

Appendix A Timeline of Legal Proceedings, courtesy of Denny Hurtado, Program Supervisor, Indian Education, Office of the Superintendent of Public Instruction, Washington State. Denny.hurtado@k12.wa.us

TIMELINE OF LEGAL PROCEEDINGS RELATED TO THE CITY OF TACOMA’S CUSHMAN HYDROELECTRIC PROJECT ON THE NORTH FORK OF THE SKOKOMISH RIVER

<u>1913</u>	November 5	L.M. Holt, Supervisor of Irrigation, U.S. Indian Office, reports that the Skokomish Tribe would oppose a dam on the North Fork of the Skokomish River, referencing safety concerns and treaty fishing rights
<u>1917</u>	July 26	Tacoma ask the U.S. Secretary of the Interior if it would oppose on behalf of the Skokomish Indians a dam on the North Fork and diversion of 800 cfs from the stream.
	August 13	Tacoma applies to the Supervisor of Olympic National Forest to Dam and divert the North and South Forks of the Skokomish River to a Hood Canal powerhouse one mile north of the Reservation.
	October 17	Assistant Secretary of Interior informs the City of Tacoma that “the Skokomish Reservation does not require the water of the North Fork . . . [for irrigation] and . . . its diversion will meet with no objection on behalf of the Indians.”
<u>1919</u>	November 6	Tacoma notifies the Commissioner of Indian Affairs that it proposes a single dam that would raise the level of Lake Cushman by 60 feet.
	November 25	Assistant Commissioner of Indian Affairs notifies Tacoma that its plan <u>would</u> affect the Reservation and that Tacoma must immediately submit its plans to his office prior to filing application with the State Supervisor of Hydraulics. The record suggests that Tacoma did not comply.
<u>1920</u>	January 28	Special Agent of the Cushman Agency, on behalf of the Skokomish Tribe, protests Tacoma’s application to the State Supervisor of Hydraulics to dam and divert the North Fork.
	September	Tacoma petitions in Mason County Superior Court to condemn land and easements on the Reservation for power lines and the Tribe’s riparian water rights from the Skokomish without notifying the United States.
<u>1921</u>	November 3	The United States learns of the City of Tacoma’s condemnation suit after judgment is issued in favor of Tacoma.
	November 21	Tacoma applies to the United States Federal Power Commission (FERC) for a license to flood 8.8 acres of federal Forest Service land as part of a hydroelectric project on the North Fork, falsely certifying that, Tacoma has all land and water rights necessary for the project, Tacoma is in compliance with state laws, and that, except for the acreage applied for, the project will “not in any manner affect any property of the United States,”.
<u>1924</u>	June 3	FERC issues Tacoma a license to flood 8.8 acres of federal Forest Service land to build a hydroelectric project on the North Fork.

<u>1924-1931</u>		Without further licensing or authorization, Tacoma builds two dams, two reservoirs, two power houses, diversion works, transmission lines and appurtenances; floods more than 40 acres of federal land; occupies the Skokomish Reservation; diverts the entire North Fork from its watershed; blocks anadromous fish from approximately 84% of the North Fork watershed; and totally dewateres the North Fork below the dams.
<u>1924-1930</u>		THE UNITED STATES REFUSES TO DEFEND THE SKOKOMISH TRIBE AGAINST DAMAGE BY TACOMA'S CUSHMAN PROJECT; AT THIS TIME, THE TRIBE HAS NEITHER STANDING NOR LEGAL CAPACITY TO DEFEND ITSELF
<u>1930</u>	September 10	Taholah Superintendent forwards to the Commissioner of Indian Affairs the Tribe's petition for Interior's approval of private legal counsel for suits against Tacoma.
	September 13	Skokomish Tribal members petition Mason County Superior Court to enjoin Tacoma from diverting the North Fork out of its watershed.
	September 15	Skokomish Tribal members petition federal district court to enjoin Tacoma from diverting the waters of the North Fork to a power house on Hood Canal.
	September 30	U.S. Attorney General instructs the U.S. District Attorney in Seattle to take action on behalf of the Skokomish Tribe regarding Tacoma's diversion of the North Fork.
	October 10	Acting Commissioner of Indian Affairs refuses the Tribe's request for private legal representation.
	November 4	U.S. District Attorney advises the U.S. Attorney General that he will await the outcome of the Tribal members' suit in federal court before acting.
	December 4	Federal district court dismisses the Tribe's suit holding that the Tribe cannot represent itself, but can only be represented by the United States.
	December 12	Tacoma's attorney writes to Assistant U.S. District Attorney John McCutcheon (running for Congress from the district which includes the City of Tacoma, his home town) to notify him that the Tribe's suit had been dismissed, ask if the U.S. intends to bring suit on behalf of the Indians, and recommend against such action
	December 22	McCutcheon and U.S. District Attorney Anthony Savage recommend against the United States representing the Tribe against Tacoma
<u>1931</u>	June 27	Superintendent of Taholah Agency recommends to the Assistant Commissioner of Indian Affairs that private attorneys be employed to represent the Tribe against Tacoma because of McCutcheon's conflict of interest.
	July 9	U.S. Attorney General asks Savage to reconsider his opinion that the United States should not represent the Tribe against Tacoma

	August 19	First Assistant Secretary of the Interior asks the U.S. Attorney General to instruct Savage to represent the Tribe in suits against Tacoma's hydroelectric project. The Attorney General does so.
1933	August 30	U.S. Attorneys Savage and Joseph A. Mallery refuse to comply with the Attorney General's instructions to represent the Tribe against Tacoma.
1934	August 8	First Assistant Secretary of Interior asks the U.S. Attorney General to consider bringing a lawsuit against Tacoma to determine damage to Indian fishing rights.
	September 15	Assistant U.S. Attorney General directs U.S. Attorney Charles Dennis to investigate damage to Indian fishing rights caused by Tacoma's Cushman project and bring any appropriate legal action
	September 24	U.S. Attorney Charles Dennis, who had represented Tacoma in its 1920 illegal condemnation suit in Mason County Superior Court, recommends against the United States representing the Tribe against Tacoma
1935	October 1	Acting U.S. Attorney General refuses to represent the Tribe against Tacoma in the Cushman matter
1939	November 3	FERC determines that its issuance of licenses such as the one issued to Tacoma in 1924 "was arbitrary, capricious, without statutory or other authority, and contrary to law."
1963		FERC reaffirms its finding that it had no authority to issue licenses such as the one issued to Tacoma.
1967	January 10	FERC confirms that the only lands included in the license for the Cushman project are 8.8 acres owned by the U.S. Forest Service.
1974	June 2	Tacoma's erroneously issued license to flood 8.8 acres of U.S. Forest Service land expires.
	May 30	FERC issues an annual license to Tacoma "for the continued operation of the Lake Cushman Project No. 460 subject to the terms and conditions of the original license"
	November 5	Tacoma applies for a major project license to include all previously unlicensed Cushman project works
1975	June 4	FERC renews Tacoma's annual license
1976	June 3	FERC renews Tacoma's annual license
1977	June 3	FERC renews Tacoma's annual license and provides for annual renewals of the license to be self-perpetuating until FERC issues a license in response to Tacoma's 1974 application
1978	December 21	U.S. Department of the Interior petitions to intervene in the licensing proceeding because of continuing impacts of the project on fish and wildlife and rights of the Tribe
1979	December 28	Acting Associate Solicitor, Division of Indian Affairs, U.S. Department of the Interior asks the U.S. Department of Justice to file suit against the City of Tacoma on behalf of the Tribe to void the State Court condemnations, eject Tacoma from and quiet title to reservation lands illegally condemned, and recover past damages.

<u>1980</u>	January 29	Justice Department delays action on Interior's request pending the receipt of more information about the bases for the lawsuit.
	February 8	Deputy Solicitor, U.S. Department of the Interior recommends the Justice Department file suit against the City of Tacoma and State of Washington "to compensate the Indians for derogation of their fishing and water rights occasioned by construction and operation of two hydroelectric dams on the North Fork of the Skokomish River . . . [and to] . . . [enjoin] the continued operation of these dams in a manner that unnecessarily destroys or diminishes the fishery."
	September 17	U.S. Justice Department requests more information from the Department of the Interior
	December 23	Bureau of Indian Affairs denies the Tribe's request for funding to hire experts to provide the Justice Department with the information it has requested
<u>1981</u>	March 30	U.S. Secretary of the Interior files a motion with FERC requesting interim relief from damage to the Tribe caused by the Cushman project and the assignment of an administrative law judge to conduct a hearing on Tacoma's application to continue damaging the Tribe for another license term. FERC ignores the motion.
<u>1982</u>	May 25	Department of the Interior, Solicitor's Office recommends against pursuing any Northwest fisheries damage claims.
<u>1983</u>	September 29	Bureau of Indian Affairs denies the Tribe's request for funding for litigation expenses to seek an end to Cushman project damage and compensation for past damages.
<u>1984</u>	After January 10	Bureau of Indian Affairs denies the Tribe's request for funding for litigation expenses to seek reduction in Cushman project impacts on the Tribe and compensation for past damages.
	June 27	On inquiry from FERC, Tacoma applies to the Washington Department of Ecology for water quality certification for the project
<u>1985</u>	April 30	Washington Department of Ecology issues a water quality certification subject to certain conditions and Tacoma appeals
<u>1986</u>	March 19	U.S. Department of Interior, Washington Department of Fisheries and Game, the Skokomish Indian Tribe, and the Point No Point Treaty Council ask FERC to assign Tacoma's application to an administrative law judge for hearing and to prepare an environmental impact statement. FERC acknowledges receipt of the request.
<u>1987</u>	December 30	Washington Department of Ecology issues a revised water quality certification conditioned on release of about 4% of average annual natural flow and periodic flushing flows and studies of their effects on the mainstream, pending final action by FERC on Tacoma's license application.

<u>1990</u>	May 22	Joint Resource Parties (U.S. National Marine Fisheries Services, Department of the Interior, Fish and Wildlife Service, National Park Service, and Bureau of Indian Affairs) files a motion with FERC complaining that Tacoma's application has "been pending before the Commission for over 14 years, despite repeated requests for hearings by federal, state, and tribal interveners," and asking FERC to "immediately order the development of an Environmental Impact Statement."
	June 15	Tribe files a motion with FERC asking it to order a complete survey of cultural resources within the Cushman Project impact area
<u>1991</u>		By this time a pattern has developed whereby Tacoma would refuse resource agencies' requests for joint studies; FERC would refuse to compel Tacoma to participate in joint studies; Tacoma would perform unilateral studies, which FERC would accept, requiring the resource agencies and Tribe to spend millions of dollars exposing the inadequacies of Tacoma's studies and conducting additional studies, which FERC would ignore, basing its decisions on what it determined Tacoma "could afford."
<u>1992</u>	February 18	Tribe petitions FERC for a Declaratory Order acknowledging that the Cushman project has never been lawfully licensed, and the pending application is for an original license (not relicensing).
	November 6	Tribe files a motion with FERC requesting interim relief from ongoing environmental damage caused by the Cushman project and for full environmental review of Tacoma's application to perpetuate that ongoing damage. FERC will not hear the Tribe's motion.
	December 10	Joint Resource Parties file preliminary comments on FERC's Environmental Impact Statement scoping document and requests for interim relief from the Cushman project's impacts on the Tribe. FERC does not respond.
<u>1993</u>	November 18	Washington Attorney General's Office notifies FERC that Tacoma's Cushman project is in violation of state water law and is causing damage within and beyond the project boundaries.
<u>1994</u>	January 24	U.S. Department of Commerce, National Marine Fisheries Service, Skokomish Tribe, State of Washington, and eight public interest conservation organizations file with FERC a statement outlining damage caused by Tacoma's Cushman project and request interim relief from that damage. FERC does not respond.
	April 4	U.S. Department of the Interior objects to FERC's use of existing severely degraded conditions as both the baseline for analysis and the no-action alternative in its Environmental Impact Statement scoping document and to FERC's failure to address federal trust/treaty issues.
	April 5	U.S. Department of Commerce objects to FERC's use of existing severely degraded conditions as the baseline for forward analysis in its Environmental Impact Statement scoping document.
	May 4	FERC re-confirms that Tacoma's original license only authorized the flooding of 8.8 acres of federal land and confirms that the license covered less than 99 percent of project lands and authorized none of the Cushman project works.

	June 3	U.S. Departments of Interior and Commerce jointly submit a petition for rehearing of the May 4 order asking that FERC acknowledge that the Cushman project has never been lawfully licensed.
	October 26	Washington Department of Fish and Wildlife recommends its terms and conditions for a Cushman project license and details Cushman Project damage, including impacts on elk populations and severe damage to salmon runs due to loss of habitat and human disturbance, loss of shellfish habitat due to dewatering of the North Fork and disruption of watershed functions, and ground water impact and sewage pollution of wells caused by rises in river and creek levels.
	October 28	U.S. Environmental Protection Agency files its recommendations and comments for licensing and details Cushman Project damage, including sedimentation of the mainstem of the Skokomish River and increased flooding, failure of septic drain fields and contamination of shallow drinking water wells, loss of important rearing habitat for juvenile salmon, and great impact on an estuary of national significance under the National Estuary Program.
	October 31	U.S. Department of the Interior files its comments, terms and conditions, prescriptions and recommendations for licensing, detailing concerns including the illegal location of project facilities on trust lands within the Skokomish Reservation, the unauthorized use of Indian reserved water rights, dewatering of the North Fork and reduction in the sediment flushing capability of the North Fork and mainstem Skokomish, loss of fish habitat and spawning and rearing grounds, and increased flooding on the Reservation.
1995	June 22	FERC issues its final order on licensing issues, holding (1) that FERC had erred in granting Tacoma a license to flood 8.8 acres of federal land and characterizing Tacoma's pending petition as an application for a "subsequent license" for a project licensed "contrary to law"; (2) that it will use the current, degraded environment as the baseline for licensing and environmental review; (3) that FERC has no authority to evaluate whether Tacoma falsely certified it had sufficient water rights for the project in its 1923 application; and (4) that Tacoma <u>is</u> entitled to occupy Tribal lands because FERC has <u>not</u> authorized Tacoma to do so.
	August 18	Tribe requests review of FERC's June 22, 1995 order by the U.S. Ninth Circuit Court of Appeals.
	August 18	U.S. Justice Department also requests review of FERC's June 22, 1995 order by the U.S. Ninth Circuit Court of Appeals on behalf of the Department of Interior, Environmental Protection Agency, and National Oceanic and Atmospheric Administration.
	October 16	FERC moves the Ninth Circuit Court of Appeals to dismiss the petitions for review for lack of jurisdiction.
	November	FERC releases its Draft Environmental Impact Statement, applying its orders of May 4, 1995 and June 22, 1995, both on appeal.

<u>1996</u>	January 29	Ninth Circuit Court of Appeals dismisses the petitions of the Tribe and Justice Department for review of FERC's June 22, 1995 order, holding that the order was not a final determination subject to review.
	March 28	Tribe objects to FERC's Draft Environmental Impact Statement for ignoring seventy years of degradation by the Cushman project; improperly weighting Tacoma's interest in the project against the ongoing harm to the Tribe, environment, and general public caused by the project; ignoring the damage to Skokomish cultural resources caused by the project; and failing to recommend reinstatement of instream flows to the North Fork despite recognition of severe damage caused by their diversion.
	March 29	U.S. Department of Commerce, Office of the Under Secretary for Oceans and Atmosphere, objects to FERC's use of the severely degraded status quo as both the no action alternative and the baseline in its Draft Environmental Impact Statement.
	March 29	U.S. Department of Interior objects to FERC's use of the severely degraded status quo as both the baseline for analysis and the no action alternative in its Draft Environmental Impact Statement and to FERC's failure to "identify or assess the impacts of licensing on trust resources."
	March 29	U.S. Environmental Protection Agency objects to FERC's use of the severely degraded status quo as both the baseline for analysis and the no action alternative in its Draft Environmental Impact Statement and to FERC's failure to address its trust responsibility to the Tribe.
	May 1	U.S. Department of Justice files a complaint against the City of Tacoma in U.S. District Court for the Western District of Washington at Tacoma, before Judge Franklin D. Burgess, for illegal condemnation of five trust or restricted Reservation lands and to recover damages for trespass.
	July 17	U.S. Department of the Interior, Fish and Wildlife Service, recommends its terms and conditions for a Cushman project license, including reducing or eliminating the diversion of the North Fork and long-term fish supplementation.
	August 6	National Marine Fisheries Service recommends cessation of the Cushman Project diversion as a condition for licensing of the Cushman project.
	August 23	Pacific Fishery Management Council recommends FERC require restoration of natural fish habitat in the Skokomish River system and mitigation for losses of habitat and related fish production potential.
	November	FERC issues its Final Environmental Impact Statement, virtually identical to its Draft Environmental Impact System.
<u>1997</u>	February	Mason County approves <i>Skokomish River Flood Hazard Management Plan</i> identifying the Cushman project's contribution to "unnatural filling of the river channel" resulting in "rising elevation of the river bed, diminished channel capacity, progressively more frequent and severe flooding, accelerated risk of channel migration, and higher ground water levels."
	May 30	Tribe files the <i>Skokomish River Flood Hazard Management Plan</i> with FERC.

	June 3	Tribe files a complaint against Tacoma with FERC for damages caused by its operation of hydroelectric facilities outside the terms and conditions of its annual license and requests interim relief pending final adjudication.
	July 9	Tacoma requests sanctions against the Tribe for initiating the action on its annual license.
	July 21	Washington Attorney General files a motion to intervene in the action on the annual license, supports the Tribe's request for interim relief, and asks for additional interim relief.
	July 23	National Marine Fisheries Service files a motion to intervene in the action on the annual license, supports the Tribe's request for interim relief, and opposes Tacoma's request for sanctions.
	July 23	U.S. Department of the Interior files a motion to intervene in the action on the annual license and opposes Tacoma's request for sanctions.
	July 24	Washington Attorney General, on behalf of Washington Department of Ecology, writes a letter to FERC in support of the Tribe's position with regard to the annual license.
	August 4	Office of the Secretary, Department of the Interior, files mandatory conditions for protection and utilization of the Skokomish Indian Reservation under section 4(e) of the Federal Power Act with FERC, detailing some of the damage to the Tribe caused by the Cushman project.
	October 20	Tribe requests expedited action on the annual licensing proceeding initiated June 3, 1997.
1998	January 30	U.S. Environmental Protection Agency files comments on FERC's Final Environmental Impact Statement and proposes licensing conditions for the Cushman project, criticizing FERC's proposed license because it would result in continuing severe damage to salmon, "progressively more frequent and severe flooding" in the mainstem Skokomish River, continuing damage to eelgrass habitat, and continuing significant damage to the Skokomish Indian Tribe and its people; does not acknowledge FERC's trust responsibilities; and ignores the treaty rights of the Tribe.
	January 30	U.S. Department of the Interior, Office of the Secretary files comments on FERC's Final Environmental Impact Statement, criticizing the Statement's preferred alternative because it would "result in the continued loss of fish, wildlife, cultural and other resources"; "lead to the continued impermissible degradation of treaty reserved resources"; interfere "with the purpose for which the Skokomish Indian Reservation was created"; "ignores the impact of aggradation" on Reservation ground-water and the swamping of Reservation land; and ignores FERC's trust responsibilities and the treaty rights of Indian tribes.

February 2	U.S. Department of Commerce, Office of the Under Secretary for Oceans and Atmosphere, files comments on FERC's Final Environmental Impact Statement, pointing out that the Cushman project "dewater a major salmon-producing river," destroys a large area of salmon habitat, "disproportionately impacts the Skokomish Indian Tribe and its treaty-secured fishing rights," completely blocks access to anadromous fish habitat in 85% of the North Fork watershed, has inundated fish and wildlife habitat above the dams and dewatered habitat below dam No. 2, has "virtually eliminated" major runs of Chinook, sockeye, and pink salmon and steelhead trout and "severely diminished" coho and chum salmon runs.
February 6	FERC terminates all consultation on cultural resource issues related to the Cushman project.
March 18	Tribe protests termination of consultation on cultural resource issues.
April 7	U.S. Advisory Council on Historic Preservation protests termination of consultation under the National Historic Preservation Act.
July 28	Tribe files comments on FERC's Final Environmental Impact Statement, pointing out that it ignores FERC's trust/fiduciary duties to the Tribe, applies relicensing rules to facilities not previously licensed, evades the original licensing protections of the Federal Power Act, uses environmental conditions already severely degraded by the Cushman project as its baseline for analysis and its no-action alternative, and defines "net benefit" of licensing solely in terms of economic benefit to Tacoma.
July 30	FERC issues the Cushman project license requiring restoration of 18% of stream flows to the North Fork, the provision of fish passage at the dams, and certain post-licensing studies and monitoring by Tacoma.
August 31	Tribe joins state and federal resource agencies in objecting to the July 30 license because "FERC improperly rejects" the recommendations, prescriptions, and mandatory conditions of resource interests in violation of the Federal Power Act; ignores its own record; "substitutes open-ended post-license studies and monitoring for license conditions that meet the requirements of law"; and bases its decisions on an unlawfully issued license that expired more than 20 years ago and requests either the adoption of changes recommended by the resource agencies and the Tribe or decommissioning of the Cushman Project, interim mitigation, and federal take-over of the Cushman project.
November 20	Judge Burgess grants summary judgment in favor of the United States in its lawsuit against Tacoma for unlawful condemnation of certain Reservation lands, holding that, as a matter of law, Tacoma never acquired any interest in the land at issue, but noting that "this result appears to be dramatically unfair to the City of Tacoma" and indicating that "trespass damages [may be] precluded by [Tacoma's] payment of fair market value in 1922."

<u>1999</u>	November 19	Skokomish Indian Tribe and its members file a lawsuit for damages, <i>Skokomish Indian Tribe, et. al. v. United States of America, et. al.</i> , Case No. C099-5606 FDB, in the United States District Court for the Western District of Washington at Tacoma before Judge Burgess, petitioning for relief from damages caused by negligence; trespass; public nuisance; private nuisance; conversion (theft); tortious interference with property; violation of the Administrative Procedure Act; unlawful taking of water rights; unlawful interference with treaty rights; unlawful interference with rights to fish runs and shellfish; unlawful taking of access easements to usual and accustomed fishing and shellfishing grounds and stations; unlawful taking of lands, airspace, and allotments; inverse condemnation (taking of property without compensation); unjust enrichment; negligent misrepresentation and/or fraud; waste; unlawful operation of the Cushman Hydroelectric Project; and violations of numerous federal and state laws and regulations on the part of the United States of America, the City of Tacoma, and Tacoma Public Utilities Board Members in their Official Capacities.
	December 10	Judge Burgess enters Final Judgment in favor of the United States in its lawsuit against Tacoma for unlawful condemnation of certain Reservation allotment lands, holding that the “City of Tacoma has no right, title, or interest in the Skokomish Reservation Allotments 9-B, 11-A, 31-B, 40 and 42,” after the parties agree that no additional proceedings are needed to determine damages.
<u>2000</u>	May 26	Judge Burgess dismisses the United States as a defendant in the Tribe’s damages lawsuit
	September 7	Judge Burgess denies class certification of the plaintiffs in the damages lawsuit
	October 20	Tribe petitions the Ninth Circuit Court of Appeals for a Writ of Mandamus requiring Judge Burgess to reinstate the United States as a defendant in the Tribe’s damages lawsuit.
	October 30	D.C. Circuit Court of Appeals remands licensing proceedings for the Cushman project back to FERC requiring that any new license must account for the listings of Puget Sound Chinook salmon, Hood Canal summer-run chum salmon, and bull trout under the Endangered Species Act and the biological opinion of the National Marine Fisheries Service and effectively reopening consideration of all licensing issues, but allows Tacoma to continue to operate the project in a virtually unregulated fashion pending a final decision
	November 14	Ninth Circuit Court of Appeals denies the Tribe’s petition for a Writ of Mandamus
	November 27	Tribe files a motion in the Ninth Circuit Court of Appeals for reconsideration of the court’s denial of the Tribe’s petition for a Writ of Mandamus
	December 18	Tribe appeals Judge Burgess’s denial of class certification in the damages lawsuit to the Ninth Circuit Court of Appeals
	<u>2001</u>	January 3

2003	March 30	Judge Burgess refuses to recuse himself from the damages lawsuit despite being a Tacoma Utilities rate payer and a former assistant city attorney for Tacoma
	April 13	Judge Burgess denies reconsideration of his decision not to recuse himself
	May 15	Judge Burgess's refusal to recuse himself is referred to the Chief Judge of the United States District Court for the Western District of Washington
	May 21	Chief Judge declines to require Judge Burgess to recuse himself from the damages lawsuit
	June 5	Judge Burgess dismisses claims in the damages lawsuit arising from violations of the Tribe's rights under the Treaty of Point No Point, ruling that the Treaty's conditions "accommodate the Cushman Hydroelectric Project."
	August 9	Judge Burgess dismisses the Tribe's damages lawsuit, ruling that Congress did not intend to create a right of action for damage to the Tribe's property and other legal interests caused by Tacoma's construction, maintenance, and operation of the Cushman Project; the federal Clean Water Act was not designed to accommodate the Tribe's lawsuit for Tacoma's failure to comply; members of the Tacoma Public Utility Board are "immune from liability"; and all remaining claims were brought too late
	September 6	Tribe appeals Judge Burgess's dismissal of the Tribe's damages lawsuit and his orders dismissing the United States as a defendant, denying class certification, refusing to recuse himself, and dismissing the Tribe's damages claims, as well as numerous other procedural orders to the Ninth Circuit Court of Appeals
	September 26	Ninth Circuit Court of Appeals sends the Tribe's appeal to the court mediation program
	March 3	Tribe moves FERC to partially lift the stay to require Tacoma to comply with licensing conditions designed to protect endangered fish species
	June 3	Ninth Circuit Court of Appeals upholds the dismissal of the Tribe's damages claims by the District Court
	June/July	Tribe requests <i>en banc</i> review of the Court of Appeals Decision
	2004	September 23
February 7		NOAA Fisheries files a final biological opinion supporting the need for interim licensing conditions to protect endangered fish species
March 2		Tacoma files a motion urging FERC to reconsider its balancing of public interest factors, claiming FERC's licensing requirements would require Tacoma to decommission the Cushman project because of unsustainable costs

<u>2005</u>	March 4	Fish and Wildlife Service files a final biological opinion supporting the need for interim licensing conditions to protect endangered fish species
	June 21	FERC issues its Order on Remand, amending licensing conditions to provide further protection for endangered fish species, lifting the stay on restoration of stream flows, and denying Tacoma's motion to reconsider its licensing conditions, noting that implementing the interim measures would result in an average annual increase of \$6.05 per customer.
	March	FERC issues final licensing order; Tacoma and Tribe appeal; appeals consolidated in the D.C. Circuit Court of Appeals, which grants Tacoma's motion to stay the Commission's order that Tacoma restore stream flows pending appeal
	March 9	<i>En banc</i> panel of the Ninth Circuit Court of Appeals upholds the dismissal of the Tribe's damages claims in Federal District Court, but transfers the Tribe's treaty based claims against the United States to the Court of Federal Claims
	March/April	Tribe moves for rehearing of its appeal on its damages claim
	April 21	Law Professors, the National Congress of American Indians, and Indian Tribes file an <i>amici curiae</i> brief in the Tribe's damages case, arguing that "the en banc majority's decision that [Indian reserved water rights] may be violated by all but the United States without fear of damages liability constitutes an unprecedented threat to the security of those rights" and "is patently inconsistent with every decision of the court previously addressing the question."
	June 3, 2005	<i>En banc</i> panel of the Ninth Circuit Court of Appeals issues an amended opinion deleting all portions of its March 9 decision on the issue of Indian reserved water rights but upheld the dismissal of the Tribe's claims on the grounds that Tribes and individual Tribal members do not have the right to sue for money damages for treaty violations by third parties and that the damages claims were brought too late.