No. 22-35000

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SAUK-SUIATTLE INDIAN TRIBE,

Plaintiff-Appellant,

v.

CITYOF SEATTLE and SEATTLE CITY LIGHT,

Defendant – Appellee,

On Appeal from the United States District Court for the Western District of Washington

APPELLANT'S OPENING BRIEF

Jack Warren Fiander Towtnuk Law Offices, Ltd. Sacred Ground Legal Services, Inc. 5808A Summitview Avenue, # 93 Yakima, WA 98908 (509) 969-4436 towtnuklaw@msn.com



Table of Contents

troduction
rrisdiction
ssignments of Error
actual Background
istorical basis for appellant's claims
Standard of Review5
ummary of Argument5
rgument6
Plaintiff's state court complaint was not properly removable as it asserts claims purely arising under state law and does not conflict with Congress' intent embodied in the plain text of the Federal Power Act
Resolution of plaintiff's state-based claims by the state court is not "exclusively" subject to federal jurisdiction, as the Federal Power Act's savings clause expressly precludes complete federal preemption
Although adjudication of Plaintiff's complaint may <i>involve</i> federal questions raised as a <i>defense</i> , the claims raised in the <i>complaint</i> are based upon state law and state constitutional provisions which merely incorporate by reference federal laws
The district court's determination that Plaintiff's common law claims and claim of Nuisance involve a question foreclosed by federal law or that it involves a federal question is without merit. That respondents' possess a license to generate hydropower does not vitiate the applicability of Washington common law



The district court erred in mischaracterizing the basis of plaintiff's claims. That certain territorial acts for Oregon and Washington were repealed in 1873 and 1933 respectively have no bearing on this case, since Washington had by then already incorporated their provisions as matters of Washington state law. Plaintiff's claims do not arise directly under now repealed federal law, rather, the claims are based upon the incorporation by reference of then-existing federal law <i>into state law</i>	29
Appellant's assertion of a common law claim does not constitute a "collateral attack on respondent's license"	34
The 1995 Settlement Agreement the district court relied on to dismiss plaintiff's complaint does not preclude appellant's Claims	37
The doctrine of primary jurisdiction is inapplicable to this cause	40
The claims raised in plaintiff's complaint are not preempted by the Federal Power Act nor exclusively subject to determination by the Federal Energy Regulatory Commission.	41
Principles of Comity militate in favor of the Court abstaining from entertaining respondents' motion to dismiss, as resolution of the issues raised therein are best resolved by the State court, in determining the applicability of the State's own laws	44
CONCLUSION	46
Certificate of Service.	48
Certificate of Compliance	49
Statement of Related Cases	50
Amandin	<i>5</i> 1



Table of Authorities

Cases:

Alabama v. Shelton, 535 U.S. 654 (2002)	8
ARCO Envtl. Remediation, L.L.C. v. Dep't of Health & Envtl. Quality of Mont., 213 F.3d 1108 (9th Cir. 2000)	8
Ashcroft v. Iqbal, 556 U.S. 662 (2009)	22
Astiana v. Hain Celestial Group, Inc., 783 F.3d 753 (9th Cir. 2015)	38
Beneficial Nat'l Bank v. Anderson, 531 U.S. 1 (2003)	9
Bernhard v. Whitney National Bank, 523 F. 3d 546 (5th Cir. 2008)	10
Boatright v. Bookman, 1 Rice 447 (S.C. Ct. App. 1839)	27
Boyle v. United Techs. Corp., 487 U.S. 500 (1988)	41
Bruskland v. Oak Theater, 42 Wn. 2d 346 (1953)	36
Cal. Save Our Streams Council, Inc. v. Yuetter, 887 F.2d 908 (9th Cir. 1989)	34
Carrington v. City of Tacoma 276 F. Supp. 3d 1035 (W.D. Wash. 2017)	24
Caterpillar Inc. v. Williams, 482 U.S. 386 (1987)	8
<u>Cipollone v. Liggett Grp., Inc.,</u> 505 U.S. 504 (1992)	16
City of Oakland v. BP, No. 18-16663 (Aug. 12, 2020)	6



<u>City of Tacoma v. State</u> , 121 Wash. 448 (1922)	40
City of Tacoma v. Taxpayers of Tacoma, 357 U.S. 320 (1958)	37
Commonwealth v. Chapin, 22 Mass. (5 Pick.) 199, 207 (1827)	4
Cost Management Services v. Washington Nat. Gas, 99 F.3d 937 (9th Cir. 1996)	38
<u>Ervin v. JP Morgan Chase Bank NA</u> , No. GLR-13-2080, 2014 WL 4052895 (D. Md. Aug. 13, 2014)	11
Fla. Lime & Avocado Growers v. Paul, 373 U.S. 132 (1963)	15n
Gully v. First National Bank in Meridian, 299 U.S. 109 (1936)	46
Hamilton v. Marquis of Donegall, 3 Ridgeway's Parl Cases 267 (Ire. 1795)	29
<u>Hart v. Bayer Corp.</u> , 199 F. 3d 239 (5th Cir. 2000)	6
<u>Hart v. Hill</u> , 1 Whart. 124, 137 (Pa. 1836)	4
Hines v. Davidowitz, 312 U.S. 52 (1941)	15n
Holyoke Co. v. Lyman, 82 U.S. 500 (1872)	27
Hortonville Joint Sch. Dist. No. I v. Hortonville Educ. Ass'n, 426 U.S. 482 (1976)	8
Maryland Public Service Commission v. Talen Energy Marketing LLC (U.S. Supreme Ct. No. 14-614), April 9, 2016)	18-19
Medtronic, Inc. v. Lohr, 518 U.S. 470 (1996)	14
Menominee Tribe v. United States, 391 U.S. 404 (1968)	20

DOCKET

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

