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CIRCUIT COURT OF THE STATE OF OREGON FOR WALLOWA COUNTY

STATE OF OREGON )

Plaintiff, )

vs. )

IRVIN CURTIS WATTERS, SR. )

CASE NUMBER: 03M5472

IRVIN CURTIS WATTERS, JR )

CASE NUMBER: 03M5471

Defendants. )

This matter came before this Court on Defendant's Dumurrers, Motions to Dismiss for Lack of Jurisdiction and Motion to Change Venue. This Court has heard testimony and received evidence and is prepared to make its ruling.

Defendant's Watters are a father and son of 100% Nez Perce Indian descent. Defendants, with intent to provide elk meat for a ceremonial celebration in the City of Wallowa in Wallowa County, Oregon, did shoot an kill two cow elk upon premises located inland that was part of the treaty lands between the United States and Defendants' ancestors.

These two particular elk were killed on private property owned by Boise Cascade Corporation. Neither Defendant possesses State of Oregon hunting tag or license. The shooting took place outside any hunting season recognized by the Department of Fish and Wildlife, State of Oregon.

Circuit Court of the State of Oregon  
for Union County  
1008 K Ave.  
La Grande, OR 97850

1 Senior Watters was cited for "taking an elk during closed season." Watters Junior was  
2 cited for aiding in the illegal taking of these elk by his father.

3 ORS 135.630(3) allows for a demur when, among other things;

4 (4) .... the facts stated do not constitute an offense.

5 This Court has heard a substantial amount of the testimony regarding this case. There is  
6 no dispute as the material facts in this case.

7 An issue exists as to whether the area on which these elk were shot was within the treaty  
8 language of "open and unclaimed." If "yes" Defendants Watters could legally shoot the elk  
9 where they were shot.

10 Testimony from an expert in the Nez Perce culture indicated that even private property,  
11 such as that owned by Boise Cascade, may be "open and unclaimed." This may happen when  
12 there are not any homestead or other structures in the area.

13 This Court need not make the determination regarding "open and unclaimed." The  
14 charges involving Defendants do not deal with where the elk were, but rather involve  
15 allegations that the elk were taken "... during closed season." In other words, as this Court sees  
16 the allegation, it is alleged that the Watters Defendants took the elk at a time that they had no  
17 right to take an elk. Neither Defendant is charged with trespass.

18 Without going into length, this Court believes that Defendants Watters had a right  
19 pursuant to treaty to kill elk on lands that were ceded to the United State by the Nez Perce  
20 pursuant to treaties, including the treaty of 1855. Such right was to hunt in any area that is  
21 "open and unclaimed." This particular land where the elk were shot was within that treaty  
22 property, although such land is now owned privately.

23 There is not such thing as a "closed season" for hunting by these Nez Perce members.

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There could be a violation by these two Nez Perce members for hunting where they have no such right to be. In other words, Defendants may be guilty of trespass, but not of "taking (or aiding in taking) elk during closed season."

The demurrers filed by Defendants Watters are granted. Based on this ruling there is no need for this Court to rule on Defendants' Motion to dismiss for lack of jurisdiction or on Defendants' Motions for Change of Venue.

Defense counsel, Ron Schenck, shall draft an appropriate general judgment of dismissal.

DATED: October 8, 2003

  
PHILLIP A. MENDIGUREN  
CIRCUIT COURT JUDGE

mc: Dan Owlsley  
Ron Schenck