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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

ESTATE OF CHARLES FIANDER, and  
ROGER MARK FIANDER

Plaintiffs,

v.

YAKIMA RESERVATION IRRIGATION  
DISTRICT,

Defendant.

No. 1:21-cv-3024

**COMPLAINT—CLASS ACTION  
FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

Fed. R. Civ. P. 23

I. INTRODUCTION

1.A This civil action involves a complaint seeking to declare that defendant’s imposition of a monetary fee for so-called irrigation services upon plaintiffs who are owners of land situated on the Yakama Reservation to whom no water delivery services are provided by defendant is unlawful, does not constitute a governmental tax authorized to be imposed upon such lands, and seeking a permanent injunction requiring defendant to provide a means for exempting plaintiffs from such assessments.

II. PARTIES

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2 2.A. Plaintiff Estate of Charles Fiander is the owner of a 1.9 acre parcel of  
3 land situated in the area of White Swan, Washington which is a portion of former  
4 Indian tribal allotment known as the Coburn Addition, for which a fee patent was  
5 issued to him.  
6

7 2.B. Plaintiff Roger Mark Fiander is the owner of a parcel of similar land  
8 situated at 140 Deering Road on the Yakama Reservation.  
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10 2.C. Defendant is an irrigation district which purports to be formed under  
11 state law with a registered address of P.O. Box 1689, Yakima, WA 98907.  
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III. JURISDICTION AND VENUE

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14 3.A. The Court has jurisdiction over this cause pursuant to 28 U.S.C.  
15 §1331 in that this cause presents a Federal Question as to whether defendant, a  
16 nongovernmental association possesses authority, in the absence of Congressional  
17 authorization, to monetarily assess Indian owned lands in Indian Country, absent  
18 their consent, for irrigation services which are not actually provided to them by  
19 defendant.  
20

21 3.B. The Court has jurisdiction to resolve this Federal Question in that this  
22 civil action is not barred by the State Tax Anti-Injunction Act, 28 U.S.C. §1341  
23 as defendant's assessment does not constitute a state tax, does not meet the  
24 definition of a tax, is not imposed to provide governmental services, and does not  
25

1 fall within the class of taxes authorized to be imposed upon Indian Reservation  
2 lands according to clearly established law.

3 3.C. As this court possesses jurisdiction pursuant to 28 U.S.C. 1331 to  
4 resolve the federal question regarding the applicability of defendant's monetary  
5 assessment against plaintiffs' lands, and such action is not barred by 28 U.S.C.  
6 1341, the Court possesses pendent or ancillary jurisdiction to determine plaintiff's  
7 claim that defendant does not qualify as an irrigation district within the meaning  
8 of Washington state law.  
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10

11 3.D. Venue lies in the Eastern District of Washington in that all parties  
12 reside, are domiciled, or have business headquarters within the Eastern District of  
13 Washington.  
14

#### 15 IV. FACTUAL ALLEGATIONS

16 4.A. Plaintiffs are members of the Yakama Nation.

17 4.B. Plaintiffs own land in fee simple status with the Yakama Reservation.

18 4.C. Defendant purport to be an Irrigation District operating within the  
19 Yakama Reservation.  
20

21 4.D. An irrigation district may be organized or maintained for the purposes  
22 of:  
23

24 4.D.1. The construction or purchase of works, or parts of same, for  
25 the irrigation of lands within the operation of the district;

1 4.D.2. The reconstruction, repair or improvement of existing  
2 irrigation works;

3 4.D.3. The operation or maintenance of existing irrigation works;

4 4.D.4. The construction, reconstruction, repair or maintenance of a  
5 system of diverting conduits from a natural source of water supply to the  
6 point of individual distribution for irrigation purposes; and  
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8 4.D.5. The execution and performance of any contract authorized by  
9 law with any department of the federal government or of the state of  
10 Washington, for reclamation and irrigation purposes.  
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14 4.E. On information and belief, defendant provides no services identified  
15 in ¶ 4.D above.

16 4.F. Defendant is not a governmental entity.

17  
18 4.G. Defendant imposes a monetary assessment for irrigation district  
19 services upon plaintiffs' land.

20 4.G.1. The assessment identified in the foregoing paragraph is not  
21 authorized by any act or statute of the United States Congress.  
22

23 4.H. On information and belief, none of such assessments collected by  
24 defendant from plaintiffs are not expended for the purposes identified in ¶ 4.D  
25 above.

1 4.I. On information and belief, the majority of the funds derived from such  
2 assessments are expended upon legislative lobbying and litigation, often in  
3 opposition to the proposed class members.

4 4.J. On information and belief, for purposes of collection of payment of  
5 such assessment, defendant has designated the Treasurer of Yakima County,  
6 Washington as defendant's treasurer.

7 4.K. Failure to pay such assessment can, and has, resulted in a lien upon  
8 lands and foreclosure of lands owned by plaintiff and the members of plaintiffs'  
9 class.

10 4.L. Defendant is not a subdivision of the United States or the State of  
11 Washington.

## 12 V. CLASS ALLEGATIONS

13 5.1. The estate of deceased Yakama Indian Charles Fiander, and his living  
14 lineal descendant Roger Mark Fiander, bring this action under Federal Rule of  
15 Civil Procedure 23(b)(2) on behalf of themselves and a class of all other persons  
16 similarly situated who are, have been, and will be, subjected to bi-annual  
17 monetary assessments imposed upon them and lands by the defendant.

18 5.2. Plaintiffs seek to represent the following class: All members of the  
19 Yakama Nation who own land within the Yakama Reservation who are being  
20 assessed and required to pay a monetary assessment to defendant.  
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1 5.3. Plaintiffs are each adequate representatives of the proposed class. The  
2 proposed class satisfies the requirements of Rule 23(a)(1) because the class is so  
3 numerous that joinder of all members is impracticable. On information and belief,  
4 there are at least several hundred persons that fit within the class in that they old  
5 title to land assessed by defendant and an unknown yet numerous number of  
6 persons who are co-owners of such lands holding undivided fractionated interests  
7 in such land.  
8

9  
10 5.4. The class meets the commonality requirements of Federal Rule of  
11 Civil Procedure 23(a)(2). The members of the class are subject to a common  
12 practice by Defendants: Being assessed a monetary amount not authorized to be  
13 imposed by the United States Congress upon lands owned by Indian tribal  
14 members in Indian Country to offset the cost of irrigation services which are not  
15 provided by defendant.  
16

17 5.5. By definition, all class members have experienced that practice.  
18

19 5.6. The lawsuit raises questions of law common to members of the  
20 proposed class, specifically including the federal question of whether the  
21 defendant possesses lawful authority to monetarily assess and collect payment  
22 from class members for the provision of irrigation services which are not  
23 provided.  
24  
25

1 5.7. The proposed class meets the typicality requirements of Federal Rule  
2 of Civil Procedure 23(a)(3), because the claims of the representative Plaintiffs are  
3 typical of the claims of the class. Msrs. Fiander and the proposed class members  
4 are all individuals who have had to pay money to defendant despite the defendant  
5 not being a governmental entity authorized to impose such assessment upon  
6 Indian owned lands in Indian Country and despite that defendant provides no  
7 irrigation water delivery services to them nor even owns an irrigation canal or  
8 headgate.  
9  
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11 5.8. The proposed class meets the adequacy requirements of Federal Rule  
12 of Civil Procedure 23(a)(4). The representative Plaintiffs seek the same relief as  
13 the other members of the class—namely, an order that the Defendant promptly  
14 provide a means for identifying and notifying landowners whose lands should be  
15 excluded from such assessments and to remove such properties from defendant’s  
16 assessment rolls.  
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18

## 19 VI. CLAIMS FOR RELIEF

20 6.A. Defendant’s assessment constitutes an impermissible financial burden  
21 upon plaintiff’s property and that owned by the members of plaintiff’s proposed  
22 class which is not authorized by existing federal law to be applicable to Indian  
23 reservation land owners.  
24  
25

1 5.B. Defendant's conduct or assessment is further contrary to existing  
2 Washington state law as to any fee simple landowner within the Yakama  
3 Reservation whether he or she be a tribal citizen or not in that defendant was not  
4 properly organized as an irrigation district and exercises none of the powers, or  
5 exceeds such powers, conferred upon irrigation districts,  
6

7 VII. PRAYER FOR RELIEF

8 WHEREFORE, Plaintiffs pray that this Court:

- 9
- 10 A. Certify this cause as a class action pursuant to Rule 23, Fed. R. Civ. P.,  
11 designate plaintiffs as suitable representatives of such class, and appoint  
12 the undersigned counsel as attorney for such class.
- 13
- 14 B. Declare that defendant lacks authority to monetarily impose a financial  
15 assessment upon plaintiffs' lands.
- 16
- 17 C. Declare that defendant's activities exceed the lawful powers of an  
18 irrigation district.
- 19
- 20 D. Award plaintiffs damages in the amounts, within the statutory  
21 limitations period, that plaintiffs have been required to pay defendant,  
22 or disgorgement of such funds to plaintiffs and the members of  
23 plaintiffs' proposed class.
- 24
- 25 E. Enter a permanent injunction requiring defendant to give notice, in a  
manner likely to provide actual notice to the class members, of the



1 opportunity to be excluded from assessments imposed by defendant  
2 and enjoining defendant from further assessments.

3 F. Award such other and further relief as is just and equitable, including an  
4 award to plaintiffs of their reasonable costs of suit.  
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6 DATED this 23<sup>rd</sup> day of February, 2021.

7 Respectfully submitted,

8 S/Jack W. Fiander  
9 Counsel for Plaintiffs  
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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Filed Over Allegedly Unauthorized Irrigation Services Tax on Yakama Reservation Lands](#)

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