No. 15-35540

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UPPER SKAGIT INDIAN TRIBE, Plaintiff - Appellee, v. SUQUAMISH INDIAN TRIBE, Defendant - Appellant.	D.C. No. 2:14-sp-00001-RSM Appeal from the U.S. District Court for Western Washington, Seattle

APPELLANT'S OPENING BRIEF

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I. STATEMENT OF JURISDICTION

The District Court for the Western District of Washington has subject matter jurisdiction in the underlying proceeding pursuant to 28 U.S.C. §§1331, 1345, and 1362. This matter arises out of a subproceeding initiated by Upper Skagit Indian Tribe ("USIT") against the Suquamish Indian Tribe ("Suquamish") in *U.S. v. Washington*, C70-9213, W.D.Wash, involving a Request for Determination ("RFD") of the geographic scope of Suquamish's usual and accustomed fishing grounds and stations ("U&A") in the marine waters of the Puget Sound. The District Court had continuing jurisdiction in this matter pursuant to Paragraph 25(a)(1) of the permanent injunction issued by the District Court.[1] The District Court entered its order and judgment on Cross Motions for Summary Judgment on June 3, 2015[Dkt. 62, Dkt. 63 / ER 4-23]. Suquamish timely filed its Notice of Appeal as to the District Court's denial of Suquamish's Cross Motion for Summary Judgment and grant of USIT's Cross Motion for Summary Judgment on June 30, 2015 [Dkt. 65 / ER 1]. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.[2]

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[1] Originally entered on March 22, 1974, *U.S. v. Washington*, 384 F. Supp. 312, 419 (W.D. Wash. 1974 *aff'd and remanded*, 520 F.2d 676 (9th Cir. 1975), *as modified by August 23, 1993, Order* (C70-9213, Dkt. #13599)(set forth in *U.S. v. Washington (Compilation of Major Post-Trial Substantive Orders, January 1, 1991 through December 31, 1993)*, 18 F.Supp.3d 1172, 1213 (W.D. Wash. 1991)).

[2] *Tulalip Tribes v. Suquamish Indian Tribe*, 794 F.3d 1129, 1133 (9th Cir. 2015).

II. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

A. Whether the District Court erred in applying the "*Muckleshoot* analysis" as set forth in this Court's prior decisions in *Muckleshoot v. Lummi*, 141 F.3d 1355 (9th Cir. 1998) ("*Muckleshoot I*"), *Muckleshoot Indian Tribe v. Lummi Indian Nation*, 234 F.3d 1099 (9th Cir. 2000) ("*Muckleshoot II*"), *United States v. Muckleshoot Indian Tribe*, 235 F.3d 429 (9th Cir. 2000) ("*Muckleshoot III*"), and their progeny, in connection with denying the Suquamish's Cross Motion for Summary Judgement and granting USIT's Cross Motion for Summary Judgment and finding that Judge Boldt did not intend to include the Contested Waters[3] within Suquamish's U&A. In particular:

1. Whether the District Court erred as a matter of law by refusing to accord any weight to Judge Boldt's statements regarding the lack of any tribal objection to Suquamish's U&A claim in the Contested Waters, failing

[3] Described fully as "Those waters, tideland and bedlands easterly of a line drawn from Clark Point to Governor Point across the mouth of Chuckanut Bay, and those waters, tidelands, and bedlands easterly of a line on the shore directly north of Whiskey Rock, thence southwesterly across Samish Bay to Point Williams, said line being the current line marking the boundary between Washington State Salmon Catch Reporting Areas 7B and 7C, thence westerly and southerly around Samish Island until a line can be drawn southerly to the westernmost point on Hat Island in Padilla Bay, thence westerly and southerly around Hat Island at extreme high tide until a line can be drawn southerly and easterly to a point on the shore of the mainland approximately one mile east of the eastern most point of the eastern mouth of the slough draining from Whitney to Padilla Bay, which point is almost directly south of Bay View…including all of the streams, beds and banks draining into these salt water areas." (DKT 62 at p. 2 n. 1). Hereinafter referred to as the "Contested Waters."

to evaluate general evidence of Suquamish treaty-time fishing and travel in the Contested Waters, failing to discuss testimony before Judge Boldt that Suquamish would be fishing for herring in the Contested Waters based on his U&A determination, and failing to consider Judge Boldt's specific approval of fishing regulations that contemplated Suquamish fishing in the Contested Waters.

2. Whether the District erred in disregarding Judge Boldt's express findings with respect to Suquamish U&A in Fidalgo Bay and the waters east of Cypress and Sinclair Islands, and finding that it was unlikely Suquamish used those waters at treaty time.

3. Whether the District Court erred as a matter of law in construing Judge Boldt's findings regarding the Hale Passage Agreement as a modern agreement pertaining to current day use, as opposed to a recognition of Suquamish's historic U&A rights.

B. Whether the District Court erred as a matter of law in failing to apply the doctrine of claim preclusion to bar USIT's claims following USIT's stipulation that claim preclusion was applicable.

III. ADDENDUM OF PERTINENT LAWS

Pursuant to Circuit Rule 28-2.7, pertinent statutes and regulations are contained within the addendum to this brief.

IV. STATEMENT OF THE CASE

A. Procedural History

As noted above, this treaty fishing rights appeal under paragraph 25(a)(1) of the permanent injunction issued originally by Judge Boldt in *U.S. v. Washington*, C70-9213, in 1974.[4] Suquamish was not a party to the original proceeding, but instead had its U&A determined in a supplemental proceeding before Judge Boldt in 1975.[5] As described by Judge Boldt, Suquamish's U&A included the following:

> 5. The usual and accustomed fishing places of the Suquamish Tribe include the marine waters of Puget Sound from the northern Tip of Vashon Island to the Fraser River including Haro and Rosario Straits, the streams draining into the western side of this portion of Puget Sound and also Hood Canal.

At that hearing and in his Order, Judge Boldt also recognized that Suquamish had entered into an agreement regarding the Hale Passage area with Lummi Tribe ("Lummi") and another Tribe with U&A in those waters, recognizing the primary nature of Lummi's treaty rights.[6] Prior rulings have determined that the apparent meaning of "marine waters of Puget Sound" as used by Judge Boldt in his description of Suquamish's U&A includes the Contested Waters.

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[4] Originally entered on March 22, 1974, *U.S. v. Washington*, 384 F. Supp. 312, 419 (W.D. Wash. 1974) *aff'd and remanded*, 520 F.2d 676 (9th Cir. 1975), *as modified by August 23, 1993, Order* (C70-9213, Dkt. #13599)(set forth in *U.S. v. Washington (Compilation of Major Post-Trial Substantive Orders, January 1, 1991 through December 31, 1993)*, 18 F.Supp.3d 1172, 1213 (W.D.Wash. 1991)).

[5] *Tulalip Tribes v. Suquamish Indian Tribe*, 794 F.3d 1129, 1132 (9th Cir. 2015); *accord* March 28, 1975 Order at ¶ 3, ER at 33.

[6] Order of April 18, 1975, at ¶ 7, ER at 26.

In 2005, USIT filed a prior RFD with respect to Suquamish's U&A in Saratoga Passage and Skagit Bay, which are located on the east side of Whidbey Island, bounded on the north by the Swinomish Channel, and located south of the Contested Waters.[7] Following this Court's ruling on the appeal from the prior RFD in 2010, USIT initiated this RFD in 2014, seeking an order from the District Court that Suquamish did not have U&A in the Contested Waters either.[8]

USIT and Suquamish filed cross-motions for summary judgment on January 23, 2015, which raised all of the issues presented here for review.[9] Following additional briefing, the District Court heard oral argument on the cross-motions on May 21, 2015. The District Court entered its Order [Dkt. 62 / ER 5-23] and Judgment [Dkt. 63 / ER 4] on June 3, 2015, and Suquamish timely filed its Notice of Appeal with this Court on June 30, 2015 [Dkt. 65 / ER 1-3].

B. Factual Background Relevant to Review

Suquamish was an original party to the 1855 Treaty of Point Elliot,[10] under

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[7] *Upper Skagit Indian Tribe v. Washington*, 590 F.3d 1020, 2013 at n. 4 (2010) (describing waters at issue). A separate RFD was instituted in 2005 against Suquamish by the Tulalip Tribes with respect to other waters in the southern Puget Sound on both sides of Whidbey Island, which was the subject of this Court's recent decision in *Tulalip Tribes v. Suquamish Indian Tribe*, 794 F.3d 1129 (2015) (holding Suquamish's U&A included the waters at issue located on the east and west sides of Whidbey Island).

[8] *See* Request for Determination, Dkt. 1 (Referenced at ER 1262).

[9] *See* Suquamish MSJ, Dkt. 37, USIT MSJ Dkt. 38 (Referenced at ER 1262).

[10] 12 Stat. 927, Art. V (signed January 22, 1855; ratified March 8, 1859; proclaimed April 11, 1859).

which Suquamish and other Puget Sound Tribes ceded certain lands to the United States of America while, as relevant here, reserving a right to take fish at "all usual and accustomed grounds and stations" on and off its reservation.[11] Following Judge Boldt's Order of April 18, 1975, uncontroverted evidence before the District Court established that Suquamish has regularly harvested fish and shellfish in the Contested Waters for the last forty years.[12]

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[11] *Tulalip Tribes*, 794 F.3d 1131 (citations omitted).

[12] *See generally* Declaration of Rob Purser, ER 708-719 (noting same); *accord* Declaration of Raymond Forsman, ER 703-707; Declaration of Tony Forsman ER 720-725. In addition, the following annual regulations for various species are applicable to the Contested Waters referenced in the declarations: 1975 Fishing Regulations, ER 100-121; 1976 Suquamish Fishing Regulations, ER 122-158; 1977 Fishing Regulations, ER 159-162; 1978 Fishing Regulations , ER 163-206; 1979 Fishing Regulations, ER 207-229; 1980 Fishing Regulations, ER 230-258; 1981 Fishing Regulations, ER 259-285; 1982 Fishing Regulations, ER 286-304; 1983 Fishing Regulations, ER 305-313; 1984 Fishing Regulations, ER 314-317; 1985 Fishing Regulations, ER 318-330; 1986 Fishing Regulations, ER 331-336; 1987 Fishing Regulations, ER 337-350; 1988 Fishing Regulations, ER 351-358; 1989 Fishing Regulations, ER 359-372; 1990 Fishing Regulations, ER 373-378; 1992 Fishing Regulations, ER 379-381; 1995 Fishing Regulations, ER 382-390; 1996 Fishing Regulations, ER 391-396; 1997 Fishing Regulations, ER 397-408; 1998 Fishing Regulations, ER 409-416; 1999 Fishing Regulations, ER 417-424; 2000 Fishing Regulations, ER 425-437; 2001 Fishing Regulations, ER 438-444; 2002 Fishing Regulations, ER 445-448; 2003 Fishing Regulations, ER 449-453; 2004 Fishing Regulations, ER 454-466; 2005 Fishing Regulations, ER 467-479; 2006 Fishing Regulations, ER 480-491; 2007 Fishing Regulations, ER 492-510; 2008 Fishing Regulations, ER 511-536; 2009 Fishing Regulations, ER 537-572; 2010 Fishing Regulations, ER 573-598; 2011 Fishing Regulations, ER 599-620; 2012 Fishing Regulations, ER 621-636; 2013 Fishing Regulations, ER 637-657; 2014 Fishing Regulations, ER 658-682; *see also* 1975-2014 catch report totals from the NW Indian Fish Commission database identifying that portion of the Suquamish fleet's salmon catch in the Contested Waters, ER 683-689; Declaration of Viviane Barry, ER 726-727 (noting shellfish harvest); *see* catch report totals

C. Rulings Presented for Review and Standard of Review

In this appeal, Suquamish challenges the District Court grant of USIT's cross-motion for summary judgment and denial of its cross-motion for summary judgment as set forth in the District Court's Order. [Dkt. 62 / ER 5-23]. In particular, Suquamish challenges the District Court's determination that USIT met its burden of showing that it is more likely than not that Judge Boldt intended to exclude the Contested Waters from Suquamish's U&A and the related findings that: (a) reaching the Contested Waters requires a substantial detour from likely travel routes used by Suquamish at treaty-time [ER 19]; (b) that there was no evidence in the record of Suquamish fishing or travel in the Contested Waters in the record before Judge Boldt [ER 20]; (c) that the Hale Passage Agreement related only to Suquamish and other tribes "current day use" as opposed to "historic right" [ER 20-21]; and (d) the District Court's finding that the fishing regulations required to be filed with the Court and approved by Judge Boldt are not part of the "record before Judge Boldt" or probative of his intent with respect to the inclusion of the Contested Waters within Suquamish's U&A [ER 21-22].

These matters were all resolved by the District Court on summary judgment, and therefore the applicable standard of review is *de novo*.[13]

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identifying Suquamish's year-over-year shellfish harvest in the Contested Waters, ER 690-700.

[13] *Tulalip Tribes v. Suquamish Indian Tribe*, 794 F.3d 1129, 1133 (9th Cir. 2015).

V. SUMMARY OF THE ARGUMENT

Judge Boldt's April 18, 1975, Order included three separate Findings of Fact ("FF") that are relevant here: (1) FF No. 5 broadly describing Suquamish's U&A as the "marine waters of the Puget Sound,"; (2) FF No. 7 approving the Hale Passage Agreement between Lummi, Nooksack, and Suquamish with respect to Lummi's primary and the other tribes' secondary rights in Hale Passage; and (3) FF No. 9 wherein the District Court approved the Joint Regulations covering the Suquamish's exercise of its treaty fishing rights in the Contested Waters.[14] When FF 5 broadly describing Suquamish's U&A is read in the context of general and specific evidence of Suquamish fishing and travel activities in the Contested Waters, Judge Boldt's other specific findings regarding Suquamish's use of (and by necessary implication, U&A in) Hale Passage, Judge Boldt's approval of the Joint Regulations permitting Squamish to fish in the Contested Waters,[15] it is

[14] April 18, 1975, Order, ER 24-30.

[15] *See* Suquamish Claim Map, ER 1117 (noting location of Claim Area 3). As relevant, Areas R1, R1a, and R2 defined in the Joint Regulations cover all of the Contested Waters and what is described as "Area 3" on Suquamish's Claim Map. *See* Joint Regulations, ER 1255-1261 (in particular map at ER 1261). The Joint Regulations specifically referenced in Judge Boldt's FF No. 9 opened areas R1, R1a. *Id.* at Art III, ER 1257-1258. Although Area R1 was closed to Suquamish, the regulations themselves contemplated the existence of Suquamish U&A in those waters insofar as it permitted Suquamish to open additional areas, including Area R1, "upon agreement between the tribes involved." *Id.* Art. IV, ER 1258. Subsequently, and in the context of negotiating the Hale Passage Agreement with Lummi, Suquamish did exactly that. *See* Declaration of Raymond Forsman, ER 703-707 (discussing origin of northern boundary line in Bellingham Bay between

clearly more likely than not that Judge Boldt intended his Order determining Suquamish has U&A in the "marine waters of the Puget Sound" to include the Contested Waters.

The District Court erred as a matter of law by failing to read Judge Boldt's order in context, refusing to consider relevant information in the record before Judge Boldt at the time he made his ruling, and entering an Order that ignores and contravenes express and specific findings of Judge Boldt with respect to the location of Suquamish U&A.

VI. ARGUMENT

A. The District Court erred in applying the *Muckleshoot* Analysis, by failing to evaluate the text of Judge Boldt's order in context and refusing to consider or accord any weight to information before Judge Boldt indicating the existence of Suquamish U&A in the Contested Waters.

The fundamental goal of the inquiry under the *Muckleshoot* analysis is to determine the intent of Judge Boldt in connection with analyzing the meaning of his Order. Suquamish, as the party who's U&A is being challenged, is not required to identify specific historical evidence before Judge Boldt that would have been sufficient to support a finding of Suquamish U&A. Instead, the burden is on USIT to show that Judge Boldt more likely than not intended to carve out the contested marine waters from Suquamish's U&A in ". . . the marine waters of the

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Point Francis and Post Point during negotiations with the Lummi Tribe on the Hale Passage Agreement).

Puget Sound" without actually saying so.[16] In discharging its burden, USIT must show there was no information before Judge Boldt, rather nothing in the record at all, from which it can be reasonably inferred that he intended to include the Contested Waters within Suquamish's U&A. As set forth below, when consideration is given to the entire record before Judge Boldt, this is a burden USIT failed to carry.

1. The nature of the proceedings and evidence before Judge Boldt were not given appropriate consideration by the District Court.

The District Court's finding that there was "no evidence" before Judge Boldt that would suggest Judge Boldt intended to include the Contested Waters in Suquamish U&A is predicated on the failure to consider the entire record. Although the District Court's Order acknowledges the expedited "emergency" nature of the proceedings where Suquamish's U&A was adjudicated, it nonetheless applied the *Muckleshoot* analysis as if Judge Boldt's determination of Suquamish U&A used the same extensive and methodical evidentiary process at play in the *Boldt I* decision. *U.S v Washington*, 384 F. Supp. 312, 402 (W.D. Wash. 1974). Unlike his U&A findings in *Boldt I*, however, which incorporate specific citations to record evidence supporting them, the April 18, 1975 Order's finding

[16] *See U.S. v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000) (noting inquiry is focused on Judge Boldt's intent, and that a challenging tribe has failed to carry its burden if, on review, "it is just as likely that [the] area was intended to be included as that it was not.").

establishing the Suquamish U&A (and that of other tribes) does not cite specific pieces of record evidence on which they are based.[17] Instead of looking to all of the information before Judge Boldt in conducting its analysis, the District Court limited its review to three things: (1) the written report of Dr. Barbara Lane on the Suquamish; (2) Dr. Lane's testimony on April 9, 1975; and (3) the language of Judge Boldt's finding of fact No. 5 describing Suquamish's U&A.

While these three pieces of information are certainly all relevant under the *Muckleshoot* analysis, the District Court's exclusive consideration of these items improperly constricted its inquiry into the entire record. Under *Muckleshoot*, and unless Judge Boldt has indicated otherwise with specific citations to record documents in his Order, the proper inquiry requires evaluating all of the information before Judge Boldt when construing the intent underlying Judge Boldt's Order and its meaning.[18] Here, significant relevant parts of the record before and developed by Judge Boldt were given no consideration by the District Court.

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[17] *See, e.g., Muckleshoot III, supra*, 235 F.3d 429, 432-433 (noting that the findings of fact in *Boldt I* "specifically cite[] the supporting documents used as the bases for [their] conclusions."), *accord, id.* at 434 (noting that the reason these particular reports are "the most relevant evidence" is because they are specifically cited in Judge Boldt's order); *c.f. generally*, April 18, 1975, Order, ER 24-30 (noting lack of specific citations to record evidence supporting each finding of fact, with the exception of the citation to the Joint Regulations labeled PL-98 in FF 9).

[18] *Muckleshoot III*, 235 F.3d at 432-433 (inquiry considers the "the documents *and* the evidence the court relied upon" as well as the "information" and "facts before the court.").

In particular, the District Court dismissed the import Judge Boldt placed on of the complete lack of any tribal objection (including USIT) to Suquamish's U&A claim to or fishing in the Contested Waters, general evidence of Suquamish treaty-time fishing and travel in open marine waters like the Contested Waters, testimony that Suquamish would be fishing for herring *in the Contested Waters* during the upcoming herring fishery, and the full text of Judge Boldt's April 18, 1975, Order wherein he approved of the Hale Passage Agreement and Suquamish / Joint Regulations for fishing in the Contested Waters. Each of these elements of the record are probative of Judge Boldt's intended meaning in the April 18, 1975, Order. When this information is properly considered as part of the record available to the District Court to divine intent, it is clear that Judge Boldt intended to include the Contested Waters within Suquamish's U&A, or at the very least, that it is just as likely as not that he intended to include them.

a. The District Court erred in failing to weigh the impact that the lack of tribal objection to Suquamish's U&A claim had with respect to Judge Boldt's determination of Suquamish U&A.

The District Court failed to discuss or properly analyze the impact of Judge Boldt's own statements regarding the scope of his prima facie determination of Suquamish's U&A. At the hearing on April 9, 1975, Judge Boldt noted the impact that the lack of any objection from any other tribe to Suquamish's U&A claim map (which included the Contested Waters as "Area 3") had in determining whether a

prima facie showing of U&A had been made:

> THE COURT: The problems relating to the herring fishery were brought to the Court's attention very late in the game, as it were. . . . [W]e had all hoped that the herring fishery matter could be brought on with ample time to develop everything about it and get it settled once and for all in final form subject, of course, to appeal. That was not possible, as a result of which I have gone to great pains to expedite a prima facie determination for the benefit of the Fisheries Department even above the tribal questions. And it seems to me that all we need to concern ourselves with at this time is the matter of a prima facie showing with respect to the matter. **Inasmuch as no other tribe that will share this same fishery at these places and who have a direct interest in excluding any who might not be qualified to have a direct interest in whatever their take is will be added to the total that the tribes may take, since no tribe has objected, it seems to me that that is at least sufficient prima facie showing; and carrying the matter further at this point without further and in-depth exploration and full hearing is inadvisable.** If we do this with each of the matters, we will never get these matters resolved before the herring have arrived. I regret this very much. I would much prefer to have had the matter brought up in time so that we could have given full and thorough attention to it. But if we are going to get this resolved in time for the arrival of the herring, which is just days away now, that is all we can do as a practical matter.[19]

Documentary evidence and testimony of Dr. Barbara Lane is certainly relevant in determining Judge Boldt's intent. But the Judge's own explanation of his Order is even more probative of his intent. Here, Judge Boldt's own words, preserved in the 1975 hearing transcript, tell us what he relied on in determining Suquamish's U&A: the lack of any Tribes' objection to Suquamish's claims to U&A (including the Contested Waters).[20] The District Court did not treat Judge Boldt's explanation

[19] Transcript of Proceedings on April 9, 1975, ER 775-776.

[20] USIT, who was represented at the hearings, not only did not object, but also approved subsequent In-Common Point Elliot Treaty Fishery Regulations for 1976

of his Order as part of the record. If properly considered and weighed as part of the full record available to determine his intent, these statements by Judge Boldt preclude a finding that USIT met its burden to show that there was nothing in the record suggesting Judge Boldt intended to include the Contested Waters in Suquamish U&A.[21]

b. The District Court's finding that reaching the Contested Waters would require a "substantial detour" and the creation of a new island chain "barrier" is unsupportable.

i. The District Court erred in dismissing general evidence that Suquamish fished and traveled in the Contested Waters to the east of its newly fashioned island chain barrier at or before treaty time.

The Contested Waters here are composed of open salt water bays and sea that is geographically equivalent to the "bay areas" at issue in Court's recent decision in *Tulalip Tribes v. Suquamish Indian Tribe*.[22] As this Court has recognized in *Tulalip*, Dr. Lane described Puget Sound Tribes' (including Suquamish's) use of marine areas like the Contested Waters as "public thoroughfares [that] were used as fishing areas by anyone travelling through such

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that were filed with the Court and permitted Suquamish fishing in the Contested Waters. *See* ER 124-131 (noting USIT representative's signature).

[21] *Tulalip Tribes*, 794 F.3d at 1135 (noting burden is on the Tribe challenging U&A "to show that Judge Boldt intended to exclude the . . . contested waters from the Suquamish U & A."); *accord U.S. v. Lummi*, supra, 235 F.3d at 452 (noting same).

[22] 794 F.3d at 1135. By way of contrast, the Contested Waters are geographically distinguishable from the "nearly enclosed or inland waters" at issue in the previous RFD filed by USIT against Suquamish. *Upper Skagit Indian Tribe v. Washington*, 590 F.3d 1020, 1024 n. 6 (9th Cir. 2013) (describing Saratoga Passage and Skagit Bay).

waters."[23] Indeed, Dr. Lane's 1975 Suquamish Report notes that Suquamish "traveled widely" and fished over "wider marine areas" in and around waters including Rosario Strait,[24] which is directly adjacent to the Contested Waters.[25]

Early on during the hearing on April 9, 1975, Dr. Lane testified that areas within the Contested Waters, specifically including Chuckanut Bay, were used by many Indian Tribes during the summertime to gather shellfish and herring.[26] In addition, Dr. Lane testified that Indians traveling north to the Fraser River would have used Hale Passage as a route of travel.[27] Instead of taking account of this evidence, the District Court's Order below relied heavily on a truncated portion of Dr. Lane's response to a single question to support its finding that Judge Boldt intended to exclude the Contested Waters from Suquamish U&A:

"Suquamish would not go all the way over into Bellingham Bay in order to

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[23] Dr. Barbara Lane's report "*Political and Economic Aspects of Indian-White Culture in Western Washington in the Mid-19th Century,*" May 10, 1973, ER 1118-1147 (in particular at ER 1142).

[24] "*Identity, Treaty Status and Fisheries of the Suquamish Tribe of the Port Madison Reservation*", December 15, 1975, ER 1197-1123 (In particular at ER 1202: "the Suquamish often travelled to Hood Canal and *upper Puget Sound* as well as in *other directions* to harvest natural resources or to visit with relatives in other areas."); *id.* at ER 1214 ("the evidence that the Suquamish travelled to the Fraser River in pre-treaty times documents their capability to travel widely over the marine waters in what are now known as the Strait of Juan de Fuca and Haro and Rosario Straits.").

[25] *See, e.g.*, ER 781-783 (Lane's testimony on April 9, 1975, that Suquamish traveled through the open marine waters of the entire Puget Sound and would have likely fished in those areas).

[26] ER 765-766.

[27] ER at 803.

> get the herring **that were spawning right inside where Lummi lived because they had their places**. **Where there were rich harvests of resources, more than required by local populations, frequently those places – and some of these bays** [referring to Area 3 / Bellingham Bay area] **were that sort of situation – where large numbers of people came to harvest, and local people had no objection**."[28]

The District Court's use of Dr. Lane's testimony to support its conclusion requires selective editing, a failure to appreciate the statement in context as Dr. Lane's explanation of "exclusive" areas, and a refusal to credit in any way Dr. Lane's other testimony of Suquamish's fishing and travel in open marine areas such as the Contested Waters. Moreover, the District Court's use and proffered interpretation of this quote ignores the premise of the question to Dr. Lane that elicited it, which placed Suquamish in the Contested Waters, and noted that she had already expressed an opinion that the area was Suquamish U&A.[29]

The District Court's Order then proceeds to treat the Contested Waters as constricted waters, connecting the dots between islands to fashion a barrier out of Fidalgo, Cypress, Sinclair, and Lummi Islands—and concludes that Suquamish

[28] ER at 816 (bolded language indicates testimony omitted by District Court); *ee also id*. at ER 812-813 (qualifying nature of exclusive use "right inside" or "right in front of where the houses were" of a Tribe's village, but noting generally that other Tribes, including Suquamish, were not excluded from the marine waters generally and "certainly came through those waters, maybe even fished there *with Lummi permission.*") (emphasis added); *accord id.* at ER 802-804; *c.f.* District Court's Order, *at* ER 20.

[29] "Q [Solomon]: But if I understood your testimony, for example, *with respect to the Suquamish being in that area, you formed an opinion that that was in their usual and accustomed grounds by reason of their travelling to that territory*." ER 816-817 (emphasis added).

would not travel to the east thereof. Notably, the District Court reached this conclusion without citing to any evidence in the record before Judge Boldt that would suggest that Judge Boldt understood any of these islands acted as a barrier establishing the eastern boundary of Suquamish U&A.[30] The Court then measured the "at least eight mile" distance from its newly fashioned island chain wall to the Contested Waters and declared it to be "substantial."[31] This finding ignores Dr. Lane's testimony regarding likely use of Hale Passage, lying inside and to the east of the District Court's new island chain barrier, as a travel route of tribes going north to the Fraser River,[32] and is at odds with Dr. Lane's testimony concerning the use of open marine areas such as the passages between the islands identified by the District Court and the Contested Waters.[33] The District Court's determination that Suquamish would not go east of this island chain barrier also contravenes Judge Boldt's own FF #7 regarding Suquamish's historic use of Hale Passage.[34] The District Court's apparent subjective and unsupported finding that an 8 nautical mile

[30] District Court's Order at ER 18-19. In fact, Judge Boldt's bench ruling on April 10, 1975, rejecting the State of Washington's limited challenge to Suquamish's U&A Claim Areas 1 & 2, expressly included all of Suquamish Claim Area 1 within their U&A. *See* ER 891-892. Suquamish Claim Area 1 includes all of Fidalgo Bay, which is on the *east side of Fidalgo Island* and directly adjacent to portions of the Contested Waters here. *See* ER 1117.

[31] *Id.*

[32] ER at 803.

[33] *See, e.g.* ER 797-798 (noting Suquamish, like other Tribes traveling in the vicinity, "in most marine areas under most circumstances had shared access to them when they were visiting in those areas.").

[34] Discussed *infra* at Section 2.

transit is "substantial" fails to take into account that Suquamish's U&A spans between 100 and 140 nautical miles[35] from south to north when routed through Rosario Strait and Haro Strait, respectively, and also fails to consider Dr. Lane's testimony that the Contested Waters here could be reached in "a day's trip" and were "easily within the range of the Suquamish people to travel and to use it as a resource location."[36] Considered in this context, the alleged eight mile "detour" is something far less than "substantial."[37]

ii. The District Court's finding that Suquamish would be required to make a "detour" of "at least eight miles" to reach the Contested Waters directly conflicts with the express findings of Judge Boldt regarding Suquamish's U&A in Claim Area 1.

Judge Boldt stated that the April 1975 hearings were convened "on an emergency basis" to make a prima facie ruling on the Suquamish U&A claim.[38] At the outset of the hearing on April 9th, Judge Boldt declared from the bench that he

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[35] Approximate distances cited herein were calculated using web-based nautical charting software available at http://earthnc.com/online-nautical-charts (last visited 10/5/15). The Court may also rely on the NOAA coastal charts of the Puget Sound (18440) and Strait of Georgia and Strait of Juan de Fuca (18400), copies of which are included at ER 729 and ER 731, respectively. These .pdfs available to download at http://www.charts.noaa.gov/PDFs/PDFs.shtml (last visited 10/5/15).

[36] ER at 782.

[37] Notably, however, Dr. Lane's testimony and expert witness reports document that Suquamish's actual destination was historic Fort Langley. The Court may take judicial notice of the fact that Fort Langley (which is modernly a National Historic Site in Canada) is located approximately 30 nautical miles upriver from the mouth of Fraser River. *See Parks Canada Website* http://www.pc.gc.ca/eng/lhn-nhs/bc/langley/natcul/natcul2/a.aspx (last visited 10/5/15).

[38] ER 891.

had determined that Suquamish had made a prima facie showing to U&A in those areas depicted on Suquamish's Claim Map (numbered 1-4).[39] Following this declaration, Mr. Solomon, counsel for the State of Washington, proceeded to lodge a limited challenge to the "far north" areas of Suquamish's U&A Claim denoted as Areas 1 and 2 on Suquamish's Claim Map.[40] Neither the State of Washington nor any other tribe objected to Suquamish's U&A Claim in Areas 3 (including the Contested Waters) or Area 4 (including the Suquamish Reservation at Port Madison).[41] The following day, Judge Boldt ruled on the State's limited challenge and specifically found Suquamish U&A included Claim Areas 1 and 2.[42]

The most glaring error with respect to the District Court's newly fashioned island chain barrier is that it is squarely at odds with the April 10, 1975 bench ruling of Judge Boldt with respect to Suquamish Claim Area 1, which was depicted on the Claim Area Map before him.[43] Suquamish Claim Area 1 includes Fidalgo Bay (which abuts the Contested Waters (in particular Padilla Bay), Bellingham Channel, and other unnamed marine waters to the east of Cypress Island and

[39] ER 776-777. Evidence had previously been submitted to the Court for consideration. *See, e.g.,* ER 32-33 (noting other evidence considered by Judge Boldt that was submitted along with RFD).
[40] ER 785-793; *see also generally* ER 1115-1117 (Suquamish's proposed regulations and claim area map).
[41] ER 789-792 (noting challenge was limited to Areas 1 and 2); *see also* ER 776-777 (Judge Boldt noting lack of any tribes objection).
[42] Boldt's Bench Ruling on April 10, 1975, ER 892-893 (rejecting the State's limited challenge to Suquamish's U&A in Claim Areas 1 and 2).
[43] *Id.*

Sinclair Island. *All of these waters are located to the east of the District Court's newly demarcated island wall eastern boundary of Suquamish's likely travel routes*.[44] The District Court erred in declaring a new boundary that would exclude areas that Judge Boldt clearly and unequivocally ruled were Suquamish U&A.

Further, as a matter of geography, there is *no* distance between that portion of Suquamish's U&A in Fidalgo Bay / Suquamish Claim Area 1, and the Contested Waters. These open marine waters are *directly* adjacent to each other. Moreover, the most direct northward route from Fidalgo Bay to the Fraser River runs directly through the Contested Waters, Bellingham Bay, and Hale Passage—a route that Dr. Lane specifically testified would have been used by Tribes, like Suquamish, that were traveling north.[45] Judge Boldt's express findings, coupled with the testimony of Dr. Lane, strongly indicate Judge Boldt intended to include the Contested Waters in Suquamish U&A. The District Court's decision to set aside and ignore an express and specific finding of Judge Boldt is insupportable, and therefore its Order declaring a new eastern boundary of Suquamish's U&A must be reversed.

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[44] The District Court itself acknowledged Judge Boldt's finding with respect to Suquamish Claim Area 1. ER 9. However, it went on to commit a manifest error of geography when it then found that Fidalgo Island separates Claim Area 1 from the Contested Waters. ER 19; *but see* ER 1117 (Noting Area 1 includes Fidalgo Bay on the east side of Fidalgo Island and directly adjacent to the Contested Waters).

[45] ER 803.

c. The District Court failed to consider evidence in front of Judge Boldt that Suquamish would be fishing in the Contested Waters during the then upcoming herring fishery and in his Order approving Joint Tribal Regulations.

The primary purposes of the 1975 proceedings were threefold: to determine (1) whether the treaty rights addressed in *Boldt I* included a right to take herring; (2) the upcoming herring fishery's scope, and (3) which tribes could participate in that herring fishery based on the existence of U&A.[46] The Indian herring fishery under consideration included large portions of the Contested Waters and other marine waters within Suquamish's Claim Area 3.[47]

The Joint Regulations for tribal herring fishing[48] considered by Judge Boldt expressly permitted Suquamish to fish in the Contested Waters.[49] Prior to issuing his final written order, Judge Boldt heard testimony on April 10-11, 1975,

[46] *See, e.g.*, ER 776 (so noting); *accord* April 18, 1975, Order, ER 24-30 (noting purpose of hearing and findings).
[47] *See* Joint Regulations, ER 1255-1261 (in particular noting location Areas R1, R1a and R2 as shown on ER 1261); *see also* ER 1117 (noting location of Suquamish Claim Area 3).
[48] *See* Joint Regulations, ER 1258 (noting special closure for Suquamish at Article IV(a)(ii)); s*ee also* Declaration of Raymond Forsman, ER 703-707 (discussing origin of the "no fishing zone" in 1976 regulations a part of Bellingham Bay north of a line between Point Francis to Post Point during negotiations with the Lummi Tribe on the Hale Passage Agreement).
[49] *See* Joint Regulations, ER 1255-1261; *see also* April 18, 1975, Order, FFs Nos. 9-1, ER 28-29 (approving Joint Regulations and setting catch allocation for tribes, including Suquamish, in "Northern Puget Sound.")

explaining the Joint Regulations and the proposed Indian herring fishery.[50] That included testimony on both days noting Suquamish's planned participation in the fishery included fishing in portions of the Contested Waters and other marine waters within Suquamish's Claim Area 3.[51] Judge Boldt's written Order of April 18, 1975, *specifically approved the Joint Regulations for the upcoming season in the "Northern Puget Sound" with respect to Suquamish and other Tribes.*[52] The Joint Regulations allowed Suquamish to fish in the Contested Waters,[53] and Judge Boldt approved them. The District Court ignored the testimony before Judge Boldt of the entry of the Suquamish fleet into the Contested Waters. Further, it did not seek to reconcile Judge Boldt's findings in his same Order. His finding of fact that Suquamish was party to and subject to the Joint Regulations for fishing in Contested Waters should have compelled the District Court to find that he intended to include the Contested Waters within the "marine waters of the Puget Sound"

[50] *See generally* ER 906-913 (transcript of testimony explaining regulations on April 10, 1975); ER 992-1099 (transcript of testimony regarding same on April 11, 1975).

[51] *See* ER 920-921 (Testimony on April 10, 1975, noting Suquamish purse seiner would be fishing in State Area 3); *see also* ER 792 (On April 9th Mr. Stay, Mr. Solomon and the Court clarified that "state areas" and Suquamish sub-areas were the same); *see also* ER 1115-1117 (Suquamish Herring Fishery Regulations and Map, noting Area 3 includes the entirety of the Contested Waters); ER 1025-1027 (noting Suquamish would be fishing in the "Hale Passage area" within Area 3, that also includes the Contested Waters at issue).

[52] *See also* April 18, 1975, Order, FFs Nos. 9-11, ER 28-29 (approving Joint Regulations).

[53] *See* Joint Regulations, ER 1261 (Map depiction of Areas R1, R1a and R2).

when describing Suquamish's U&A in his preceding finding of fact in the same Order.

Under this Court's prior decisions, it is proper to consider all of the information that was presented to Judge Boldt in order to determine his intent with respect to the scope of Suquamish's U&A.[54] The District Court was shown that the record before Judge Boldt included evidence of regular travel in the Contested Waters by Suquamish, general evidence of Suquamish's fishing activities in open marine waters, and testimony of two witnesses regarding Suquamish's planned fishing in the Contested Waters. Even more, the District Court did not consider the totality of the very Order in issue, and in particular, Judge Boldt's explicit approval of the Joint Regulations and Suquamish's participation in the Northern Puget Sound Herring fishery in his April 18, 1975, Order. In light of Judge Boldt's other findings, the District Court's determination that it was more likely than not that Judge Boldt intended to exclude the Contested Waters from the "marine waters of Puget Sound" without ever having expressly said so on the record is erroneous.

2. The District Court erred in construing Judge Boldt's findings related to the Hale Passage Agreement, which is an express finding of Suquamish U&A in Hale Passage on the East side of Lummi Island.

Contrary to the District Court's cursory reading of FF No. 7 regarding Hale Passage and conclusion that it only reflects an agreement concerning modern day

[54] *Upper Skagit Indian Tribe v. Washington*, 590 F.3d 1020, 1025 (noting that all of the testimony before Judge Boldt is relevant in determining his intent).

use, [55] a careful reading makes clear that FF No. 7 related to the treaty fishing rights of four Tribes in Hale Passage, with overlapping U&A's in the area.[56] FF No. 7 begins with Judge Boldt's determination that:

> [S]everal Puget Sound Area Tribes…regularly and customarily used Hale passage adjacent to Lummi Island for travel and fishing before, during, and after treaty times, said Passage was an area over which the Lummi Tribe exercised and was acknowledged by many others to have primary control as regards fishing or other resource gathering and occupancy."[57]

The very next sentence includes Judge Boldt's approval of the decision of three of

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[55] April 18, 1975, Order at ER 26. In full:

> 7. "Although Indians from several Puget Sound area tribes, including specifically those which were predecessors in interest to the Swinomish Tribal Community, regularly and customarily used Hale Passage, adjacent to Lummi Island for travel and fishing before, during and after treaty times, said Passage was an area over which the Lummi Tribe, exercised and was acknowledged by many others to have primary control as regards fishing or other resource gathering and occupancy. Prior to the hearing in this case the Lummi, Nooksack and Suquamish Tribes without relinquishing any claims to fishing locations, agreed for the present time to resolve any differences on this matter among themselves and not to request a court determination as to their relationship with each other in this area. As to the Swinomish Tribal Community, the court finds that its treaty-right fishing in said Hale Passage is subject to the permission of the Lummi Tribe."

Id.

[56] Lummi's U&A was established by Judge Bold in *Boldt I*, 1974. *See* 384 F.Supp. 312, 360 (1974); *accord U.S. v. Lummi Indian Tribe*, 235 F.3d 443, 445-446 (9th Cir. 2000) (so noting). The Nooksack, Suquamish and Swinomish Tribes' U&A's were established in the same April 18, 1975 Order, ER 24-30 (*see* FF No. 4, FF No. 5 and FF No. 6) and immediately prior numerically to FF No. 7 establishing the primary/secondary treaty rights relationship between the Lummi, Suquamish, Nooksack and Swinomish Tribes.

[57] ER 26.

these Tribes (Lummi, Suquamish, and Nooksack) to privately resolve their "relationship with each other in this area…" where they each had U&A.[58] FF No. 7 then addresses the treaty fishing rights of the fourth tribe, Swinomish, which had not joined the other Tribes' agreement, finding that they were secondary to Lummi's primary rights. On review, and contrary to the District Court's findings, Judge Boldt's FF No. 7 clearly concerns the primary/secondary rights relationship between tribes with U&A in Hale Passage, including Suquamish.

Judge Boldt's use of the term "primary" rights in describing Lummi's relationship to Swinomish, and his recognition of the private agreement reached by Suquamish, Nooksack and Lummi, was a clear acknowledgment that all four tribes had "regularly and customarily used Hale Passage…for travel and fishing before, during and after treaty times" but that Swinomish, which had refused to enter a private settlement, held rights secondary to Lummi's primary rights. Judge Boldt further defined the primary/secondary rights relationship between tribes with

[58] It was axiomatic in 1975 and is axiomatic today that a court cannot permit a Tribe to fish in an area unless that area is within the Tribe's established U&A. Moreover, if any Tribe would be likely to object to Suquamish's claim of U&A in Hale Passage, it would be Lummi. Instead, Lummi acknowledged the existence of Suquamish's U&A and entered into a voluntary agreement regarding how to address the tribes respective treating fishing rights in those waters via the Hale Passage Agreement, and issued Joint Fishing Regulations reflecting that. *See* Joint Regulations, ER 1255-1261 (noting Lummi was party thereto); *accord* 1976 In Common Regulations, ER 122-158 (same).

adjudicated overlapping U&A's in *U.S. v. Lower Elwha Tribe*.[59] This ruling stands for the proposition that in an area where two or more tribes have overlapping U&A, the tribe with the "primary" right controls the area, and the tribe(s) with a "secondary" right generally can only exercise it with the consent of the tribe holding primary rights. In contrast, in many areas with overlapping U&A, the treaty-time evidence shows that tribes shared such areas in common with no tribe having primary rights.[60]

The District Court failed to consider FF No. 7 in its proper legal and historical context. Instead of viewing FF No. 7 for what it is—a legal ruling on the primary/secondary rights relationship of four tribes, including Suquamish, in the Hale Passage area—the court below misconstrued Judge Boldt's language as "…indicating that the Suquamish current day use of [Hale Passage] was pursuant to agreement rather than to historic right." Even presuming that the District Court's dubious conclusion that modern day use by agreement and a historic right to use an area are somehow mutually exclusive, FF No. 7 reflects Judge Boldt's understanding that all four tribes—Lummi, Nooksack, Suquamish and Swinomish—held adjudicated U&A in the Hale Passage area based on the

[59] *See, e.g.*, Order re: Makah Tribe's Request for Reconsideration of Lower Elwha Usual and Accustomed Fishing Places (March 10, 1976), *U.S. v. Washington*, 459 F. Supp. 1066, *aff'd sub nom U.S. v. Lower Elwha Tribe*, 642 F.2d 1141 (9th Cir 1981) (discussing primary / secondary rights relationship).

[60] As between the Makah and Lower Elwha tribes, the Hoko River is an area subject to their "joint use and control." *Lower Elwha Tribe*, 642 F.2d at 1142-1143.

Agreement of three of the tribes (Lummi, Nooksack and Suquamish)[61] and Dr. Lane's testimony that Indians (like Suquamish) traveling northward would use Hale Passage to go north. There is no "modern" agreement that can confer fishing rights or a right to use an area in the absence of U&A.

Certainly, Lummi would not in 1975 have felt it necessary to enter into an agreement with Suquamish that affirmed Lummi's primary right in the Hale Passage area if Lummi did not recognize that Suquamish was one of the Tribes that had "regularly and customarily used Hale Passage…for travel and fishing before, during and after treaty times." Thus, the District Court erred in determining that Judge Boldt understood the 1975 Hale Passage Agreement as merely a contemporaneous permission for Suquamish to use Hale Passage, subject to Lummi's consent, rather than a mutual understanding between Lummi and Suquamish regarding their historical, treaty time relationship regarding an area were the two tribes' U&A's overlap. Finding of Fact No. 7, given its proper interpretation, is "evidence of Judge Boldt's intent" and strongly suggests his determination of Suquamish U&A in "…the marine waters of Puget Sound from

[61] *See generally*, Declaration of Raymond Forsman, ER 703-707 (regarding specific provisions of the Hale Passage Agreement, such as Suquamish's agreement not to fish in northern Bellingham Bay, north of a line between Point Francis and Post Point). This interpretation of the Hale Passage Agreement is consistent with Dr. Lane's testimony that treaty-time Suquamish would not fish at "right in front of where the [Lummi] houses were" in northern Bellingham Bay without permission. ER 815.

the northern tip of Vashon Island to the Fraser River…" included the Hale Passage area, which would likely have been used at treaty time to access the Contested Waters.[62]

B. The District Court erred in refusing to apply the doctrine of claim preclusion to USIT's successive challenges to Suquamish U&A following USIT's stipulation that the doctrine is applicable.

The District Court predicated its refusal to apply claim preclusion to bar USIT's second challenge to Suquamish's U&A on the grounds that USIT's claims in this matter relate to different waters than were previously at issue in *Upper Skagit Indian Tribe v. Washington*, 590 F.3d 1020. While there is no dispute that the doctrine of claim preclusion applies to bar litigation of "the very same claim,"[63] it also applies to bar claims that could have been brought in a previous action where they arise out of a common nucleus of operative fact.[64] Here, uncontroverted evidence in the record establishes that the activity USIT complains of—Suquamish fishing in waters allegedly outside of its U&A—was ongoing at the time when USIT first brought the prior action challenging Suquamish U&A in

[62] *Tulalip Tribes v. Suquamish Indian Tribe*, *supra*, 794 F.3d 1129, 1136.
[63] ER 14 (Citing *New Hampshire v. Maine*, 532 U.S. 742, 748 (2001)).
[64] *See Western Systems, Inc. v. Ulloa*, 958 F.2d 864, 870-871 (9th Cir. 1992) (noting claim preclusion bars both those claims that were litigated, and those claims that could have been litigated in the prior proceeding); *accord Sidney v. Zah*, 718 F.2d 1453 (9th Cir. 1983).

Skagit Bay and Possession Sound in 2005.[65] USIT stipulated in its own motion for summary judgment that the claims it asserts in this matter arise out of a common nucleus of operative fact, involve the alleged infringement of the same right, and depend on substantially the same evidence as were at issue in the prior case between the parties.[66] USIT had every opportunity to challenge the existence of Suquamish U&A in the Contested Waters in 2005 when it initiated a prior RFD, and elected for whatever reason not to do so. To allow USIT to continue to bring successive piecemeal challenges to Suquamish's U&A in various locations in the marine waters of Puget Sound is a waste of judicial resources and runs afoul of the prohibition against claim splitting.[67] This Court should therefore reverse the District Court's finding, hold USIT's claims are barred by the doctrine of claim preclusion, and remand with instructions to dismiss USIT's RFD on this basis.

VII. CONCLUSION

For the foregoing reasons, Suquamish respectfully requests that this Court reverse the Judgment of the District Court granting USIT's motion for summary

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[65] *See generally* supra at n. 12 (evidence of Suquamish fishing in the Contested Waters). It is also worth noting that USIT participated in the proceedings before Judge Boldt and could have objected to Suquamish's U&A at that time. *See* April 18, 1975, Order, at ER 24.

[66] USIT's Motion for Summary Judgment, ER 1108-1109.

[67] *See Elgin v. Department of Treasury*, 132 S.Ct. 2126, 2146-2147 (2012) (Alito, J., dissenting) (citing *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)) (additional citations omitted); *accord Haphey v. Linn County*, 924 F.2d 1512, 1517 (9th Cir. 1991).

judgment, and remand with instructions to enter judgment in favor of Suquamish on the grounds that evidence in the record before Judge Boldt precludes USIT from discharging its burden to show it is more likely than not that Judge Boldt intended to exclude the Contested Waters from Suquamish U&A, or in the alternative, that USTI's RFD is barred by the doctrine of claim preclusion.

DATED this 8th day of October, 2015.

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Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28-4, 29-2(c)(2) and (3), 32-2 or 32-4[1] for Case Number 15-35540

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("s/" plus typed name is acceptable for electronically-filed documents)

Date: October 8, 2015

[1] If filing a brief that falls within the length limitations set forth at Fed. R. App. P. 32(a)(7)(B), use Form 6, Federal Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties registered in the CM/ECF system for this matter.

DATED this 8th day of October, 2015.

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STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, Suquamish hereby identifies the following related cases: None.