

The Honorable Ricardo S. Martinez

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

STATE OF WASHINGTON, *et al.*,

Defendants.

**Case No. C70-9213
Subproceeding: TBD**

**STILLAGUAMISH TRIBE OF
INDIANS' *EX PARTE* MOTION FOR
LEAVE TO OPEN NEW
SUBPROCEEDING TO DETERMINE
MARINE USUAL AND ACCUSTOMED
FISHING AREAS**

**NOTE ON MOTION CALENDAR:
SEPTEMBER 8, 2017**

COMES NOW Plaintiff-Intervenor the Stillaguamish Tribe of Indians (“Stillaguamish Tribe” or “Tribe”), by and through its attorneys of record, and hereby respectfully moves the Court for leave to open a new subproceeding in the case of *United States v. Washington*, Cause No. C70-9213.

INTRODUCTION

This is not a clarification subproceeding. The Tribe seeks to invoke the continuing jurisdiction of the Court under Paragraph 25(a)(6), which provides that any of the parties may invoke the continuing jurisdiction of the Court to determine “the location of any of a tribe’s usual and accustomed fishing grounds not specifically determined by Final Decision #1.” Pursuant to this provision, the Tribe asks the Court to determine and declare the non-exclusive treaty and

equitable rights of the Tribe to harvest all species of fish and shellfish in the marine waters of the marine waters on the eastern side of Whidbey Island and both shores of Camano Island, including of Port Susan, Skagit Bay, Saratoga Passage, Penn Cove, Holmes Harbor, and Deception Pass (also known as WDFW Shellfish Areas 24A-D, and 26A), with the exception of waters adjacent to the Tulalip Reservation and any other Indian Reservation.

This *Ex Parte* Motion is made pursuant to the Court's Amended Supplemental Order on Paragraph 25 Procedures dated November 20, 2012, 20 F.Supp. 3d 899, 982-83 (W.D. Wash. 2008) and the Court's Order Modifying Paragraph 25 of the Permanent Injunction (Aug. 24, 1993), 18 F.Supp. 3d 1172, 1213-16 (W.D. Wash. 1991) establishing procedures for filing a new Request for Determination. The Court's Amended Supplemental Order states that this motion shall be considered "as soon as practicable" and the requested leave shall be "liberally" granted.

This *Ex Parte* Motion is supported by the attached proposed Request for Determination, the Declaration of Rob Roy Smith and the Exhibits thereto, and a [Proposed] Order granting leave to open a new subproceeding for the lodging of the Request for Determination.

ARGUMENT

I. REQUESTING PARTY

The requesting party is the Stillaguamish Tribe of Indians, a federally recognized Indian tribe, composed of descendants of the 1855 Sto-luch-wa-mish and a party to the Treaty of Point Elliot of January 22, 1855, ratified March 8, 1859, and proclaimed April 11, 1859, 12 Stat. 927. The Stillaguamish Tribe was one of the original intervenors in *United States v. Washington*. In the first decision of the Court in this case, the Court determined that the usual and accustomed fishing places of the Stillaguamish Tribe included "the area embracing the Stillaguamish River and its north and south forks, which river system constituted the usual and accustomed fishing places of the tribe." *United States v. Washington*, 384 F. Supp. at 379. This area was identified as only one of the of the areas in which the Tribe might be able to fish. *Id.* at 353. The marine

fishing areas that are subject of this new subproceeding were not part of waters adjudicated for the Stillaguamish Tribe previously.

II. RESPONDING PARTIES

Respondent is the State of Washington.

Pursuant to a settlement agreement between the Stillaguamish Tribe and the Tulalip Tribes dated May 1, 1984 and entered by Order of this Court on May 8, 1985, the Tulalip Tribes are obligated to “support the Stillaguamish Tribe’s request for a determination that the Stillaguamish Tribe’s usual and accustomed fishing areas extend throughout Northern 8A and that portion of Area 8 southerly of a line drawn from Milltown to Polnell Point and northeasterly of a line drawn from Polnell Point to Rocky Point.” *United States v. Washington*, 626 F. Supp. 1405, 1480-83 (W.D. Wash. 1985). These waters constitute a portion of the proposed subproceeding case area and, as a result, the Tribe anticipates that the Tulalip Tribes will participate in support of the Tribe as to these waters.

Whether other parties will join the petitioner or adopt a respondents’ stance in this subproceeding is unknown at this time; however, the Stillaguamish Tribe anticipates that other tribes who fish within the marine waters subject to the attached Request for Determination (Swinomish Indian Community, the Tulalip Tribes and the Upper Skagit Indian Tribes) will be interested in this subproceeding and may participate as respondents in whole or in part.

III. CERTIFICATION OF PARAGRAPH 25 COMPLIANCE

In compliance with Paragraph 25(b), of Final Decision #1, 384 F. Supp. at 419, as modified by this Court’s August 24, 1993 Order Modifying Paragraph 25 of Permanent Injunction, 18 F. Supp.3d 1172, 1213-1216 (W.D. Wash. 1991, Dkt. # 13599), the proposed Request for Determination was the subject of a “meet and confer” on May 8, 2017. Smith Decl. Ex. A (filed herewith). The Tribe kept the “meet and confer” open until September 8, 2017 in an effort to provide additional time to seek a non-judicial intervention.¹ *Id.*, Ex. B. The parties

¹ Although the Tribe hosted the “meet and confer” on May 8, 2017, the Tribe has been engaging in respectful discussions with affected tribes, seeking non-judicial resolution, for at least the last two years.

1 were unable to reach an understanding to avoid the Stillaguamish Tribe's need to seek a judicial
2 resolution of its claims. Smith Decl. ¶ 6.

3 The attached Request for Determination otherwise complies with the requirements and
4 limitations of Paragraph 25 as amended on August 24, 1993. *Id.*, ¶ 4.

5 **CONCLUSION**

6 For the foregoing reasons, the Stillaguamish Tribe hereby respectfully requests that the
7 Court grant leave to open a new subproceeding in the case of *United States v. Washington*, Cause
8 No. C70-9213, in order to adjudicate non-exclusive usual and accustomed fishing places of the
9 Stillaguamish Tribe of Indians in certain marine waters.

10 DATED this 8th day of September, 2017.

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Attorneys for the Stillaguamish Tribe of Indians

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2017, I electronically filed the foregoing **STILLAGUAMISH TRIBE OF INDIANS' EX PARTE MOTION FOR LEAVE TO OPEN NEW SUBPROCEEDING TO DETERMINE MARINE USUAL AND ACCUSTOMED FISHING AREAS** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties registered in the Court's ECF system for the above-captioned case.

DATED this 8th day of September, 2017.

Kilpatrick Townsend & Stockton LLP

By: /s/ Rob Roy Smith

Rob Roy Smith, WSBA # 33798

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Attorneys for the Stillaguamish Tribe of Indians

The Honorable Ricardo S. Martinez

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

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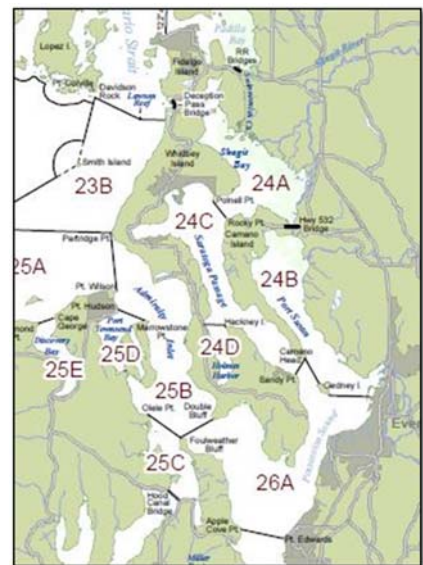
Defendants.

**Case No. C70-9213
Subproceeding: TBD**

**STILLAGUAMISH TRIBE OF
INDIANS' REQUEST FOR
DETERMINATION FOR MARINE
USUAL AND ACCUSTOMED FISHING
AREAS**

STATEMENT OF THE CASE

1. The Stillaguamish Tribe of Indians (“Stillaguamish” or “Tribe”) respectfully requests that the Court determine and declare the non-exclusive treaty and equitable rights of the Tribe to harvest all species of fish and shellfish in the marine waters on the eastern side of Whidbey Island and both shores of Camano Island, including Port Susan, Skagit Bay, Saratoga Passage, Penn Cove, Holmes Harbor, and to Deception Pass (also known as WDFW Shellfish Areas 24A-D, and a small portion of northern 26A,



STILLAGUAMISH TRIBE OF INDIANS' REQUEST FOR DETERMINATION
FOR MARINE USUAL AND ACCUSTOMED FISHING AREAS
(CASE NO. 70-9213) – PAGE 1

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or as WDFW Salmon Areas 8-1 and 8-2), excluding the waters directly adjacent to the Tulalip Reservation and any other Indian Reservation.

JURISDICTION

2. The Court has jurisdiction over this Request for Determination pursuant to 28 U.S.C. § 1331 and 1362, and Paragraph 25(f) of the Court’s injunction of March 22, 1974, *United States v. Washington*, 384 F. Supp. 312, 419 (W.D. Wash. 1974), as modified by the Court on August 24, 1993, November 9, 2011, and November 20, 2012.

3. Paragraph 25(a)(6) provides that any of the parties may invoke the continuing jurisdiction of the Court to determine “the location of any of a tribe’s usual and accustomed fishing grounds not specifically determined by Final Decision #1.” Dkt. # 13599. The Tribe seeks to adjudicate, for the first time, the scope of its treaty-reserved fishing rights in certain marine waters of Puget Sound.

4. This Request for Determination is in compliance with Paragraph 25 as modified, as well as the Court’s Amended Supplemental Order on Paragraph 25 Procedures dated November 20, 2012. This Request for Determination was the subject of a “meet and confer” on May 8, 2017, although discussions with affected tribes had been ongoing for years. The Tribe kept the meet and confer open until September 8, 2017 to provide additional time to reach agreement with affected parties. Despite efforts before and subsequent to the meet and confer, the Tribe has been unable to reach an understanding to avoid a judicial resolution.

PARTIES

5. Petitioner is the Stillaguamish Tribe of Indians, a federally recognized Indian tribe, composed of descendants of the Sto-luch-wa-mish and a party to the Treaty of Point Elliot of January 22, 1855, ratified March 8, 1859, and proclaimed April 11, 1859, 12 Stat. 927.

6. Pursuant to a settlement agreement signed on May 1, 1984 and entered by Order of this Court on May 8, 1985, the Tulalip Tribes “affirmatively support the Stillaguamish Tribe’s request for a determination that the Stillaguamish Tribe’s usual and accustomed fishing areas

extend throughout Northern 8A and that portion of Area 8 southerly of a line drawn from Milltown to Polnell Point and northeasterly of a line drawn from Polnell Point to Rocky Point.” *United States v. Washington*, 626 F. Supp. 1405, 1480-83 (W.D. Wash. 1985). These waters constitute a portion of the case area and, as a result, the Tulalip Tribes are obligated to participate in support of the Tribe as to these waters.

7. Respondent is the State of Washington.

8. Whether other parties will join the Petitioner(s) or adopt a Respondents’ stance in this subproceeding is unknown. It is anticipated that the Tulalip Tribes, Upper Skagit Indian Tribe and Swinomish Indian Tribal Community may appear as a Respondent in whole or in part.

STATEMENT OF FACTS

Prior Usual and Accustomed Fishing Area Determination, and Procedural History

9. Stillaguamish was one of the original intervenors in *United States v. Washington*. In the first decision of the Court in this case, the Court determined that the usual and accustomed fishing places of the Stillaguamish Tribe included “the area embracing the Stillaguamish River and its north and south forks, which river system constituted the usual and accustomed fishing places of the tribe.” *United States v. Washington*, 384 F. Supp. at 379. The Stillaguamish River drainage system was identified as only one of the areas in which the Tribe might be able to fish. *Id.* at 353 (“it would be impossible to compile a complete inventory of any tribe’s” areas).

10. In 1976, Stillaguamish filed fishing regulations for northern Port Susan. The Tulalip Tribes objected. In the “Order Re: Tulalip Tribes’ Objection to Stillaguamish Fishing Regulations” (March 10, 1976), the Court noted that the Tribe had not sought marine fishing rights pursuant to the requirements of Paragraph 25. *United States v. Washington*, 459 F. Supp. 1020, 1068 (W.D. Wash. 1978). The Court sustained Tulalip’s objection, but held that “the Stillaguamish Tribe *may at any future time* apply to this Court for hearing . . . regarding expanded usual and accustomed fishing places so long as application is in accordance with paragraph 25 of the court’s injunction.” *Id.* (emphasis added).

11. On October 29, 1976, the Stillaguamish Tribe filed a “Request for Determination and Preliminary Injunction re: Stillaguamish Usual and Accustomed Fishing Grounds” seeking to add to the usual and accustomed determination from Final Decision #1. Dkt. # 2584. When no action was taken, the Tribe filed a Supplemental Memorandum requesting a hearing on the Request to establish treaty fishing areas in “Port Susan and that portion of Skagit Bay south and easterly of a line drawn from Milltown southwesterly to Polnell Point, then due south to Rocky Point” on May 1, 1979. Dkt. # 5815. The Tribe’s request was numbered as Subproceeding 79-1. On May 9, 1979, the Tulalip Tribes filed an objection to the request, ultimately leading to the settlement agreement entered by Order of this Court on May 8, 1985. On May 21, 1987, the Court entered an order dismissing Subproceeding 79-1 without prejudice. Dkt. # 10646.

12. In Subproceeding 89-3, Stillaguamish filed a “Statement of Usual and Accustomed Areas and Species Claimed” as to shellfish on May 3, 1993, to include, at least, “Port Susan and that portion of Skagit Bay south and easterly of a line drawn from Milltown southwesterly to Polnell Point then due south to Rocky Point.” Dkt # 13102. However, unable to obtain separate legal counsel without conflicts and unable to pay for the services of an expert to litigate the matter, the Tribe moved to voluntarily dismiss its claim without prejudice on August 19, 1993. Dkt. # 13587. On December 8, 1993, the Court granted the Tribe’s motion and ordered “dismiss[al] *without prejudice*” because the Tribe “lack[s] the financial resources to adequately prosecute [its] claims regarding usual and accustomed areas.” Dkt. # 13907 (emphasis added).

13. Stillaguamish now files its claim for marine fishing areas in accordance with Paragraph 25(a)(6) as directed by the Court.

Evidence of Treaty Times Stillaguamish Marine Water Fishing

14. Erroneously labeled as a “river people,” recently obtained historical, cultural, and anthropological evidence makes clear that the Stillaguamish are very much a saltwater people.

15. Stillaguamish had multiple salt water village locations on Port Susan and Skagit Bay at or before treaty times, including: on Skagit Bay; at present day Warm Beach, near Stanwood on the waterway between Port Susan and Skagit Bay; and two at the main mouth of the Stillaguamish River. These villages were more sea than river oriented. The most populous villages were located on an extensive salt water marsh which extended from Warm Beach to Lower Skagit Bay, which was used by the Stillaguamish people at and before treaty times. Numerous seasonal camping sites were also located on the saltwater. In contrast, the Tribe had three up river villages. While the Stillaguamish fished upriver, they also came to Saratoga Passage, Port Susan and lower Skagit Bay for clamming and fishing. From both mouths of the Stillaguamish River, the Tribe was able to access Skagit Bay and Port Susan.

16. Stillaguamish had place names on the marine water, including: stul-uech, Hat Slough; spa-la-tum or sp-la-tum, Warm Beach; us-qu-a-daub near Stanwood; and čugu's̓ on chigos on Camano Island.

17. Stillaguamish made regular and frequent joint use of Deception Pass, Whidbey Island and parts of Camano Island as well as the adjacent marine waters with neighboring tribes which whom they intermarried. Both the northern and southern ends of Camano Island, including mud flats, were used and occupied by Stillaguamish. Middle and upper Whidbey Island are in close in proximity to the Stillaguamish River drainage where villages were located. Before Judge Boldt, Tribal elder Esther Ross confirmed anthropological reports noting that the Stillaguamish “Went over half way to Camano Island down to [Utsaladdy]” and “went clam digging in that area.”

18. During the Indian War (1855-56), the Stillaguamish were relocated to reservations on Penn Cove and Holmes Harbor on Whidbey Island during treaty times. These areas were chosen because these were areas already familiar to the Stillaguamish. While there, the Stillaguamish were instructed to and did maintain their subsistence fishing practices in Port Susan and Skagit Bay, and along Camano Island. The Stillaguamish also regularly and

frequently fished in the marine waters immediately adjacent to the Reservation areas on Whidbey Island, and travelled to Deception Pass to fish.

19. Stillaguamish are documented to have had canoes capable of navigating marine waters, confirming their ability to travel to Whidbey Island. Stillaguamish, like other tribes, would have fished along the way, and, as Dr. Barbara Lane has noted, “Stillaguamish Indians were skilled fisherman and canoe handlers.”

20. Prior anthropological expert testimony before this Court confirms that the Stillaguamish used marine waters for fishing at and before treaty times. For example, Dr. Barbara Lane testified in July 1983 as part of Subproceeding 80-1 that the “Port Susan area was a salt water area used by people in the village at Hat Slough and the village at Warm Beach . . . Those were inhabited by Stillaguamish people and were Stillaguamish Villages.”

21. Reports from early settlers, missionary priests, and U.S. Indian Agents confirm the presence of the Stillaguamish on these marine waters. The Stillaguamish were heavily intermarried with Snohomish and Skagit, and frequently travelled the open marine waters of Puget Sound to trade and potlatch, with documented visits to Fort Nisqually, Bellingham, Steilacoom, and Victoria at and before treaty times.

22. Other tribes have also acknowledged that Stillaguamish fished marine waters at and before treaty times. For example, in 1976, the Tulalip Tribes sought to intervene as a defendant in *Stillaguamish Tribe v. Kleppe*, No. 75-1718 (D. D.C.), in which the Tribe challenged the United States inaction on its federal recognition petition. The affidavit of George Williams, then Chairman of the Tulalip Tribes, stated in part that “recognition by the Federal Government of the Stillaguamish Tribe will result in the sharing by the Tulalip Tribes with it of the anadromous fish resources of Puget Sound . . . at the usual and accustomed grounds and stations of the Tulalip Tribes.” The Tribe achieved federal recognition on October 27, 1976.

23. Pursuant to the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 *et seq.*, the Tribe has been found to be jointly culturally affiliated with remains

and artifacts found at Useless Bay, Holmes Harbor, around Penn Cove, to the west of Deception Pass at Bowman Bay, around Camano Island, on Port Susan, and near Skagit Bay.

LEGAL AUTHORITIES

24. The law of the case is that “every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters, is a usual and accustomed ground or station.” *United States v. Washington*, 384 F. Supp. at 332. Tribes reserved the right to take all species of fish and shellfish at adjudicated usual and accustomed fishing locations. *U.S. v. Washington*, 873 F.Supp 1422, 1431 (W.D. Wash. 1994), *aff’d* *U.S. v. Washington*, 157 F.3d 630, 644 (9th Cir. 1998).

25. The burden is on the petitioning tribe to produce evidence that waters were usual and accustomed fishing grounds. *United States v. Washington*, 459 F. Supp. at 1059. However, the stringent standard of proof that operates in ordinary civil proceedings is relaxed. *Id.* (“In determining usual and accustomed fishing places the court cannot follow stringent proof standards because to do so would likely preclude a finding of any such fishing areas.”); *United States v. Washington*, 730 F.2d 1314, 1317 (9th Cir. 1984) (noting it would be impossible to compile a complete inventory of any tribe’s usual and accustomed grounds and stations).

26. Direct evidence or reasonable inferences that may be used to support the claim that a tribe regularly fished certain waters include: frequent travel and visits to trading posts may support other testimony that a tribe regularly fished certain waters (*United States v. Washington*, 841 F.2d 317 (9th Cir. 1988)); village locations on the water body from which fishing activities may be presumed (*United States v. Washington*, 384 F. Supp. at 351, 353); testimony of tribal elders (*United States v. Washington*, 459 F. Supp. at 1058-60); and expert anthropological testimony (*United States v. Washington*, 730 F.2d 1314 (9th Cir. 1984)). In addition, the Court has held that evidence from the Indian Claims Commission is relevant insofar as it can presume fishing activity took place from coastal areas used by a tribe. *United States v. Washington*, 459

F. Supp. at 1059. All of the above evidentiary sources support Stillaguamish marine water usual and accustomed fishing areas in the claimed waters.

27. Little documentation of Indian fishing locations in and around 1855 exists today. *United States v. Washington*, 459 F. Supp. at 1059. Historic evidence of Stillaguamish practices is particularly limited due to the Stillaguamish River's geographic restrictions and the fact that early historians and explorers struggled with the Lushootseed language, resulting in approximately 100 different historic phonetic spellings identifying the Stillaguamish people.

28. Nothing precludes the adjudication of the Tribe's marine treaty fishing claim.

29. The Tribe currently has approximately 320 members, only a small percentage of whom are expected to exercise marine water treaty fishing rights. The Tribe has been successfully managing its fishery resources for decades, and has been a reliable co-manager with other tribes and the State. The requested order adjudicating the Tribe's treaty-reserved usual and accustomed fishing places in the subject marine waters will not fundamentally upset management expectations.

PRAYER FOR RELIEF

WHEREFORE, the Stillaguamish Tribe of Indians hereby respectfully requests the following relief:

- A. An order declaring that the non-exclusive usual and accustomed fishing places of the Stillaguamish Tribe of Indians include the marine waters on the eastern side of Whidbey Island and both shores of Camano Island, including Port Susan, Skagit Bay, Saratoga Passage, Penn Cove, Holmes Harbor, and Deception Pass, excluding the waters directly adjacent to the Tulalip Reservation and any other Indian Reservation;
- B. An order declaring that the Stillaguamish Tribe of Indians may immediately begin exercising its treaty rights in these marine waters in a manner consistent with other orders of this Court and any established management plans; and

C. Other such and further relief as the Court may deem just and proper.

DATED this 8th day of September, 2017.

KILPATRICK TOWNSEND & STOCKTON

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STILLAGUAMISH TRIBE OF INDIANS

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Attorneys for the Stillaguamish Tribe of Indians

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2017, I electronically filed the foregoing **STILLAGUAMISH TRIBE OF INDIANS' REQUEST FOR DETERMINATION FOR MARINE USUAL AND ACCUSTOMED FISHING AREAS** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties registered in the Court's ECF system for the above-captioned case.

DATED this 8th day of September, 2017.

Kilpatrick Townsend & Stockton LLP

By: /s/ Rob Roy Smith

Rob Roy Smith, WSBA # 33798

rsmith@kilpatricktownsend.com

Attorneys for the Stillaguamish Tribe of Indians

The Honorable Ricardo S. Martinez

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AT SEATTLE**

UNITED STATES OF AMERICA, *et al.*,
Plaintiffs,

v.

STATE OF WASHINGTON, *et al.*,
Defendants.

**Case No. C70-9213
Subproceeding: TBD**

[PROPOSED]

**ORDER GRANTING STILLAGUAMISH
TRIBE OF INDIANS' *EX PARTE*
MOTION FOR LEAVE TO OPEN NEW
SUBPROCEEDING TO DETERMINE
MARINE USUAL AND ACCUSTOMED
FISHING AREAS**

THIS MATTER came before the Court on the *ex parte* motion of the Plaintiff-Intervenor the Stillaguamish Tribe of Indians seeking leave to open a new subproceeding in the case of *United States v. Washington*, Cause No. C70-9213, pursuant to the Court's Amended Supplemental Order on Paragraph 25 Procedures dated November 20, 2012 establishing procedures for filing a new Request for Determination. The Court has considered the Motion for Leave to Open New Subproceeding and the certifications therein by counsel for the Tribe and, being fully advised, finds that the Tribe has satisfied the requirements of Paragraph 25 and the orders of this Court to have a new subproceeding opened.

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[PROPOSED] ORDER GRANTING STILLAGUAMISH TRIBE MOTION FOR LEAVE TO OPEN NEW SUBPROCEEDING (CASE NO. 70-9213) – PAGE 1

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Accordingly, it is ORDERED as follows:

1. The Tribe's Motion for Leave to Open New Subproceeding is GRANTED.
2. The Court Clerk is directed to open a new subproceeding of *United States v. Washington*, Cause No. C70-9213, designated as Subproceeding --_____. The Stillaguamish Tribe shall then proceed with the filing of its Request for Determination. All subsequent filings in the subproceeding shall be filed in the main case, C70-9213RSM, as well as in the subproceeding.

DATED this _____ day of _____, 2017.

HONORABLE RICARDO S. MARTINEZ
United States District Judge

Presented by:

KILPATRICK TOWNSEND & STOCKTON

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Attorneys for the Stillaguamish Tribe of Indians

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2017, I electronically filed the foregoing
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PARTE MOTION FOR LEAVE TO OPEN NEW SUBPROCEEDING TO DETERMINE
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DATED this 8th day of September, 2017.

Kilpatrick Townsend & Stockton LLP

By: /s/ Rob Roy Smith

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Attorneys for the Stillaguamish Tribe of Indians