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JAN 29 1999 MR

Honorable Barbara J. Rothstein
Honorable Edward Rafeedie

BY [Signature]
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

STATE OF WASHINGTON, *et al.*,

Defendants.

Civil No. 9213 - Phase I

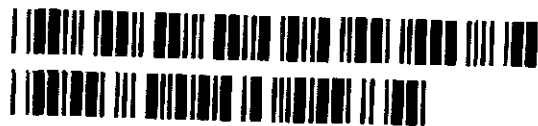
Subproceeding No. 89-3 &
Subproceeding No. 93-1

STIPULATION OF THE UPPER
SKAGIT TRIBE AND THE TULALIP
TRIBES CONCERNING UPPER
SKAGIT TRIBE'S USUAL AND
ACCUSTOMED FISHING PLACES

This agreement is made by and between the Upper Skagit Tribe and The Tulalip Tribes, both federally recognized Indian tribes, on the date noted above the signatures.

The parties promise, represent and agree as follows:

1. Introduction. The undersigned tribes are parties to the ongoing litigation in *United States v. Washington* in the United States District Court for the Western District of Washington, Cause No. 9213 and in all subproceedings thereof, including Subproceeding No. 89-3 dealing with shellfish entitlement and Subproceeding No. 93-1 dealing with Upper Skagit usual and accustomed fishing places. This settlement agreement involves the Request for Determination Re Upper Skagit Usual and Accustomed Fishing Places filed by the Upper Skagit Tribe (Subproceeding No. 93-1). On or about September 19, 1997, representatives of the Tulalip Tribes and the Upper Skagit Tribe reached agreement concerning scope of Upper Skagit tribal fishing in certain areas. The essential contents of that agreement are contained in this stipulation, which is intended to carry it into effect.



STIPULATION OF UPPER SKAGIT
THE TULALIP TRIBES CONCERNING
SKAGIT TRIBE'S USUAL & ACCUSTOMED
FISHING PLACES - 1

70-CV-09213-SUP

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1 The parties recognize that the protection of treaty fishing rights and the integrity of tribal sovereignty
 2 require maximum unity and cooperation among all affected Indian tribes. The parties wish to avoid the
 3 waste of tribal resources, including the legal costs of a long, drawn out court proceeding, and further
 4 recognize that intertribal issues pertaining to treaty rights should be resolved by the tribes without having
 5 to resort to court proceedings unless absolutely necessary.

6 In an effort to foster closer ties between the tribes and promote tribal unity and cooperation, The
 7 Tulalip Tribes agree to withdraw objections to the Upper Skagit Tribe's Request for Determination Re:
 8 Usual and Accustomed Fishing Places (Subproceeding No. 93-1, as well as objections to the Upper Skagit
 9 request for shellfish usual and accustomed places in Subproceeding No. 89-3), as to all areas dealt with in
 10 this agreement, consistent with the terms set out herein.

11 The parties recognize that the strict application of evidence in a court determination of this matter
 12 might support more expansive or less expansive fishing areas than agreed to herein.

13 2. SHELLFISH AREAS

14 2.1 Shellfish Areas. The Upper Skagit Tribe agrees to forgo shellfishing and agrees never
 15 in the future to seek to exercise shellfish fishing rights in the following Washington Department of Fisheries
 16 Salmon Catch Reporting Areas: those portions of Saratoga Passage, Holmes Harbor, and Possession Sound
 17 in Areas 8 and 8A lying southerly and easterly of a line from Lowell Point southwesterly to the small boat
 18 ramp located off of North Bluff Road in the town of Greenbank, just south of Pratt's Bluff as depicted on
 19 Map A, attached hereto and incorporated herein by reference.

20 2.2 Joint Use Areas. In the remainder of WDF Area 8, it is agreed that such areas are
 21 joint use areas. Each tribe may use such areas without permission of the other. For areas used together,
 22 the tribes agree to co-operate and coordinate use.

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 FISHING PLACES - 2

2.3 Area 8 Joint Enhancement for Shellfish. It is agreed that the parties will jointly investigate suitable habitat on (a) the east side of Whidbey Island from Rodena Beach to the small boat ramp identified in ¶ 2.1, *supra*, and (b) the west side of Camano Island from approximately Sunset Beach to Lowell Point, for possible enhancement for the joint benefit of the parties.

3. SALMON AREAS

3.1 Withdrawal of Salmon Fishing Areas. The Upper Skagit Tribe agrees to forego fishing, and agrees never in the future to seek to establish usual and accustomed salmon fishing areas in the following Washington Department of Fisheries Salmon Catch Reporting Areas: those portions of Saratoga Passage, Holmes Harbor, and Possession Sound in Areas 8 and 8A lying southerly and easterly of a line from Camano City due west to the eastern shore of Whidbey Island as depicted on Map B, attached hereto and incorporated herein by reference, including all rivers and streams (including their tributaries and the bed and banks thereof), which drain into those areas, and will not attempt to exercise salmon fishing rights in any of those areas.

3.2 Joint Use Areas. In the remainder of WDF Area 8, it is agreed that such areas are joint use areas.

4. General Provisions.

4.1 Primary Rights Claims. The Upper Skagit Indian Tribe agrees not to make a primary rights claim in either subproceeding. The Upper Skagit Indian Tribe agrees to not oppose the Tulalip Tribes' claims to primary rights in state fishing area 8A.

4.2 Presentation of Claims and Evidence; Proposed Findings and Conclusions. With respect to the presentation of claims and evidence in Subproceeding No. 89-3, and in reliance on this agreement, The Tulalip Tribes agreed and did not oppose the Upper Skagit Indian Tribe's claims which were limited to the scope described herein. The Tulalip Tribes refrained from examination and cross-examination in trial in Subproceeding No. 89-3 of all tribal expert or lay witness whose testimony involved matters

STIPULATION OF UPPER SKAGIT TRIBE &
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described herein. The Tulalip Tribes did not propose nor join in any proposed finding of fact or conclusion of law that would establish or preclude the establishment of any claim whose assertion would be in conflict with the terms of this stipulation.

4.3 No Modification of Existing Usual and Accustomed or Primary Rights.

Notwithstanding anything in this stipulation to the contrary, nothing herein shall be construed to modify or limit the rights of any tribe as to its previously determined usual and accustomed grounds and stations, or as to its previously determined primary or exclusive rights in such areas.

4.4 Status Quo of Formal and Informal Agreements Between Tribes Maintained. Subject

to the provisions of this agreement and orders of the court defining usual and accustomed fishing grounds and stations ("U&A places") and primary rights, it is the intent of the parties thereto, except as specifically set forth herein, to maintain the presently existing status quo established by formal and informal agreement(s) between and among tribes as it relates to U&A places. Absent agreement to the contrary, a tribe shall not be precluded from shell fishing in one of their U&A places solely because there has been no directed tribal salmon fishery in that area during previous seasons. For example, the absence of directed tribal salmon fisheries in WDF salmon catch reporting Area 9 during the past four years shall not preclude any tribe otherwise entitled to fish in that area from shell fishing there.

4.5 Existing Rights Preserved; Stipulation Not An Admission. Notwithstanding anything

in this stipulation to the contrary, neither tribe waives any of its rights under paragraph 25 of the Court's March 22, 1974, Injunction in *United States v. Washington*, 384 F. Supp. 312, 419 (W.D. Wash. 1974), as later modified by the court's order. Nor does either tribe by agreeing to this stipulation admit any fact or concede any legal theory.

5. Regulations. Each party shall enact all necessary regulations to ensure compliance with this agreement.

STIPULATION OF UPPER SKAGIT TRIBE &
THE TULALIP TRIBES CONCERNING UPPER
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1 6. Stay of Agreement. In the event that either tribe is barred from fishing in any of the areas
2 described in this stipulation by litigation or agreement or other operation of law, then the portion of this
3 stipulation relating to fishing in that area is stayed, pending further agreement of the parties or court order.

4 7. Remedies. The parties agree that the terms of this agreement shall be made part of a court
5 order and that if either party fails to comply with the terms of the agreement, the injured party may enforce
6 this agreement as follows:

7 a. Court Order. The terms of this agreement shall be enforceable as a court
8 order of the United States District Court for the Western District of Washington, pursuant to and within
9 the mechanisms established in Phase I of *United States v. Washington*, Civil No. 9213. In the event that the
10 continuing jurisdiction of the court in *United States v. Washington* shall be terminated, then the parties agree
11 that the court retains such jurisdiction as is necessary to enforce the terms of this agreement.

12 b. Injunctive Relief. The parties agree that they may be enjoined from taking
13 any action that fails to comply with the terms of this agreement and may be subject to contempt and
14 injunctive relief.

15 c. Contract. If either party breaches this agreement, the injured party, at its
16 option, may sue for specific performance of the agreement, or sue for breach of contract which shall be
17 limited to a suit for damages and injunctive relief, or any combination of the above. The contract remedies
18 shall include only those remedies specifically set out in this agreement and shall not include avoidance of
19 the contract or the discharge of any duties or self-help by either party.

20 d. For the purposes of enforcement of this paragraph, each tribe or party hereto
21 hereby waives sovereign immunity and agrees to suit, for the purpose of enforcing this agreement only, in
22 the federal District Court for the Western District of Washington.


23 8. No Court Modification. No modification of this agreement shall be made by order of any
24 court unless agreed to in writing by each of the parties.

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26 STIPULATION OF UPPER SKAGIT TRIBE &
THE TULALIP TRIBES CONCERNING UPPER
SKAGIT TRIBE'S USUAL & ACCUSTOMED
FISHING PLACES - 5


9. Dispute Resolution. The parties agree that in the event that a dispute arises from this agreement that cannot be resolved by mutual agreement, the parties shall submit the issues to federal court for determination.

10. Agreement Concerning Court Order in Subproceeding #93-1. The parties agree to jointly present a court order adopting this agreement to the court in this subproceeding. The parties agree that any order adopted by the court concerning the underlying issues in this proceeding must be consistent with this agreement and neither party will seek nor advocate any order inconsistent with this agreement. Each party agrees to oppose the entry of any order not consistent with this agreement.

DATED this 28 day of January, 1999, 1998.


Chair
Upper Skagit Tribe

Stan Jones, Sr., Chairman
Tulalip Tribes Board of Directors


Harold Chesnin, Tribal Attorney
Upper Skagit Tribe


Mason D. Morisset, Tribal Attorney
The Tulalip Tribes

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STIPULATION OF UPPER SKAGIT TRIBE &
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SKAGIT TRIBE'S USUAL & ACCUSTOMED
FISHING PLACES - 6

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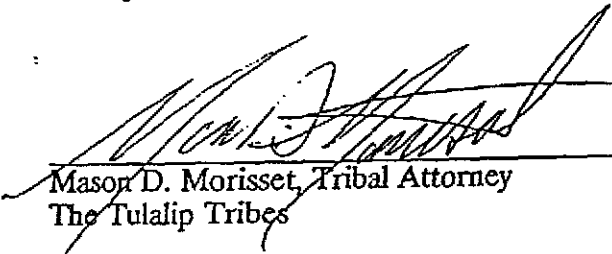
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DATED this ____ day of _____, 1997.

Floyd Williams
Upper Skagit Tribe


Stan Jones, Sr., Chairman
Tulalip Tribes Board of Directors

Harold Chesnin, Tribal Attorney
Upper Skagit Tribe


Mason D. Morisset, Tribal Attorney
The Tulalip Tribes

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mdm: September 20, 1997

STIPULATION OF UPPER SKAGIT TRIBE &
THE TULALIP TRIBES CONCERNING UPPER
SKAGIT TRIBE'S USUAL & ACCUSTOMED
FISHING PLACES - 6

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AT SEATTLE
CLERK OF DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
BY

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

STATE OF WASHINGTON, et al.,

Defendants.

Civil No. 9213
Sub-proceeding No. 93-1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the date below signed, the following documents were served upon each of the parties listed below by transmitting a true and correct copy of the foregoing document in the manner indicated and with all costs of delivery prepaid:

1. Stipulation of the Upper Skagit Tribe and The Tulalip Tribes Concerning Upper Skagit Tribe's Usual and Accustomed Fishing Places
2. This Certificate of Service

All parties and counsel
of record in this matter
via First-Class mail

Dated this 29th day of January, 1999.

Mason D. Morisset
Mason D. Morisset by *Law R. Jozwiak*

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CERTIFICATE OF SERVICE - 1

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