HONORABLE RICARDO S. MARTINEZ

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

UNITED STATES OF AMERICA, et al.,

Plaintiff,

v.

STATE OF WASHINGTON, et al.,

Defendant.

Case No.: C70-9213

UPPER SKAGIT'S OPPOSITION TO SAUK'S MOTION TO VACATE

NOTED ON MOTION CALENDAR: Friday, June 7, 2019

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

TABLE OF CONTENTS

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

I. INTRODUCTION

In 1998, Swinomish and Upper Skagit entered into an agreement in Supb. 93-1 settling Swinomish's objections to Upper Skagit's claim to expanded usual and accustomed fishing places (U&As). The settlement was approved, entered as an order of the Court, and published. *U.S. v. Washington*, 19 F. Supp. 3d 1280, 1289 (1998) (93-1, Dkt. # 172). It was then reexamined after another tribe (not Sauk) objected to it, after which it was reaffirmed and again made an order of this Court in a published decision. 19 F. Supp. 3d 1303, 1303-04 (1999) (93-1, Dkt. # 188).

Today, the Sauk-Suiattle Indian Tribe (Sauk), who was not a party to the settlement and did not appear in 93-1, has filed a motion to vacate the settlement, over 20 years after its entry as a court order. The motion should be denied.

II. FACTS

A. Sauk's U&A

While Upper Skagit disagrees with many of the statements in Sauk's motion, the one clear, unambiguous, and indisputable fact with which it and Sauk agree is that Judge Boldt, after a complete and thorough review of all of the evidence regarding Sauk's fishing activity at and before treaty times found:

> The usual and accustomed fishing places of the Sauk River Indians at the time of the treaty included Sauk River, Cascade River, Suiattle River and the following creeks which are tributary to the Suiattle River – Big Creek, Tenas Creek, Buck Creek, Lime Creek, Sulphur Creek, Downey Creek, Straight Creek, and Milk Creek. Bedal Creek, tributary to the Sauk River, was also a Sauk fishing ground. (Ex. USA-29, p. 13; Ex. MS-10, p. 3, l. 1-6)

U.S. v. Washington, 384 F. Supp. 312, 376 (1974) (Dkt. # 415 ¶ 131, p. 74).

Sauk's U&A excludes the Skagit River and includes no marine areas.

B. Background of the Stipulated Order Sauk Seeks to Vacate

In 1993, Upper Skagit sought to expand its U&A into marine waters and filed an RFD to do

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

so.[1] In response to that filing and other action in the case, Judge Rothstein, to whom *U.S. v. Washington* had recently been transferred (*see* 70-9213, Dkt. # 12870), held a status conference on June 10, 1993. Counsel for every or nearly every tribe (including Sauk) attended that conference, at which Judge Rothstein explained new procedures for the case and then opened 93-1.[2] She issued an order soon after containing that same information. That Order provided:

> ¶ 3 . . . The Clerk shall file as "Subproceeding No. 93-1" the "Request for Determination of Upper Skagit Indian Tribe for ***Additional Usual and Accustomed Fishing Places***" lodged on April 30, 1993. . . .
>
> ¶ 4 . . . Counsel shall file a notice of appearance in each subproceeding in which they wish to participate. This applies to all subproceedings currently pending as well as all those filed in the future. ***But all parties in this case will be bound*** by all rulings in the subproceeding whether or not counsel have filed notices of appearances in particular subproceedings.

Order at 2 (June 22, 1993) (70-9213, Dkt. # 13292) (emphasis added).[3]

Seventeen tribes, the State, and the United States filed notices of appearances in 93-1; thirteen tribes and the State filed responses to Upper Skagit's RFD; and nine tribes, the United States, and the State signed the Joint Status Report (JSR).[4] Sauk did not appear, respond, or sign the JSR.[5] Over the next six years, Upper Skagit and the other appearing parties litigated 93-1. Upper Skagit negotiated settlements with those three tribes which opposed its RFD (Swinomish, Tulalip, Lummi), each of which stipulated to Upper Skagit's U&A in marine waters in exchange for significant concessions from Upper Skagit.[6] Those settlement agreements were filed with the

---

[1] *See* Ballinger Decl. Ex. 1 (93-1 docket); Ex. 2 (RFD). Concurrently, Upper Skagit litigated its right to take shellfish in the same marine waters in 89-3, which Judge Rafeedie found in an order issued in December 1994. *See U.S. v. Washington*, 873 F. Supp. 1422, 1448-1450 (1994) (89-3, Dkt. # 13864, pp. 56-61). Certain tribes did not oppose Upper Skagit's position in 89-3, on the agreement that nothing would preclude those tribes from contesting the same claims and evidence in 93-1 for purposes of harvesting fish other than shellfish in marine waters. *See* 93-1, Dkt. # 128, p. 2-3, 27-28 (May 28, 1997).

[2] Ballinger Decl. Ex. 3 (excepts from transcript filed at 70-9213, Dkt. # 13440).

[3] Ballinger Decl. Ex. 4 (Order filed at 70-9213, Dkt. # 13292).

[4] *See* Ballinger Decl. Ex. 2 (93-1 docket).

[5] *See* Ballinger Decl. Ex. 2 (93-1 docket).

[6] Ballinger Decl. Ex. 5, p. 6, ¶ 3.1 (93-1, Dkt. # 172: "The Swinomish Tribe agrees not to challenge Upper Skagit

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

Court with time for other tribes to object to entry.[7] In fact, Tulalip objected to the very settlement agreement that is the subject of Sauk's motion.[8] The Court subsequently signed the stipulations in February 1999 (including re-affirming by subsequent order its approval of the Upper Skagit-Swinomish agreement), making them orders of the Court and concluding 93-1.[9] Other than notices and orders spread to all subproceedings, those stipulated orders are the last entries in 93-1.[10]

Most relevant to this motion is that the settlement agreement between Swinomish and Upper Skagit *does not bind Sauk*. To the contrary, the agreement provides that if another treaty tribe establishes a right to fish in the waters at issue, Upper Skagit and Swinomish will "adjust and modify their respective allocation percentages on a pro-rata basis." Dkt. # 172, p. 14, ¶ 4.5.1.[11]

C. Factual Corrections

Despite there being no evidence supporting most of Sauk's factual assertions (*see* Motion at 6-9),[12] Upper Skagit makes the following points:

1. *Sauk Agreed to the Terminal Area Fin Fish Allocation.* The allocation agreement at issue predated the 1998 settlement agreement and was not unknown to Sauk: *Sauk itself was a party to the agreement setting the allocation.* In 1975, Swinomish, Upper Skagit, and Sauk recognized the impact that a fishery in Sauk's U&A could have to the entire ecosystem because the Sauk adjudicated U&A fishery consist primarily of spawning grounds.[13] To avoid this risk to the

---

claims for usual and accustomed fishing grounds and stations as set out and disclosed in subproceeding 93-1, in exchange for Upper Skagit agreements contained in this Section herein and in Sections 4 and 5 below."); Maloney Decl. ¶ 3; Ballinger Decl. Exs. 6, 7, 8 (93-1, Orders filed at 93-1, Dkt. ## 187, 188, 189).

[7] Ballinger Decl. Ex. 1 (93-1 docket).

[8] *See* Ballinger Decl. Ex. 1 (93-1 docket, entry for Dkt. # 173).

[9] *See* Ballinger Decl. Exs. 5, 6, 7, 8 (93-1, Orders filed at Dkt. ## 172, 187, 188, 189).

[10] *See* Ballinger Decl. Ex. 1 (93-1 docket).

[11] Ballinger Decl. Ex. 5 (Order filed at Dkt. # 172).

[12] The only evidence Sauk filed is the settlement agreement (which is reported and not disputed) and a purported chinook harvest schedule that has not been explained or authenticated by anyone with the competence to do so. *See* Dkt. # 21936, -1, -2.

[13] Maloney Decl. ¶ 4.

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

ecosystem, Upper Skagit and Swinomish agreed to instead allocate 6% of the downriver fishery to Sauk. *Id.* The allocation the tribes set in 1975 continued until this year. *Id.* The allocation was not based on tribal membership. *Id.* Instead, it was based on the geographic reach of each tribe's U&A. *Id.* And, while some of the Skagit River fin fish stock (such as the Baker River sockeye and the spring hatchery chinook) never enter Sauk's U&A, Sauk's allocation pursuant to the allocation agreement includes those species. *Id.*

2. *Tribal Membership.* Tribal membership has never constituted a rationale by which the tribes have determined inter-tribal allocation, and the reason is obvious: there is no uniform method by which tribes determine who may be a tribal member. Instead, the tribes determine inter-tribal allocation by evaluating their respective U&As in the area.[14] Nevertheless, to correct the record, the current membership of Upper Skagit is 1,345 members.[15]

3. *Chinook Schedule.* Sauk relies on Exhibit 2 to the Fiander declaration to claim that "the Upper Skagit Tribe has exceeded its percentage of the catch." Motion at 7-8. To the contrary, the Exhibit shows the "projected catch" for each year, which is based on the 50/44/6 allocation to which each agreed. The "actual catch" is, in fact, the actual catch. Upper Skagit never exceeded its projected catch, which means it never exceeded its contractual 44% allocation. Under the agreement and court order, Upper Skagit had no obligation to catch less than its allocation to account for the fact that Swinomish and Sauk caught less than each was allocated.

4. *FERC Settlement Agreement*. The settlement agreement with Puget Sound Energy (PSE) referenced in Sauk's motion settled the parties' (including tribes') dispute over the relicensing of the Baker River Hydroelectric Project to PSE, and does not "grant" any tribe the "right" to take fish.[16] Such a position is directly contrary to the agreement's Section 6.5, which

---

[14] *E.g.*, Maloney Decl. ¶ 4.

[15] Maloney Decl. ¶ 5.

[16] Sauk chose not to submit the 200-page agreement; a link for it is at this website: https://www.pse.com/pages/hydro-licensing/baker-license-and-amendments.

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

provides, "Tribal Rights. . . . [N]othing in this Settlement . . . shall . . . create, expand . . . or apply to any treaty, sovereign, or federal right (including attendant rights of access and exercise), including, but not limited to . . . fishing . . . rights . . . ." *Id.*, p. 18.

III. ARGUMENT

A. Sauk's Motion Is Procedurally Defective and the Rule 60 Defect Cannot Be Cured.

1. Sauk misfiled the motion and seeks to vacate a superseded order.

Sauk filed in the main case and not 93-1. While this would seem a minor issue, it has major implications. It is a clear admission by Sauk that it has no standing in 93-1 (*see infra* Section A(3)) and therefore is trying to reverse years of procedure under Paragraph 25. In addition, Sauk seeks to vacate an order which is not even the operative order. The Court considered Tulalip's objection as a motion to reconsider the order at Dkt. # 172 and invited further briefing.[17] All tribes were provided notice and an opportunity to be heard, and the operative order was subsequently entered at Dkt. # 188.

2. Sauk cannot justify the motion to vacate under Rule 60.

Sauk has styled its motion as one to vacate the agreement between Upper Skagit and Swinomish, but because the Court approved the settlement and incorporated it into a court order, the motion is to vacate a court order. Federal Rule Civil Procedure 60(b) governs. *Hook v. Arizona Department of Corrections,* 972 F.2d 1012, 1016 (9th Cir. 1992) ("The proper vehicle for seeking relief from a consent decree is a Rule 60(b) motion.").

Rule 60(b) sets forth specific grounds upon which relief from judgment may be granted. Sauk neither cites the rule nor identifies which provision justifies the relief it seeks, leaving Upper Skagit to guess. A motion to vacate brought "more than a year after the entry of the . . . order" may be granted only upon a showing that "(4) the judgment is void; (5) the judgment has been satisfied . . . ; or (6) any other reason that justifies relief." Fed. R. Civ. P. 60(b), (c)(1). As there is

[17] *See* Ballinger Decl. Ex. 1 (93-1 docket, entry for Dkt. # 174).

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

no conceivable basis to argue Rule 60(b)(4) or (5), Sauk must justify its motion under Rule 60(b)(6). But the Ninth Circuit has "used Rule 60(b)(6) 'sparingly as an equitable remedy to prevent manifest injustice'" and held in a prior subproceeding in this case that it "is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." *U.S. v. Washington*, 98 F.3d 1159, 1163 (9th Cir. 1996). As this Court has observed, "there is a common thread of finding delays of over two years" to be unacceptable. *U.S. v. Washington*, 20 F. Supp. 3d 912, 924 (2008) (01-2, Dkt. # 329).

Upper Skagit's RFD sought U&A in marine waters. The tribes who opposed that determination complied with the procedural mechanisms Judge Rothstein added to Paragraph 25 and ultimately settled, conceding Upper Skagit's U&A in marine waters. Given the Court's admonition quoted above ("all parties in this case will be bound by all rulings in the subproceeding whether or not counsel have filed notices of appearances in particular subproceedings"), Sauk's statement that it "was not a signatory and, until recently was not aware of the stipulation" (Motion at 4) is irrelevant. Sauk could have appeared in 93-1, contested Upper Skagit's U&A, and (like Tulalip did) opposed entry of the settlement agreement. Having done none of those things, it cannot now petition the Court to reopen the proceedings.

Moreover, Sauk's reason for vacating the Court's order approving the settlement agreement has nothing to do with whether Upper Skagit has U&A, *i.e.*, the dispute in 93-1. Sauk instead argues that the Court should condition *exercise* of that right on an allowance for Sauk's upriver fishery. Even if it had been timely made, that request would have been an improper objection to Upper Skagit's RFD as it does not contest Upper Skagit's U&A, the only issue in the subproceeding. *See U.S. v. Washington*, 20 F. Supp. 3d 777, 818 (2006) (05-3, Dkt. # 95) (subproceedings are "limited in scope" to the determination requested in the RFD). Nor would Sauk have been permitted to file a cross-request, as Paragraph 25(b)(4) of the Permanent Injunction strictly circumscribes the scope of cross-requests, requiring that they "relate[] directly to

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

the subject matter of the request for determination." 384 F. Supp. at 419 (as amended). Finally, the Swinomish / Upper Skagit agreement explicitly provides that if another treaty tribe establishes a right to fish in the waters at issue, Upper Skagit and Swinomish will "adjust and modify their respective allocation percentages on a pro-rata basis."[18] In other words, the settlement agreement need not be vacated for the allocations in it to be adjusted to accommodate fishing by another treaty tribe.[19]

Finally, in deciding a Rule 60(b) motion, the court must weigh prejudice to other parties if relief is granted. *See In re Pacific Far East Lines, Inc.*, 889 F.2d 242, 249 (9th Cir. 1989). Twenty years of fishing in accordance with the agreement has built up reliance interests that are especially important in *U.S. v. Washington.* The case involves "a delicate regime for regulating and dividing fishing rights" created over the decades, which "certainly cautions against" disturbing court orders "upon which many subsequent actions of the parties have been based." *U.S. v. Washington,* 593 F.3d 790, 800 (9th Cir. 2010) (en banc).

No Rule 60 provision applies. The motion to vacate should be denied with prejudice.

3. Sauk has not complied with Paragraph 25.

Nor has Sauk complied with the prefiling or procedural requirements of Paragraph 25 of the Permanent Injunction to present a new controversy. "The prefiling requirements of Paragraph 25 are jurisdictional and must be strictly construed." *U.S. v. Washington,* 20 F. Supp. 3d 983, 986 (2012). Sauk did not seek to open a new subproceeding as required by Paragraph 25(b)(3) and did not comply with the Paragraph 25(b)(1) prefiling requirements. *See* 384 F. Supp. at 419, *as modified by* 18 F. Supp. 3d 1172, 1213 (1993) (No. 70-9213, Dkt. # 13599, pp. 1-2).

Because of those deficiencies, Sauk cannot on reply restyle its motion as a Request for Determination.

---

[18] Ballinger Decl. Ex. 5, p. 14, ¶ 4.5.1.

[19] In all the years since the entry of the Court's order here, no other treaty tribe has sought to move from their marine water U&A into a Skagit River U&A.

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

B. Moderate Living Restrains *State* Action that Violates Treaty Obligations Owed by the *State* Based on Promises Made by the *Government*.

On the merits, Sauk is wrong that the Court may reduce a terminal area treaty tribe's fishing in one U&A to ensure treaty tribe fishing in the same terminal area but an entirely different U&A. To the undersigned's knowledge, no treaty tribe has sought that ruling before, and if the Court entertains the request, the Court will open its jurisdiction to an entirely new phase of proceedings (Phase III). As the Court knows, one subproceeding under Phase II (01-1, *In re Culverts*) concluded last year, with this ruling affirmed by an equally-divided Supreme Court:

> [T]he right of taking fish, secured to the Tribes in the Stevens Treaties, *imposes a duty upon the State* to refrain from building or operating culverts under State-maintained roads that hinder fish passage and thereby diminish the number of fish that would otherwise be available for Tribal harvest. . . . [T]he State of Washington currently owns and operates culverts that violate this duty.

U.S. v. Washington, 20 F. Supp. 3d 986, 1000 (2007) (01-1, Dkt. # 392, p. 12) (emphasis added), *aff'd* 138 S. Ct. 1832 (2018). The State's duty derived from the government's "promise that the number of fish would always be sufficient to provide a 'moderate living' to the Tribes." *U.S. v. Washington*, 853 F.3d at 965. This restriction on the State's exercise of its otherwise lawful right to build culverts was because "*the State is bound by the treaty*." *Id*. (emphasis added).[20]

By its motion, Sauk attempts to impose that duty on treaty tribes. But, unlike the State, treaty tribes do not owe a moderate living duty to refrain from action that "diminish[es] the number of fish that would otherwise be available for Tribal harvest" (20 F. Supp. 3d at 1000) because they *made no promise* creating that duty. The treaty tribes made no promises *to each other* in the eleven treaties Governor Stevens negotiated with each tribe. *See* 384 F. Supp. at 330 ("[I]n less than one year during 1854-1855 [Stevens] negotiated eleven different treaties, each with several different tribes, at various places distant from each other in this rugged and then primitive area.").

[20] If Sauk feels aggrieved by what it considers an inability to earn a moderate living for its fishermen, Sauk should address that issue to the party which owes a duty under the treaties (the State), whose allocation of fish is subject to reduction to ensure that moderate living.

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

Because the premise underlying the culverts injunction (that fish-blocking culverts violate a duty owed by the State) is absent here, the moderate living doctrine has no application to this dispute.

The illogic in Sauk's position cannot be overstated. Sauk asks the Court to find that the very treaties by which each treaty tribe reserved its right to take fish in its U&As included an unstated promise to limit the *exercise* of that right to ensure that *other tribes* could take fish *outside* those other tribes' U&As. Sauk's position is unmoored from the treaties and contrary to the decisional law. "[T]he treaty Indians pleaded and insisted upon retaining the *exercise* of [the fishing] rights [reserved by the tribes] as essential to their survival." 384 F. Supp. at 334 (Final Decision #1, Dkt. # 414, p. 16). The treaties reserved to each tribe the right to fish in its U&As, a right in "in common with all citizens of the Territory," *Washington v. Washington State Com. Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 697 (1979), not other tribes with other U&As.

And, in contrast with a tribe with U&A in an area, fishing there by others "is not a *right* but merely a *privilege*." 384 F. Supp. at 332 (Final Decision #1, Dkt. # 414, p. 11, ¶ 7). Thus:

> The *exercise of a treaty tribe's right* to take anadromous fish *is limited only* by the geographical extent of the usual and accustomed fishing places, the limits of the harvestable stock, the tribe's fair need for fish, and the opportunity for non-Indians to fish in common with Indians outside reservation boundaries.

384 F. Supp. at 402 (FOFCOL, Dkt. # 415, p. 141, ¶ 25) (emphasis added). These limitations are explicitly finite and include no consideration of another tribe's inability to exercise *its* treaty right. Sauk would limit a treaty tribe's *exercise* of its right to fish within its U&A for an extra-treaty purpose and one not delimited by Judge Boldt in 1974.

It is common knowledge that the salmon stocks in the Northwest are in steep, potentially irreversible decline. Sauk's position is that dwindling stock in one U&A gives a tribe the right to fish a different U&A. If that is correct, the painstaking work of nearly 50 years determining each tribe's U&A will have been both for naught and subject to never ending redefinition. If granted, Sauk's request would upend more than 30 years of albeit sometimes fractious peace among treaty tribes by adding a new route open to all tribes to challenge settled fishing regimes. Phase III of

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

this case would begin, with the potential of a flurry of new proposed subproceedings by other tribes seeking to expand where they may fish.

Sauk's motion is meritless.

IV. CONCLUSION

Because the Rule 60 deficiency cannot be cured, the Court should deny Sauk's motion with prejudice, meaning Sauk may not seek the relief it wants by way of a motion to vacate.

DATED this 3rd day of June, 2019.

UPPER SKAGIT INDIAN TRIBE

By: *s/ David S. Hawkins*
David S. Hawkins, WSBA # 35370
General Counsel
25944 Community Plaza Way
Sedro-Woolley, WA 98284
Telephone: (360) 854-7090
Email: dhawkins@upperskagit.com

HARRIGAN LEYH FARMER & THOMSEN LLP

By: *s/ Arthur W. Harrigan, Jr.*
By: *s/ Tyler L. Farmer*
By: *s/ Kristin E. Ballinger*

Arthur W. Harrigan, Jr., WSBA #1751
Tyler L. Farmer, WSBA #39912
Kristin E. Ballinger, WSBA #28253
999 Third Avenue, Suite 4400
Seattle, WA 98104
Telephone: (206) 623-1700
Facsimile: (206) 623-8717
Email: arthurh@harriganleyh.com
Email: tylerf@harriganleyh.com
Email: kristinb@harriganleyh.com

Attorneys for Upper Skagit Indian Tribe

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties registered with the Court's ECF system for the above-captioned case.

HARRIGAN LEYH FARMER & THOMSEN LLP

By: s/ *Arthur W. Harrigan, Jr.*

Arthur W. Harrigan, Jr., WSBA #1751
999 Third Avenue, Suite 4400
Seattle, WA 98104
Telephone: (206) 623-1700
Facsimile: (206) 623-8717
Email: arthurh@harriganleyh.com

Attorney for Upper Skagit Indian Tribe

LAW OFFICES
HARRIGAN LEYH FARMER & THOMSEN LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717