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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION, Plaintiff, v. **CITY OF YAKIMA,** a municipal corporation, Defendant.	**NO. 1:20-cv-03156-SAB** **MEMORANDUM IN SUPPORT OF PLAINTIFF YAKAMA NATION'S MOTION FOR SUMMARY JUDGMENT ON LIABILITY** 6/22/22 No oral argument requested

I. INTRODUCTION

The Plaintiff Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation" or "Plaintiff") seeks summary judgment regarding the liability of the City of Yakima ("City" or "Defendant") for the response costs Yakama Nation has incurred due to releases and threats of releases of hazardous substances at and from the City of Yakima Landfill Site ("Site"). Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9675, as amended, the Yakama Nation is entitled to recover "all costs of removal or remedial action incurred by . . . an Indian tribe not inconsistent with the national contingency plan." 42 U.S.C. § 9607(a)(4)(A). The Plaintiff incurred costs totaling $133,671.70 from March, 2017 through September 30, 2021, exclusive of prejudgment interest. The cost reports attached to the declarations of Jeanna Hernandez and Ethan Jones set forth those costs and underlying documentation for the actions taken.

The issues raised by the Plaintiff's motion are neither novel nor complex. No genuine issue of material fact exists as to the liability of the City under CERCLA, the actions taken by the Yakama Nation in response to releases of hazardous substances from the Site, or the amount of the costs that the Yakama Nation is seeking. The plain language of the statute supports a finding that the Plaintiff is entitled to all of the costs it seeks in this litigation, and a declaratory judgment of liability for the Yakama Nation's future costs.

II. FACTUAL BACKGROUND

A. The Landfill Site

The Landfill Site is located on two parcels within the City of Yakima, east of North 8th Street and north of East E Street. In July 1963, the City entered into a lease with Boise Cascade, Inc. – who had owned and operated a lumber mill encompassing the site since 1903 – for the parcels which comprise the Site to be used as a municipal solid waste landfill. Statement of Material Facts Not in Dispute, ¶ 2 (hereinafter "SOF"). Under the terms of the lease, the City agreed to indemnify Boise Cascade for any liabilities arising from the City's use of the site as a municipal solid waste landfill. The Site was used as an unlined municipal solid waste facility until 1970, and was closed by the Yakima County Health Department in 1972. *Id.*, ¶¶ 2-4.

In January 1996, the City notified the State of Washington Department of Ecology ("Ecology") that hazardous substances had been discovered at the Landfill Site during the construction of the I-82 Exit 33A off-ramp. *Id.*, ¶ 5. Between 1997 and 2015, the City and its contractors conducted environmental investigations to identify releases and threats of releases of contaminants at the site. *Id.*, ¶ 6. An Environmental Site Assessment was completed for the Site in 2008, under the State of Washington's Model Toxics Control Act. A Remedial Investigation ("RI") Report was issued in 2009, and a supplemental RI completed in 2015. Contaminants identified at the Site include diesel range organics, heavy oils, vinyl chloride, n-nitrosodiphenylamine, 4,4'-

DDT, 4-4' DDD, endosulfan II, bis(2-ethylhexyl)phthalate, 3,3'-dicholorobenzidine, lead, chromium, arsenic, iron, manganese, nitrate, and PCB aroclors. *Id.*, ¶13. On March 30, 2017, Ecology identified the City as a potentially liable person for releases of hazardous substances at the Site, and issued a formal determination to that effect on May 5, 2017. SOF ¶7,8.

In June 2020, the City entered into a purchase and sale agreement for the purpose of purchasing land located within the Site to construct new roads. *Id.*, ¶10. The City currently owns land located within the Site in fee simple. *Id.*, ¶11.

B. Yakama Nation

Yakama Nation is a federally recognized Indian tribe and the legal successor in interest to the Indian signatories to the Treaty with the Yakamas of June 9, 1855 (12 Stat. 951) ("Treaty"). *Id.*, ¶1. Under Article III of the Treaty, the Yakama Nation reserved for itself and its members the right to take fish at all "usual and accustomed places" in the Columbia River Basin. 12 Stat. 953. These places include numerous sites along the Yakima River at, in and near the City occupied since time immemorial specifically by the Yakama Nation, and to which the Plaintiff once held exclusive Indian title as part of the total area ceded to the United States by the Treaty. *Yakima Tribe v. United States* (ICC Docket No. 161), Additional Findings of Fact, 12 Ind. Cl. Comm. 301, 338-358 (1963).

Under the Treaty, tribal fishermen are entitled to an opportunity to harvest fifty percent of the available fisheries resources on the Columbia River and its tributaries, including the Yakima River. *United States v. Oregon,* 529 F.2d 570 (9th Cir. 1976). Yakama Nation's reserved rights to fish in the Yakima River have specifically been recognized by this Court, in a decision ordering release of in-stream flows by local irrigation districts to sustain salmon eggs in the bed of the Yakima River during low water conditions. *Kittitas Reclamation Dist. v. Sunnyside Valley Irrig. Dist.*, 763 F.2d 1032 (9th Cir. 1985). Under a series of ten-year Columbia River Basin management agreements, the Yakama Nation is also recognized by the State of Washington as a co-manager of the fisheries in the Yakima River sub-basin. See *U.S. v. Oregon* (D.Or. 68-513-MO), All Parties' Joint Motion and Stipulated Order Approving 2018-2027 Management Agreement (Doc. 2607), Exhibit 1 (Doc. 2607-1) at 62. Congress through the Northwest Power Act of 1980 also recognizes this management authority as fully equal to that of the State of Washington. 16 U.S.C. § 839b(h); see also *Northwest Resource Info. Center v. Northwest Power Planning Council*, 35 F.3d 1371, 1388 (9th Cir. 1994).

C. Response Actions Performed

Beginning in March 2017 and continuing to today, the Plaintiff has taken numerous actions as a result of the releases and threats of releases of contamination at and from the Site. Declaration of Laura Klasner Shira, ¶¶5-9 (hereinafter "Shira

Decl.”). Yakama Nation began these response activities when its representatives became aware of the release of hazardous substances at the Site and the threats of releases to groundwater and the Yakima River. *Id.*, ¶5. Yakama Nation’s response activities involve the monitoring, assessment, and evaluation of the releases of hazardous substances as well as their potential impact to the environment and to the health and welfare of Yakama enrolled tribal members. *Id.*, ¶¶5-9. Yakama Nation has – among other activities – reviewed Site background, technical, and decision-making documents, participated in technical meetings, coordinated and communicated with Ecology, and provided education and outreach. *Id.*, ¶¶6-9. All of these activities have been in response to the releases and threatened releases at the Site. *Id.*, ¶10.

From 2017 to today, the Yakama Nation has reviewed and commented on various Site documents, including technical and decision-making documents, and studies conducted to assess hazardous substances at the Site. *Id.*, ¶¶5-9. Since learning of the releases and threatened releases, the Yakama Nation has met on numerous occasions with Ecology Site managers and staff. Many of these communications are technical – seeking and providing technical information and providing comments on proposed cleanup actions. Others are necessary to effectuate the actions taken by Plaintiff, such as discussing positions taken on cleanup issues, or meetings regarding the relationship between ongoing cleanup and Yakama Nation’s interests. The Plaintiff has conducted these actions to prevent, minimize, and mitigate

potential damage to the river environment that it manages, and for the health of Yakama Nation's enrolled members. *Id.,* ¶10. Moreover, Yakama Nation has incurred significant enforcement costs – a cost of response under the law – to litigate this matter.

D. Yakama Nation Incurred $133,671.70 for Response Actions Conducted as a Result of Releases of Hazardous Substances at the Site

Yakama Nation's response costs and supporting documentation through September 30, 2021, are set out in Cost Documentation Reports ("Cost Summaries") prepared by Yakama Nation Fisheries ("Fisheries") and Yakama Nation Office of Legal Counsel ("OLC"). Declaration of Jeanna Hernandez, Exs. 2-5 (hereinafter "Hernandez Decl."); Declaration of Ethan Jones, Ex. 1 (hereinafter "Jones Decl."). The Cost Summaries reflect unreimbursed response costs of $133,671.70 incurred by Yakama Nation through September 30, 2021, excluding prejudgment interest. The Plaintiff incurred these costs as a result of the releases or threats of releases of hazardous substances at the Site. These costs include payroll of Yakama Nation employees, technical support services associated with remediation and response activities, and legal support services. All of these costs were incurred in connection with the response activities discussed above and in the attached Declarations. Shira Decl., ¶10; Jones Decl., ¶5.

E. All Yakama Nation Costs Are Documented and Verified

Yakama Nation has documented and verified that it has incurred $133,671.70 through September 30, 2021, responding to releases and threats of releases of hazardous substances at the Site. Plaintiff's direct costs include both Yakama Nation's staff costs and the site-specific costs incurred by outside contractors. To calculate Yakama Nation's direct costs for the Site, Fisheries and OLC collected documents, including employee time sheets and other site-related receipts and invoices. Hernandez Decl., ¶7; Jones Decl., ¶4. To compile the external contractor costs, Fisheries and OLC collected documents of Yakama Nation expenditures for contractor services, including vouchers, invoices, and payment schedules.

The response costs incurred are set out in the Cost Documentation Reports from Fisheries and cost reports from OLC referenced above. Hernandez Decl., Exs. 2-5; Jones Decl., Ex 1. To complete these reports, bookkeepers for Fisheries obtained, compiled and reviewed all supporting documentation for accuracy, completeness, and adequacy. Hernandez Decl., ¶7. That documentation includes all personnel time sheets, travel advances, and contractual invoices attributed to the Site. *Id*. All of the data obtained from the supporting documentation are compared and reconciled with the Yakama Nation's accounting system. *Id*. The categories of costs represented in the Cost Summaries are personnel, fringe benefits, travel, supplies, contractual costs, and other Site-related costs. *Id*. ¶¶8-16. An indirect cost rate is applied, and those costs

are included. *Id*. ¶¶18,19.

It is undisputed that the Yakama Nation has taken response actions, incurred costs as a result, and verified a total of $133,671.70 through September 30, 2021 for the Site, exclusive of prejudgment interest.[1]

III. STANDARDS

A. Summary Judgment Standard

Summary judgment is appropriate when the pleadings and evidence establish that there are no genuine issues as to any material facts. *See* Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Manzanita Park, Inc. v. Ins. Co. of North Amer.,* 857 F.2d 549, 552 (9th Cir. 1988). "A 'material' fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit." *Manzanita Park*, 857 F.2d at 552 (citation omitted). The mere existence of some alleged factual dispute will not defeat a properly supported motion; there must be a genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247-48 (1986).

Summary judgment is particularly well suited for CERCLA cost recovery. The Ninth Circuit has upheld summary judgment on the issue of the recoverability and

[1] The Yakama Nation is prepared to calculate prejudgment interest according to 42 U.S.C. § 9607(a)(4)(D).

amount of response costs incurred by staff, attorneys, and accountants of the United States. *See United States v. Chapman*, 146 F.3d 1166, 1168-71 (9th Cir. 1998) (declarations and cost summaries sufficient to support grant of summary judgment).[2] Other courts have similarly granted or upheld summary judgment on the amount of response costs. *See United States v. Findett Corp.*, 220 F.3d 842, 849-50 (8th Cir. 2000); *United States v. Chromalloy Amer. Corp.*, 158 F.3d 345, 347-48 (5th Cir. 1998); *United States v. Hardage*, 982 F.2d 1436, 1442-48 (10th Cir. 1992); *United States v. R.W. Meyer, Inc.*, 889 F.2d 1497, 1499-1508 (6th Cir. 1989); *California Dep't of Toxic Servs. v. Neville Chem. Co.*, 213 F. Supp. 2d 1134, 1142 (C.D. Cal. 2002), *aff'd*, 358 F.3d 661 (9th Cir. 2004).

B. CERCLA Liability Standard

CERCLA was enacted both to "facilitate the expeditious and efficient cleanup of hazardous waste sites" and to assure that those responsible pay for the site cleanup. *Carson Harbor Vill., Ltd. v. Unocal Corp.*, 270 F.3d 863, 881 (9th Cir. 2001) (*en banc*). Liability for that cleanup "attaches when three conditions are satisfied: (1) the site at which there is an actual or threatened release of hazardous substances is a

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[2] The Yakama Nation is treated identically to the United States and States in Section 107(a)(4)(A) of CERCLA, the operable liability provision in this litigation. 42 U.S.C. § 9607(a)(4)(A).

"facility" as under § 9601(9); (2) a 'release' or 'threatened release' of a hazardous substance from the facility has occurred, § 9607(a)(4); and (3) the party is within one of the four classes of persons subject to liability under § 9607(a)." *Pakootas v. Teck Cominco Metals, Ltd.*, 452 F.3d 1066, 1073-74 (9th Cir. 2006).

C. CERCLA Cost Recovery Standard

Under CERCLA, if a release or a threatened release "causes the incurrence of response costs" by Yakama Nation, it is entitled to recover "all costs of removal or remedial action . . . not inconsistent with the national contingency plan." 42 U.S.C. § 9607(a)(4)(A).[3] The courts have adopted a pragmatic, common sense approach regarding the type of evidence that is sufficient to establish the amount of response costs that the United States, or another sovereign government like Yakama Nation, has incurred with respect to a site. These costs are typically proven, both within the Ninth Circuit and across the country, by means of (1) affidavits describing the response actions for which the costs were incurred, and (2) cost summaries of the voluminous underlying cost documentation relating to various categories of response costs, such as

[3] The national contingency plan "provide[s] the organizational structure and procedures for preparing for and responding to . . . releases of hazardous substances." *See Washington State Dep't of Transp. v. Washington Natural Gas Co.*, 59 F.3d 793, 799 (9th Cir. 1995) (quoting 40 C.F.R. § 300.1).

personnel, indirect, travel and contract costs. *See, e.g., Findett Corp.,* 220 F.3d at 849; *Chapman*, 146 F.3d at 1172; *Hardage*, 982 F.2d at 1442-43; *Neville Chemical*, 213 F. Supp. 2d at 1139-42.

Once Yakama Nation shows that it has incurred *any* response costs as a result of a release or threat of release of hazardous substances, the burden shifts to the City to show that the response actions for which the costs were incurred were inconsistent with the National Contingency Plan ("NCP"). *See Chapman,* 146 F.3d at 1170. The law in the Ninth Circuit is clear; "where 'the United States government, a [S]tate, or an Indian tribe is seeking recovery of response costs, *consistency with the NCP is presumed,*' and the burden is on the defendant to rebut the presumption of consistency by establishing that the plaintiff's response action was arbitrary and capricious." *Fireman's Fund Ins. Co. v. City of Lodi, California*, 302 F.3d 928, 949 (9th Cir. 2002)(quoting *Wash. State Dept. of Transp.,* 59 F.3d at 799).

Finally, to challenge the *costs* incurred by Yakama Nation in connection with the Site, the City must prove that performance of a specific response action was inconsistent with the NCP. *Chapman,* 146 F.3d at 1169-70. As the court in *Hardage* pointed out, "[t]he NCP regulates *choice of response actions*, not costs. Costs, by themselves, cannot be inconsistent with the NCP." *Hardage,* 982 F.2d at 1443 (citation omitted).

IV. ARGUMENT

A. The City is liable under CERCLA Section 107

The City has admitted all facts necessary to establish the elements required to impose CERCLA liability. Under the clear definitions in the law, the Site is a "facility," a "release" of a hazardous substance from the facility has occurred, and the City is a "person" subject to liability under Section 107(a).

1. The Landfill Site is a "facility"

Under CERCLA "facility is defined in the broadest possible terms, encompassing far more than traditional waste sites," and includes "any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located." *Uniroyal Chem. Co. v. Deltech Corp.*, 160 F.3d 238, 245 (5th Cir. 1998); 42 U.S.C. § 9601(9). If a hazardous waste has "come to be located" at a site, that site is a facility under CERCLA. *Pakootas,* 452 F.3d at 1074. And "the term facility has been broadly construed by the courts, such that in order to show that an area is a facility, the plaintiff need only show that a hazardous substance under CERCLA is placed there or has otherwise come to be located there." *3550 Stevens Creek Assocs. v. Barclays Bank of California,* 915 F.2d 1355, 1360 n. 10 (9th Cir. 1990).

The City notified Ecology that hazardous substances were discovered on the Site in 1996. SOF ¶5. Those wastes include diesel range organics, heavy oils, vinyl

chloride, n-nitrosodiphenyla-mine, 4,4'-DDT, 4-4' DDD, endosulfan II, bis(2-ethylhexyl)phthalate, 3,3'-dicholorobenzidine, lead, chromium, arsenic, iron, manganese, nitrate, and PCB aroclors. SOF ¶13. The City further admits that some of these hazardous wastes have migrated into the groundwater. SOF ¶12. The Remedial Investigation conducted for the City defines the Site by "the extent of contamination associated with potential releases from the former landfill." SOF ¶13. It cannot be disputed that the Site is a "facility" under the law. Indeed, the Court has already made findings that establish the Site is a "facility" under CERCLA. *See* Order, ECF No. 59 at 2 ("The parties agree that there have been releases or threatened releases from the Site and that the City is an 'owner' as defined by CERCLA").

2. A release or threat of release of a hazardous substance has occurred.

CERCLA broadly defines a "release" as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment." 42 U.S.C. § 9601(22). The City has admitted that hazardous substances at the Site have been released. SOF ¶11. The Ninth Circuit has held that "the passive migration of hazardous substances into the environment from where hazardous substances have come to be located is a release under CERCLA." *Pakootas,* 452 F.3d at 1074-75 (citing *A & W Smelter & Refiners, Inc. v. Clinton,* 146 F.3d 1107, 1111 (9th Cir. 1998)); *Chapman,* 146 F.3d at 1170; *Coeur D'Alene Tribe v. Asarco, Inc.,* 280 F.Supp.2d 1094, 1113 (D. Idaho 2003) ("Th[e] passive movement

and migration of hazardous substances by mother nature (no human action assisting in the movement) is still a 'release' for purposes of CERCLA in this case").

Diesel range organics, heavy oils, vinyl chloride, n-nitrosodiphenyla-mine, 4,4'-DDT, 4-4' DDD, endosulfan II, bis(2-ethylhexyl)phthalate, 3,3'-dicholorobenzidine, lead, chromium, arsenic, iron, manganese, nitrate, and PCB aroclors, all of which have come to be located at the Site, has each been designated as a "hazardous substance." 40 C.F.R. § 302.4. The City's admissions are sufficient to constitute proof of a "release" under the law. Moreover, the Court has already found "that there have been releases or threatened releases from the Site". *See,* Order, ECF No. 59 at 2.

3. The City of Yakima is a party subject to liability under 42 U.S.C. § 9607(a).

The Defendant admits that it is a current owner of the Site. SOF ¶¶10, 11. "The current owner of any facility at the time of cleanup is also strictly liable for any 'release' of hazardous substances from the facility…" *Anderson Bros., Inc. v. St. Paul Fire & Marine Ins. Co.,* 729 F.3d 923, 929 (9th Cir. 2013). The City does not dispute that it is a party subject to liability, and the Court's inquiry on this element can end here. *See also* Order, ECF No. 59 at 2 ("The parties agree … that the City is an 'owner' as defined by CERCLA.").

B. The Actions Taken by Yakama Nation are "Removal or Remedial Actions"

Yakama Nation is entitled to its costs if they are "costs of removal or remedial action(s)." 42 U.S.C. 9607(4)(A). Each of the actions discussed above, and described more completely in the attached Declarations, fits squarely within CERCLA's definition of response. CERCLA broadly defines removal as, in part:

> … the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, *such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment*, which may otherwise result from a release or threat of release.

42 U.S.C. 9601(23) (emphasis added).[4] The actions taken by Yakama Nation are exactly that; actions that the Plaintiff has taken to monitor, assess and evaluate the

[4] A "remedial action" is also broadly defined, and includes "actions consistent with a permanent remedy." 42 U.S.C. § 9601(24). The definition recognizes that remedial actions can be taken in addition to removal actions, and specifically includes "any

conditions at the Site, the City's proposed future conduct, and the effect of that conduct on Yakama Nation enrolled members and the environment. Shira Decl., ¶10. Moreover, Yakama Nation undertook these specific actions to determine whether mitigation of damage to the public health or welfare was necessary. *Id*. All of the response actions described herein were taken as a result of the releases and threatened releases of hazardous substances at the Site. *Id*. ¶¶5,10.

C. The Yakama Nation is Entitled to Recover All Costs and to a Declaratory Judgment of Liability for Future Response Costs

The language of CERCLA is clear: responsible parties are liable for "*all costs* of removal or remedial action incurred by . . . the Indian tribe," 42 U.S.C. § 9607(a)(4)(A) (emphasis added). In addition, liability under CERCLA is joint and several. *See California v. Montrose Chem. Corp.*, 104 F.3d 1507, 1518 n.9 (9th Cir. 1997); *United States v. Chem-Dyne Corp.,* 572 F.Supp. 802 (S.D. Ohio 1983). The Ninth Circuit has held that the broad remedial purposes of CERCLA support a liberal interpretation of "all costs." *See Chapman,* 146 F.3d at 1175; *R.W. Meyer Inc.,* 889 F.2d at 1503.

Courts interpreting the language in Section 107(4)(A) have found that recoverable response costs include:

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monitoring reasonably required to assure that such actions protect the public health and welfare and the environment." *Id.*

(1) those costs directly incurred in assessing, investigating, monitoring, testing and evaluating the releases and threats of release, *see* 42 U.S.C. § 9601(23); *Chromalloy*, 158 F.3d at 349; *Neville Chem. Co.*, 213 F. Supp. 2d at 1124;

(2) prejudgment interest, *see* 42 U.S.C. § 9607(a)(4); *R.W. Meyer Inc.*, 889 F.2d at 1105; *United States v. Monsanto Co.*, 858 F.2d 160, 175 (4th Cir. 1988);[5]

(3) litigation costs, including attorney fees, administrative costs and investigative costs related to response actions, *see* 42 U.S.C. § 9601(25); *Chapman*, 146 F.3d at 1175; *United States v. Gurley*, 43 F.3d 1188, 1199-1200 (8th Cir. 1994); *Neville Chem. Co.*, 213 F. Supp. 2d at 1124; and

(4) indirect costs, such as overhead costs in administering the Superfund program and litigating Superfund enforcement actions, *see United States v. W.R. Grace & Co.*, 429 F.3d 1224, 1250 (9th Cir. 2005); *R.W. Meyer Inc.*, 889 F.2d at 1503-4 (indirect costs are "part and parcel of all costs"); *United States v. Ottati & Goss, Inc.*, 900 F.2d 429, 444-45 (1st Cir. 1990).

All of the costs for which Yakama Nation seeks recovery, as set forth in the attached Cost Summaries, fall within the categories of recoverable costs described

[5] CERCLA provides that interest accrues "from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned." *See* 42 U.S.C. § 9607(a)(4).

above. Accordingly, as a matter of law, all Yakama Nation's costs at the Site are recoverable pursuant to Section 107(a) of CERCLA.

Moreover, Yakama Nation is entitled to a declaratory judgment of liability in any future cost recovery actions regarding the Site. Section 113(g)(2) of CERCLA provides, in pertinent part, that "[i]n any such action described in this subsection, the court *shall enter a declaratory judgment on liability* for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages." 42 U.S.C. § 9613(g)(2) (emphasis added). This provision has been read by the Ninth Circuit as a mandate: "Therefore, if a plaintiff successfully establishes liability for the response costs sought in the initial cost-recovery action, it is entitled to a declaratory judgment on present liability that will be binding on future cost-recovery actions." *City of Colton v. Am. Promotional Events, Inc.-W.*, 614 F.3d 998, 1007 (9th Cir. 2010). Because the City is liable, as a matter of law, Yakama Nation is entitled to a declaratory judgment under CERCLA Section 113(g).

D. Yakama Nation's Costs are Sufficiently Documented and Calculated

Yakama Nation Fisheries and Office of Legal Counsel have each compiled true and correct copies of documentation supporting the costs incurred in relation to the Site. Hernandez Decl., Exs. 2-5; Jones Decl., Ex. 1. These Cost Summaries are, thus, authentic under Federal Rule of Evidence 901. As records kept in the ordinary course

of business and under government authority, the records are admissible pursuant to both the business and public records exceptions to the hearsay rule. *See* Fed. R. Evid. 803. Finally, as a summary of authentic and admissible documents, the Cost Summaries are admissible pursuant to Federal Rule of Evidence 1006, which allows summaries of voluminous writings to be admitted in Court when the underlying documents are made available for examination or copying.

The Cost Summaries includes costs, all of which are recoverable, documented and verified. Thus, the Cost Summaries are accurate summations of Yakama Nation's incurred costs, totaling $133,671.70 in costs through September 30, 2021, exclusive of interest.

CONCLUSION

Based on the undisputed facts in the record, Yakama Nation has met its burden of demonstrating that the City is liable for response costs under CERCLA, that Yakama Nation has incurred costs of response, and the amount of those costs. For the foregoing reasons, Yakama Nation respectfully requests the Court to grant the Plaintiff's Motion for Summary Judgment, and enter an Order: (1) adjudging that Yakama Nation is entitled to recover $133,671.70 in damages, plus interest, from Defendants jointly and severally for costs incurred through September 30, 2021; and (2) declaring that the City of Yakima is liable, jointly and severally, to Yakama Nation for all prospective costs

incurred by Yakama Nation for any and all of its response actions taken regarding the Site after September 30, 2021.

DATED this 3rd day of May, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 3rd day of May, 2022, I caused the foregoing document to be electronically filed with the court's electronic court filing system, which will generate automatic service upon all parties enrolled to receive such notice.

The following parties will be manually served by First class U.S. Mail, postage prepaid, or by facsimile: N/A

s/ Michael M. Frandina

Attorney for the Plaintiff