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December 11, 2024

Via ECF Filing

Molly C. Dwyer, Clerk of the Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: Joinder Letter in Lieu of Amicus Brief (Party Consent),
Pakootas v. Teck Cominco Metals Ltd., Case No. 24-5565,
Confederated Tribes of Siletz Indians' Support for Appellants and
Amicus Curiae Spokane Tribe of Indians

Dear Ms. Dwyer and to the Honorable Court,

I represent the Confederated Tribes of Siletz Indians (Siletz Tribe), a federally recognized Indian tribe headquartered in Siletz, Oregon.¹ The Siletz Tribe is a natural resource trustee under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq., for natural resources at the Portland Harbor Superfund Site in Oregon.

As allowed by Circuit Advisory Committee Note to Rule 29-1, the Siletz Tribe offers this Joinder Letter in Lieu of Amicus Brief (while expressly reserving its sovereign immunity) in support of Appellants in the referenced case

¹ The Siletz Tribe is a federally recognized sovereign Indian tribe to which the Federal Rule of Appellate Procedure 26.1(a) disclosure requirement is inapplicable.

(collectively the Confederated Tribes of the Colville Reservation, or the Colville Tribe), a natural resource trustee for natural resources on the upper Columbia River in northeastern Washington, and in support of the arguments set forth by the Spokane Tribe of Indians in their amicus brief in support of the Colville Tribe.²

Brief Overview of the Siletz Tribe

The Siletz Tribe's history is complex. The Siletz Tribe is comprised of all the bands and tribes of Indians in Oregon west of the Cascade Mountains who were confederated and removed and settled on the Siletz Coast Reservation, which was established on November 9, 1855 by Executive Order in fulfillment of the western Oregon treaties, which included various provisions regarding settlement of the signatory tribes on a permanent reservation. 1 Kappler, Indian Affairs, Laws and Treaties 890-91 (U.S. G.P.O. 1904). As set forth in the Siletz Tribe's Geographic Areas of Tribal Interest Ordinance, Siletz Tribal Code § 7.205(a), the Siletz Tribe is comprised of Indians descended from tribes and bands of Indians who entered into the following ratified and unratified Indian treaties:

- (1) Treaty with the Rogue River, Sept. 10, 1853, 10 Stat. 1018, ratified April 12, 1854, proclaimed Feb. 5, 1855;
- (2) Treaty with the Umpqua-Cow Creek Band, Sept. 19, 1853, 10 Stat. 1027, ratified April 12, 1854, proclaimed Feb. 5, 1855;
- (3) Treaty with the Rogue River, Nov. 15, 1854, 10 Stat. 1119, ratified March 3, 1855, proclaimed April 7, 1855;
- (4) Treaty with the Chasta, etc., Nov. 18, 1854, 10 Stat. 1122, ratified March 3, 1855, proclaimed April 10, 1855;

² Pursuant to Rule 29(c)(5) of the Federal Rules of Appellate Procedure, undersigned counsel states that no party's counsel authored any portion of this filing. Additionally, no party and no party's counsel, nor any other person or entity, has or is expected to contribute money intended to fund preparing or submitting this filing, to which all parties have consented (as to filing, not content).



- (5) Treaty with the Umpqua and Kalapuya, Nov. 29, 1854, 10 Stat. 1125, ratified March 3, 1855, proclaimed Mar. 30, 1855;
- (6) Treaty with the Molala, Dec. 21, 1855, 12 Stat. 981, ratified March 8, 1859, proclaimed April 27, 1859;
- (7) Treaty with the Kalapuya, etc., Jan. 22, 1855, 10 Stat. 1143, ratified March 3, 1855, proclaimed April 10, 1855;
- (8) Treaty with the Tilamooks and other confederate tribes and bands of Indians residing along the coast west of the summit of the Coast Range of mountains and between the Columbia River on the north and the southern boundary of Oregon on the south, Aug. 11, 1855 (unratified);
- (9) Treaty with the Santiam Band of the Callapooya Tribe of Indians, April 16, 1851 (unratified);
- (10) Treaty with the Tualaty Band of the Callapooya Indians, April 19, 1851 (unratified);
- (11) Treaty with the Luck-a-mi-ute Band of the Callapooya Tribe of Indians, May 2, 1851 (unratified);
- (12) Treaty with the Yamhill Band of the Callapooya Tribe of Indians, May 2, 1851 (unratified);
- (13) Treaty with the Principal Band of the Moolal-le Tribe of Indians, May 6, 1851 (unratified);
- (14) Treaty with the Santiam Band of the Moolal-le Tribe of Indians, May 7, 1851 (unratified);
- (15) Treaty with the Clatsop Tribe of Indians, August 5, 1851 (unratified);



- (16) Treaty with the Naalem Band of the Tillamook Tribe of Indians, August 6, 1851 (unratified);
- (17) Treaty with the Tillamook Tribe of Indians, August 7, 1851 (unratified);
- (18) Treaty with the Nuc-que-clah-we-muck Tribe of Indians, August 7, 1851 (unratified);
- (19) Treaty with the Waukikum Band of the Chinook Tribe of Indians, August 8, 1851 (unratified);
- (20) Treaty with the Konnaack Band of the Chinook Tribe of Indians, August 8, 1851 (unratified);
- (21) Treaty with the Kathlamet Band of the Chinook Tribe of Indians, August 9, 1851 (unratified);
- (22) Treaty with the Wheelappa Band of the Chinook Tribe of Indians, August 9, 1851 (unratified);
- (23) Treaty with the Lower Band of the Chinook Tribe of Indians, August 9, 1851 (unratified);
- (24) Treaty with the Klatskania Band of the Chinook Tribe of Indians, August 9, 1851 (unratified);
- (25) Treaty with the Ya-su-chah Band of Indians, September 20, 1851 (unratified);
- (26) Treaty with the To-to-tan, You-quee-chae, etc. Bands of Indians, September 20, 1851 (unratified); and



- (27) Treaty with the Clackamas Tribe of Indians, November 6, 1851 (unratified).

Tribes, bands and Indians from these tribes were settled on the Siletz Coast Reservation as their permanent reservation under their respective treaties, and the Siletz Tribe is a legal and political successor to the tribes and bands who were signatories to these treaties, which covered much of the area that includes the Willamette and Columbia Rivers and Portland Harbor.

In 1955, the Siletz Tribe's status as a federally recognized Indian tribe was terminated by the Western Oregon Indians Termination Act, 25 U.S.C. §§ 691 et seq., part of the federal government's effort to assimilate Indian tribes into mainstream culture and end their sovereignty. The Siletz Tribe was restored to federal recognition in 1977 by the Siletz Restoration Act, 25 U.S.C. § 711, and today exercises its sovereignty in many ways, including by serving as a natural resource trustee for natural resources at the Portland Harbor Superfund Site. The Siletz Tribe is one of eight natural resource trustees (and one of five Tribal natural resource trustees) comprising the Portland Harbor Natural Resource Trustee Council.

The District Court Erred by Not Recognizing that the Colville Tribe's Claims Were Claims for Lost Use of Natural Resources, Which Are Wholly Cognizable Under CERLCA

The Colville Tribe filed its opening brief on November 21, 2024 (Docket Entry 13.1). The Spokane Tribe of Indians filed an amicus brief in support thereof on December 10, 2024 (Docket Entry 20, Spokane Tribe Amicus Brief). The Colville Tribe seeks reversal of the district court's order ruling against the Colville Tribe and in favor of appellee polluter Teck Metals, Ltd. (Teck) on natural resource damages claims seeking recovery of damages for the Colville Tribe's lost use of natural resources injured by contaminants released by Teck into the upper Columbia River over a long period of time. The Spokane Tribe of Indians supports the Colville Tribe's request for reversal on the grounds that the district court's order thwarts CERLCA's objective that natural resource trustees be able to fully recover damages "sufficient to restore, replace or acquire the equivalent of injured

natural resources, including lost use of those resources.” Spokane Tribe Amicus Brief at 3. The Siletz Tribe shares that concern.

Natural resources provide a variety of services, and the Colville Tribe claimed damages from lost services attributable to pollution that were separate from damages incurred by the general public. The district court dismissed those natural resource damages claims after labelling them as claims for “cultural resource damages,” simply because they were service loss claims specific to an Indian tribe. But the identity of a trustee bringing a natural resource damages claim is not determinative of whether that claim is recognized by CERCLA. Rather, CERCLA authorizes various persons, including Indian tribes, to bring natural resource damages claims to recover damages resulting from injury to natural resources, including lost use damages. 42 U.S.C. § 9607(f)(1). Not surprisingly, because of the Colville Tribe’s unique relationship to the upper Columbia River and natural resources therein, the Colville Tribe’s natural resource damages claims are not conterminous with those of the general public. The Siletz Tribe therefore joins in the argument set forth in the Spokane Tribe Amicus Brief and likewise joins in asking that the district court be reversed.

As a responsible sovereign, the Colville Tribe seeks to ensure the full recovery of natural resource damages in the upper Columbia River. That full recovery of damages requires the Colville Tribe – and Indian tribes like the Siletz Tribe at other contaminated sites where natural resources have been injured by polluters – to participate as a natural resource trustee to seek to fully restore injured natural resources, so that those natural resources eventually will provide the ecological services once enjoyed by all people, Tribal or not.

Respectfully submitted,

s/ Julie A. Weis

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CERTIFICATE OF COMPLIANCE

The foregoing complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 1,450 words, and it complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word Version 1808, font size 14 and Times New Roman type style.

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December, 2024, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that I have caused the foregoing document to be sent by electronic mail to the following non-CM/ECF participant:

None

DATED this 11th day of December, 2024.

/s/Julie A. Weis
Julie A. Weis
HAGLUND KELLEY LLP

