No. 24-3629

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHINOOK INDIAN NATION, et al., *Plaintiff-Appellants*, v. DEB HAALAND, et al., *Defendants-Respondents*.	No. 24-2639 D.C. 3:17-cv-05668-MJP CONFEDERATED TRIBE OF SILETZ INDIANS MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Comes now the Confederated Tribe of Siletz Indians ("Siletz Tribe"), a federally-recognized Indian tribe, and submits this Motion for Leave to File an Amicus Curiae Brief in the above-entitled appeal pursuant to FRAP 29, to assist the Court in its determination of this case. A copy of the Siletz Tribe's proposed amicus brief is attached to this motion.

The Confederated Tribes of Siletz Indians ("Siletz Tribe") is a federally-recognized Indian Tribe. *See* 89 Fed. Reg. 944, 945 (Jan. 8, 2024) (Bureau of Indian Affairs annual list of federally-recognized Indian tribes). As discussed below, the Siletz Tribe is a confederation of tribes from throughout western Oregon who were parties to ratified or unratified treaties and who were removed to the Siletz Coast Reservation established in 1855. *See* Exhibit 1 to Siletz Amicus

Brief. The Siletz Tribe is a legal and political successor in interest to these tribes and bands.

Appellant Chinook Indian Nation ("CIN") is a group seeking federal-recognition and which is claiming that it is the sole successor in interest to several Indian tribes and bands that are part of the Siletz tribal confederation. The Siletz Tribe has a vested legal interest, mandated by tribal law, to defend its legal status and integrity. In addition, the relief which CIN seeks in its appeal would have broad and potentially devastating impacts on the Siletz Tribe, as set out in detail in its Amicus Brief. The Siletz Tribe has standing to assert these interests. The United States, appellee in this appeal, has federal interests which it is advocating, but it does not have the authority or responsibility to address the tribal interests that are at stake in this appeal. Only the Siletz Tribe can assert those interests, and therefore submission of its views is critical in reviewing and deciding this appeal. The Amicus Brief addresses tribal issues and subjects appearing in CIN's Opening Brief.

Undersigned counsel contacted counsel for Appellant and Appellee to determine whether they would support or oppose the Siletz Tribe's Amicus Motion and Brief. Federal Appellees support the Siletz Tribe's Motion. CIN opposes the Siletz Tribe's Motion.

The Siletz Tribe requests that the Court approve its motion for leave to file an amicus brief and accept the attached amicus brief as the Siletz Tribe's amicus filing.

DATED this 25th day of November, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 25, 2024.

I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

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GEOGRAPHINC AREAS OF TRIBAL INTEREST ORDINANCE

Siletz Tribal Code § 7.200

GEOGRAPHIC AREAS OF TRIBAL INTEREST ORDINANCE

Siletz Tribal Code § 7.200

Ordinance No. 7.200. Amended by
Resolution No. 2005-361, dated September 16, 2005;
Resolution No. 2023-112, dated March 16, 2023.

Original Date: May 16, 1999
Subject: Geographic Areas of Tribal Interest

GEOGRAPHIC AREAS OF TRIBAL INTEREST ORDINANCE

Siletz Tribal Code § 7.200

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§ 7.200 PURPOSE

(a) Statement of Purpose. The Confederated Tribes of Siletz Indians is a federally recognized Indian Tribe (referred to as the "Siletz Tribe" for some purposes) which is comprised of Indian tribes and bands and members of Indian tribes and bands who were settled by the federal government on the "Siletz" or "Coast" Reservation (hereinafter "Siletz Reservation"), from 1855 forward. Those tribes, bands, and persons which were settled on the Siletz Reservation were and are possessed of legal and customary rights of possession and use to those geographic areas in which they historically resided and occupied, in addition to legal rights associated with such tribes', bands' and persons' settlement on the Siletz Reservation. These legal and customary rights arise from many sources including, but not limited to, Anglo-American legal principles. The Siletz Tribe is asserting and will assert these legal and customary rights on behalf of the Tribe and tribal members.

(b) Standard of Interest. The Siletz Tribe has conducted an intensive investigation of the historical and legal circumstances of the Tribe and of the tribes, bands, and persons who make up the Siletz Tribe and its membership. The Siletz Tribe declares its interest in those geographic areas where its investigation has shown a justifiable scientific and/or legal connection to such areas.

PART I
ANCESTRAL TRIBAL LANDS

§ 7.201 POLICY

The Siletz Tribe is comprised of Indian tribes, bands and members which originate in many

cases from geographic areas or territories other than the geographic area which comprised the Siletz Reservation as formally established in 1855. The history of the Siletz Tribe is divided into pre-treaty and post-treaty time periods. It is the policy of the Siletz Tribe to declare those lands and geographic areas occupied by tribes or bands which comprise the Siletz Tribe, or occupied by tribes or bands from which members of the Siletz Tribe derive, in pre-treaty times as ancestral lands of the Siletz Tribe.

§ 7.202 DEFINITIONS

(a) "Ancestral lands" shall mean the traditional historical area of occupation of an Indian tribe or band, and shall include the terms "ancestral lands," "aboriginal area" or "aboriginal territory," and "ancient tribal lands" or "ancient tribal boundaries."

(b) "Pre-treaty times" shall mean that period of time pre-dating the negotiation of treaties by the federal government with tribes, bands, and other groups of Indians which occupied the lands of western Oregon, northwest California and southwest Washington. For purposes of this Ordinance, pre-treaty times shall be defined as any period of time prior to 1851.

(c) "Occupied" or "occupation" shall mean those lands upon which an Indian tribe, band or group resided upon or used on a permanent, seasonal, or periodic basis. Use of such lands includes regular or sustained use for any societal purpose, including but not limited to residence; hunting, fishing, gathering, or other resource utilization; travel or passage; ecosystem protection or health; culture; religious; and political purposes. It shall not be a negation of occupation of lands under this section if a geographic area was used only on an episodic basis or was not used for years at a time. "Occupation" need not have been exclusive to any specific tribe, band or group of Indians, but must have been of substantial importance to such tribe, band or group.

§ 7.203 TRIBES AND BANDS WHICH COMPRISE THE SILETZ TRIBE

(a) Statement of Policy. The legal history of those tribes, bands and groups which comprise the Siletz Tribe are extremely varied. In some cases tribes or bands were moved as identifiable, complete entities to the Siletz Reservation. In other cases, tribes or groups were moved piecemeal or at different times to the Siletz Reservation, or different sub-groups of a tribe or band were moved separately to the Siletz Reservation as those groups signed treaties, engaged in hostilities, surrendered, or were moved to or removed from specific territory. In still other cases, a tribe or band was not moved at one time as a group to the Siletz Reservation, but individual members or families from such tribes or bands were moved to the Siletz Reservation as the individuals or families were captured or as other circumstances occurred. The Siletz Tribe declares its legal, historical and cultural connection to all such tribes and bands.

(b) Tribes and Bands of Indians Which Comprise the Siletz Tribe. The following named

tribes and bands of Indians, or substantial numbers of individuals or families from said tribes and bands of Indians, were settled on the Siletz Reservation from 1855 on so as to make said tribes and bands part of the confederated Indian nations which comprise the Siletz Tribe. Names of tribes or bands of Indians set out on this list include phonetic derivations and other name variations of said tribes and bands:

(1) Alsea (including Yaquina and Alsea);

(2) Chinook (including upper and lower Chinook, and Clatsop);

(3) Coos (Including Hanis and Miluk);

(4) Kalapuya (including Yamhill, Santiam, Yoncalla, Tualatin, Marys River, etc.);

(5) Lower Umpqua, Siuslaw;

(6) Molalla;

(7) Shasta (including Klamath River);

(8) Rogue River (this is a general term that has been applied to Takelma, Shasta, Applegate, Galice Creek, or any of the Lower Rogue Athapascan groups);

(9) Klickitat;

(10) Takelma (including Dagelma, Latgawa, and Cow Creek);

(11) Tututni (including all southwest Oregon Athapascan Indian groups including Upper Umpqua, Upper Coquille, Euchre Creek, Flores Creek, Pistol River, Port Orford, Yashute, Mikonotunne, Applegate River, Galice Creek, Chetco, Chasta Costa, Tolowa, Sixes, Naltunnetunne, etc.);

(12) Tillamook, including Siletz, Salmon River, Nestucca, Nehalem, Tillamook Bay, etc.).

The listed tribes and bands include all such entities which, in the estimation of the Siletz Tribe and based upon current scientific and legal evidence, constitute the tribes and bands of Indians which comprise the Siletz Tribe. Based upon information and investigation, this list may be added to or names removed therefrom by Tribal Council resolution.

(c) Successor Tribe. Based on scientific analysis and inquiry and legal policy analysis, the Siletz Tribe declares that it is the successor tribe in interest to those tribes and bands listed in subsection (b). This declaration is based upon the scientific and legal conclusion that the tribes and bands listed therein moved as distinct political units to the Siletz Reservation and continued their existence on the Siletz Reservation as part of the confederation of tribes and bands which comprise the Siletz Tribe.

In some cases other Indian tribes may have a companion claim or connection to successor tribe status to the tribes and bands listed in subsection (b). The Siletz Tribe declares that successor tribe status as defined herein is not necessarily exclusive. The Siletz Tribe declares that in the event another Indian tribe states a claim as successor tribe to one of the tribes or bands listed in subsection (b), and it is necessary for some purpose that only one successor tribe legally exist, it shall be the policy of the Siletz Tribe to negotiate the resolution of successor tribe status directly with said tribe.

(d) Ancestral lands. The ancestral lands of the Siletz Tribe consist of the ancestral lands of the tribes and bands of Indians set out in subsection (b). A map is attached to this Ordinance as Attachment A, which generally describes the geographic area which comprises the ancestral lands of each of said tribe or band. This map is based upon land descriptions of the ancestral lands of each tribe or band which appear in reliable scientific documentation, in Court of Claims or Indian Claims Court decisions, in ratified and unratified treaties, in court decisions, or in other reliable sources of information. The land descriptions shown in Attachment A may be modified from time to time, by Tribal Council resolution, based on newly acquired information.

PART II
TREATY BASED OCCUPATION AREA

§ 7.204 POLICY

The tribes and bands of Indians which comprise the Siletz Tribe, as set out in STC § 7.203(b) of this Ordinance, were party to numerous treaty based relationships with the United States, including both ratified and unratified treaties, as well as Executive Department relationships (Executive Orders, Interior Department communications, etc.) which derived from or evolved out of the constitutional treaty relationship between Indian tribes and the United States. Various legal rights and responsibilities related to lands were created by or derive from these treaty-based relationships, and still exist in whole or in part. The purpose of this Part is to define those treaty-based geographical areas which are of sovereign interest to the Siletz Tribe.

§ 7.205 SILETZ TREATIES

(a) The tribes and bands of Indians which comprise the Siletz Tribe entered into the following treaties with the United States. Some of these treaties were not ratified as that term is used in the United States Constitution. The Siletz treaties are as follows:

(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;

(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, 1951 (unratified);

(10) Treaty with the Twalaty 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).

§ 7.206 TREATY BASED OCCUPATION AREAS

(a) The following geographic areas constitute the treaty based occupation areas of the Siletz Tribe. Such areas consist of permanent and temporary reservations or homeland areas set out in the treaties listed in STC § 7.205 of this Ordinance, or which originated from such treaties. The Siletz treaty based occupation areas are as follows:

(1) the Coast or Siletz reservation as described in the unratified Siletz treaty of 1855, listed at STC § 7.205(h) of this Ordinance;

(2) the Coast or Siletz reservation as established by Executive Order dated November 9, 1855;

(3) the Table Rock Reserve, as described in the treaties listed at STC §§ 7.205(a) and (c) of this Ordinance;

(4) those homeland areas described in the treaties listed at STC § 7.205 of this Ordinance, wherein the designated tribes and bands were required to reside in a specified geographic area until a permanent reservation was selected for their residence.

§ 7.207 PERMANENT SILETZ RESERVATION

The treaties listed at STC § 7.205(1),(3) and (4) state that the tribes and bands that were parties to those treaties would remain on the Table Rock Reserve (*see* STC § 7.206(3)) until a permanent reservation was selected for their residence. The Table Rock Reserve was opened for non-Indian settlement by May 8, 1862, based upon an Interior Department decision that the Indians located thereon had been moved to the Siletz reservation and that the Table Rock Reserve was no longer needed for Indian purposes. The Siletz Tribe declares that, based on the treaties listed in STC § 7.205 and on other authority and legal principles, the Siletz Reservation was the permanent treaty reservation of the tribes and bands which comprise the Siletz Tribe as of the establishment of the Coast Reservation by Executive Order dated November 9, 1855, or 1862 at the latest.

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IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHINOOK INDIAN NATION, et al., *Plaintiff-Appellants*, v. DEB HAALAND, et al., *Defendants-Respondents*.	No. 24-2639 D.C. 3:17-cv-05668-MJP

CONFEDERATED TRIBE OF SILETZ INDIANS AMICUS CURIAE BRIEF IN SUPPORT OF DEB HAALAND, et al. IN SUPPORT OF AFFIRMANCE OF DISTRICT COURT

On Appeal from a Judgment of the United States District Court for the Western District of Washington), Entered May 9, 2024 by the Honorable Marsha J. Pechman

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Statutes, Regulations, Rules, Federal Register

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Comes now the Confederated Tribe of Siletz Indians ("Siletz Tribe"), a federally recognized Indian tribe, and submits this amicus brief in the above-entitled proceeding.

A. Identity and Interest of Amicus; Authority to File.

The Siletz Tribe is a federally recognized Indian Tribe. *See* 89 Fed. Reg. 944, 945 (Jan. 8, 2024) (Bureau of Indian Affairs annual list of federally recognized Indian tribes). As discussed below, the Siletz Tribe is a confederation of tribes from throughout western Oregon who signed ratified or unratified treaties and were removed to the Siletz Coast Reservation which was established in 1855. *See* Ex. 1, discussed at p. 5 n. 2 *infra*. The Siletz Tribe is a legal and political successor in interest to these tribes and bands.

Appellant Chinook Indian Nation ("CIN") is a group seeking federal recognition and claiming that it is the sole successor in interest to several Indian tribes and bands that are part of the Siletz Tribe. The Siletz Tribe has a vested legal interest, required by tribal law, in defending its legal status and integrity. In addition, the relief which CIN seeks in its appeal would have broad and potentially devastating impacts on the Siletz Tribe, as set out in detail below. *See* pp. 4-5 *infra.* The Siletz Tribe has standing to assert these interests. The United States, appellee in this appeal, has federal interests which it is defending, but it does not have the authority or responsibility to address the tribal interests that are at stake in this

appeal. Only the Siletz Tribe can assert those interests and therefore submission of its views is critical in reviewing and deciding this appeal.

The source of the authority for undersigned counsel to file this brief is Art. IV, § 2 of the Siletz Constitution, which vests executive and legal authority of the Siletz Tribe in the Siletz Tribal Council. The Siletz Tribal Council Rules of Procedure Ordinance, STC §2100 et. seq., § 2114, gives the Tribal Council exclusive authority to authorize its legal counsel to participate in or initiate litigation. The Siletz Tribal Council authorized the filing of this amicus brief by Tribal Council Resolution. Undersigned counsel authored this brief in whole and affirms that no counsel to a party authored this brief in whole or in part; no party or counsel to a party contributed money intended to fund preparing or submitting this brief; and no person or entity other than Siletz Tribe and their counsel contributed money intended to fund preparing or submitting this brief.

B. Argument.

1. The Federally Recognized Tribes List Act of 1994 Does Not Confer Jurisdiction on the Federal Courts to Determine Whether a Group is a Federally Recognized Indian Tribe.

CIN's primary appellate argument is that the Findings section of the Federally Recognized Tribes List Act of 1994, Pub. L. No. 103-454, §104, 108 Stat. 479, Nov. 2, 1994, codified in relevant part at 25 U.S.C. §§ 5130, 5131, specifically conferred jurisdiction on the federal courts to determine whether an "Indian group" should be

recognized as a federally recognized Indian tribe. *E.g.*, CIN Opening Brief at 8-9 ("CIN Brief"). The Siletz Tribe strongly disagrees with CIN's assertion on this issue.

The Siletz Tribe defers to the discussion on this subject by the federal government in its Response Brief, US Answering Brief at 18-34, and supports and agrees with that discussion. The only substantive provision enacted by Congress in the List Act was to provide for the annual publication of a list of federally recognized tribes eligible to receive services and benefits from the federal government, to assist federal agencies in determining who is eligible for its programs. *See*, *e.g.*, 89 Fed. Reg. 944 (Jan. 8, 2024) (current annual list); *Samish Indian Nation v. United States*, 419 F.3d 1355, 1359 (Fed. Cir. 2005) (prior to 1969, the BIA had no formal list of all the tribes it had dealings with); *id.* at 1357, 1359, 1369 n. 15 (prior to adoption of Federal Acknowledgment Regulations in 1978, federal government recognized tribes on an ad hoc basis).

The Findings Section of the List Act is solely a statement of the ways that some Indian tribes have historically been recognized in the past. There are a few narrow cases where a federal court ruled that a group was entitled to recognition as an Indian tribe. *E.g.*, *Montoya v. United States*, 180 U.S. 261, 266 (1901) (Court must determine whether a group is a tribe for purposes of eligibility for damage claims under the 1891 Indian Depredations Act); *United States v. Candelaria*, 271 U.S. 432 (1926) (whether Indian Pueblos are Indian tribes for purposes of the 1834

Indian Non-Intercourse Act); *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575, 589 (1st Cir. 1979) (whether a group is a tribe for purposes of application of the Indian Non-Intercourse Act). CIN does not cite any of these decisions nor seeks to justify how it fits within the confines of those historical decisions. Congress's grant of federal court jurisdiction must be express and cannot be inferred or implied.[1] *United States ex rel. King v. Hillcrest Health Ctr., Inc*., 264 F.3d 1271, 1278 (10th Cir. 2001) ("[h]aving limited jurisdiction, federal courts do not presume jurisdiction to exist but require an adequate showing of jurisdiction from the party invoking it"). Historical findings in the context of an extremely limited substantive statute cannot in any situation be extended into an affirmative grant of federal court jurisdiction over an extremely complex and controversial subject.

Were CIN's successful in its argument on this subject, it would impose massive financial, legal and other resource burdens on the Siletz Tribe. The Siletz Tribe is a confederation of numerous Indian tribes, bands and family groups from throughout western Oregon who either entered into ratified treaties, unratified treaties, or no treaties and who were removed by the federal government to and

[1] CIN argues that this result is compelled by the Indian canon of construction that the intent of federal Indian statutes must be construed in its favor. CIN Brief at 10, quoting *Montana v. Blackfeet Indian Tribe*, 471 U.S. 759, 766 (1985). But the Indian canons apply equally to all tribes and cannot be applied to interpret a specific statute in favor of one tribe and to the detriment of another, as CIN asserts here. *Redding Rancheria v. Jewell,* 776 F.3d 706, 712-13 (9th Cir 2015).

settled on the Siletz Coast Reservation, established by Executive Order on November 9, 1855. 1 Kappler's Indian Affairs: Laws and Treaties 891 (U.S. GPO, 1906). *See* Siletz Geographic Areas of Tribal Interest Ordinance, Siletz Tribal Code (STC) § 7200 et seq., § 7203(b) (list of the Siletz Tribe's constituent tribes and bands to which the Siletz Tribe is successor); § 7205(a) (list of Siletz ratified and unratified treaties) (enacted in 1999).[2] The Siletz Tribe's tribes and bands include several of the tribes and bands claimed by CIN, in particular a historical Oregon-based Indian tribe known as the Clatsop Tribe. CIN has claimed that the Clatsop Tribe is part of the Chinook Indian Nation. *See* Complaint, ¶ 6, ER 96-97. As will be discussed in greater detail below, this claim is false and without merit.

CIN's argument that the Federally Recognized Tribes List Act confers jurisdiction on the federal courts to determine whether a petitioning group is entitled to federal recognition would be disastrous financially and legally for the Siletz Tribe. Any group of persons could sue directly in federal court claiming to be an Indian tribe that is one of the Siletz Tribe's constituent tribes or bands, and the Siletz Tribe would be forced to expend significant time and resources to protect itself from such claims to protect its legal status, sovereignty and history. There would be no preliminary vetting or review of such claims as is the case in the

[2] Relevant pages of this Ordinance are attached to this Brief as Exhibit 1. The Siletz Geographic Areas of Tribal Interest Ordinance and other tribal ordinances are available online at https://ctsi.nsn.us/tribal-government/tribal-ordinances.

administrative federal acknowledgment process; the Siletz Tribe would be forced to fully litigate and defend all such claims from scratch.

This threat is not theoretical. The Siletz Tribe has faced these claims and petitions from individuals or splinter groups who claim the identity to one of the Siletz Tribe's constituent tribes or bands. For example, several years ago, the Siletz Tribe fended off a claim by another group claiming to be – like CIN here – the true and only Clatsop Tribe. *See* H.R. 5215, 113th Cong., 2d Sess., July 28, 2014 (Clatsop-Nehalem Recognition Act). That group's effort ended once it was determined that most of its members were eligible for membership in the Siletz Tribe, and many of those members are currently enrolled at the Siletz Tribe. Other groups have made similar claims. In one case, the Siletz Tribe had to fight a group of non-Indians who claimed to be an Indian tribe seeking to claim the status and protections of federally-recognized Indian tribes – the Table Rock Band of Latgawa. Table Rock is where the Rogue River Tribe, one of the primary tribal entities of the Siletz confederation, signed its historic (ratified) treaty in 1853, and the Latgawas are a Siletz band. Such claims are constant and ongoing, and the Siletz Tribe already expends significant time and resources defending against them. If CIN's is successful here, the Siletz Tribe's burden and expenses will increase dramatically. The Court of Appeals should soundly reject CIN's assertion

that the Federally Recognized Tribes List Act delegates power to federal courts to decide questions of federal recognition and find that it is without merit.

2. The Bureau of Indian Affairs has legal authority to determine whether a group is entitled to recognition as a federally recognized Indian tribe; CIN may not argue otherwise for the first time on appeal.

CIN argues in its opening brief that the Bureau of Indian Affairs lacks legal authority to determine under the Federal Acknowledgment Regulations at 25 C.F.R. Part 83 whether a group is entitled to recognition as a federally recognized Indian tribe because those regulations are unconstitutional under the non-delegation doctrine. *E.g.*, CIN Brief at 9-10. CIN in its Complaint made no claims about the Federal Acknowledgment Regulations other than that the BIA's prohibition on a group re-petitioning for acknowledgment once denied was arbitrary and capricious. Indeed, CIN expressly acknowledged and admitted in its amended federal court complaint that the Department of Interior has delegated authority from Congress to administratively determine, acknowledge or recognize the existence of an Indian tribe. ER 115, CIN Amended Complaint, ¶ 48. CIN is precluded from making the opposite argument on appeal.

CIN appears to have raised the alleged unconstitutionality of the Federal Acknowledgment Regulations solely to increase sympathy and support for its argument that judicial recognition is its only avenue to achieve status as a federally recognized Indian tribe. *Id.* That desire is not sufficient to allow CIN to raise this

new argument on appeal. *Janes v. Wal-Mart Stores, Inc*., 279 F.3d 883, 888 n.4 (9th Cir. 2002); *United States v. Patrin*, 575 F.2d 708, 712 (9th Cir. 1978).

There are limited exceptions to the general rule prohibiting the consideration of arguments for the first time upon appeal. The only relevant one being "the issue is purely one of law, does not affect or rely upon the factual record developed by the parties, and will not prejudice the party against whom it is raised." *Dream Palace v. Cnty. of Maricopa*, 384 F.3d 990, 1005 (9th Cir. 2004) (citations omitted). CIN's non-delegation argument is one purely of law and does not rely upon a factual record below. But allowing CIN to challenge the constitutionality of the BIA's Federal Acknowledgment Regulations places all tribes currently recognized under the Federal Acknowledgment Regulations at risk without their knowledge or involvement. For example, the Samish Indian Nation was re-recognized in 1996 under the original version of the Federal Acknowledgment Regulations. 61 Fed. Reg. 15825 (April 9, 1996); *See Greene v. Babbitt*, *supra*. Ruling on CIN's non-delegation claim could potentially invalidate the Samish Indian Nation's federal recognition as an Indian tribe. Samish and all other tribes recognized under those regulations are indispensable and required parties in any dispute about the Federal Acknowledgment Regulations and cannot be joined without their consent.

Additionally, a number of federal court decisions have already considered and upheld the BIA's legal authority to determine whether a group is entitled to federal recognition as an Indian tribe. *E.g.*, *United States v. 43.47 Acres of Land*, 896 F.Supp.2d 151, 159 (D. Conn. 2012) ("the BIA is entrusted with broad responsibilities relating to Indian affairs, including making determinations whether groups qualify as Indian tribes under federal law."); *Miami Nation v. Department of Interior*, 255 F.3d 342, 349-50 (7th Cir. 2001); *Miami Nation v. Babbitt*, 887 F.Supp. 1158 (N.D. Ind. 1995); *Samish Indian Nation v. United States*, *supra*, 419 F.3d at 1369-70 ("There are generally three means by which the federal government can recognize an Indian tribe. . . . . [o]r the executive can recognize a tribe pursuant to the authority delegated by Congress. *See* 25 U.S.C. §§ 2, 9 (2000)).;" *Greene v. Babbitt*, 943 F.Supp. 1278 (W.D. Wash. 1996). This Court should hold that CIN's non-delegation argument is not appropriate on appeal and without merit.

"The standing Article III requires must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997). Standing's "irreducible constitutional minimum" consists of three elements: (1) injury in fact; (2) fairly traceable to the challenged conduct; and (3) that is likely to be redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559,

560-561 (1992). CIN does not assert that the Federal Acknowledgment Regulations have caused it concrete injury or have damaged it in any way. In fact, CIN availed itself of these regulations when it petitioned for federal acknowledgment and is challenging only one provision of the federal government's regulations. *See* CIN Brief at p. 2, n.1 (CIN's Complaint challenged the BIA's Federal Acknowledgment Regulations barring re-petitioning for federal acknowledgment). CIN did not challenge the regulations themselves. Because CIN has not argued its standing relative to the regulations themselves, the Court should dismiss CIN's appeal.

3. CIN Misrepresents its History and Legal Status, Affecting the Siletz Tribe's Legal Status, and Supporting the Siletz Tribe's Request to Reject CIN's Argument that the Federal Courts Have Jurisdiction to Decide its Request for Federal Recognition.

As discussed above, the Siletz Tribe includes the Clatsop Indian Tribe and other bands claimed by CIN as well as many other western Oregon historical tribes and bands, as part of its confederation. *See* p.4 and Ex. 1, *supra*. CIN, in its Opening Brief, never explicitly states which bands and tribes it is claiming; it refers to itself as the "Chinook Indian Nation ('CIN')" on page 2 of its Opening Brief and then uses the appellations "Chinook Tribe" or "Chinook" on page 3 and the remainder of its brief, without ever explaining who the constituent bands or tribes of the Chinook Tribe are.

In its Amended Complaint, CIN claims not only the Lower Band of Chinook Indians (also referred to in judicial decisions as "Chinook (proper)", but also four other historical bands and tribes of Indians – the Wahkiakum Band of Chinook Indians, the Willapa Band of Chinook Indians, the Cathlamet Band of Chinook Indians, and the Clatsop Tribe of Indians. ER 96-97 (Amended Complaint, ¶ 6). CIN claims that these five tribes and bands are a "single community" or confederation that has existed as a single entity from historical times to the present.[3] CIN uses the term Chinook or Chinook Tribe throughout its Statement of Facts as referring to this alleged tribal confederation.

If CIN it is a tribal entity at all, it consists solely of the Lower Band of Chinook Indians and its geographic territory is limited to the State of Washington. CIN is inappropriately arrogating to itself the identity and successorship of the other four historical bands and tribes of Indians. While CIN may be correct that there is a "presumption" that the facts alleged in its Complaint must be taken as true for purposes of summary judgment, CIN Brief at 3 n.3, the presumption does not permit CIN to make up public facts and judicial holdings and findings to which

[3] The term "historical" is taken from the Federal Acknowledgment Regulations. The original 1978 version of these regulations defined historical as "means dating back to the earliest documented contact between the aboriginal tribe . . . . and officials of the United States . . .or foreign governments." 25 C.F.R. § 83.1(l) (1990). The term was liberalized in the 1994 rewrite of the Federal Acknowledgment Regulations to "means before 1900." 25 C.F.R. § 83.1 (1994).

it was a party, especially when those facts and findings are in direct opposition to CIN's assertions.

CIN's tactics in this litigation illustrate the dangers of allowing federal court suits to determine federal recognition. The Siletz Tribe was not notified by CIN of this legal action or of CIN's claims to be the successor to the Clatsop Tribe, among others. Siletz moved to intervene in this case at the district court level after it learned that CIN was claiming Clatsop identity, but its motion was denied as untimely. It would be nearly impossible for the Siletz Tribe to discover and participate in an unknown number of future judicial proceedings that threaten its legal status and identity if CIN's relief was granted.

CIN's Opening Brief illustrates how a litigant could abuse the courts to claim recognition. CIN has inappropriately claimed it is a "confederation" of several historical bands or tribes, when in actuality it can only claim a legal connection with the Lower Band of Chinook Indians.[4] In every reference to

[4] The five tribes and bands claimed by CIN are "Chinookan" culturally, but this was defined in CIN's Indian Claims Commission case as an ethnological, not a political or legal, classification. *The Chinook Tribe and Bands of Indians v. United States*, Dkt. 234, 6 Indian Claims Commission 177, 200 (August 16, 1958) (Findings of Fact) (hereinafter "*Chinook ICC*") (citing Frederick W. Hodge's Handbook of American Indians, Bulletin 30, Bureau of American Ethnology, p. 272: "The Chinook tribe . . . is the best known of the Chinookan family and 'they claimed the territory on the northside of the Columbia river, Wash. . . ." Politically each village was defined as a separate tribe or "independent sovereign."). *Id.* at 182.

Chinook or Chinook Tribe in its Opening Brief, CIN is claiming that all five tribes and bands it claims as part of its confederation were active participants in each historical reference; this is not true.

a. The Anson Dart or Tansey Point Treaties.

CIN claims that it was a consolidated tribe in 1851 when "the Chinook" signed treaties at Tansey Point. CIN Brief at 3. Anson Dart, Indian Superintendent of the Oregon Territory at the time, negotiated thirteen separate treaties with Chinook tribes and other tribes and bands along the Oregon Coast.[5] *See* www.oregonencyclopedia.org/articles/anson-dart (Oregon Historical Society; article by David Lewis, 2022). Separate treaties were negotiated with each of the five tribes and bands claimed by CIN. *Chinook ICC*, 6 ICC at 184-193 (treaty language negotiated with each tribe or band). In the Lower Band of Chinooks' Indian Claims Commission case, the Commission rejected the petitioners' claim that the five tribes and band had ever been "confederated:"

> "Petitioner requests a finding . . . [t]hat claimant constitutes the Confederated Tribe of the 'Chinook Nation,' . . . composed of the aboriginal Lower Chinook peoples, including the Clatsop, including the Nucqueclahwemuck band, Kathlamet Tribe and the Chinook (proper) Tribe, the latter including the Wahkiakum and Willipa or Shoalwater Bay bands, and as such recognized Confederation, duly represents all

[5] The Lower Band of Chinook Indians was located in what is now the State of Washington, but in 1851 this area was still part of the Oregon Territory. It did not become the Washington Territory until 1853. 10 Stat. 172 (March 2, 1853). In contrast, the Clatsop Tribe's historical territory is located solely within the State of Oregon.

> members by blood of such Tribes and bands and all descendants thereof. . . . The record contains no evidence that there existed aboriginally or historically a duly organized and confederated group known as the so-called Confederated Tribes of the 'Chinook Nation.' There is no evidence to prove that the newly organized group has a tribal organization recognized by the Secretary of the Interior. . . . According to the testimony of the [Lower Chinook General Council Chairman], the Chinook Tribe was organized in August, 1951."

The Chinook Tribe and Bands of Indians v. United States, Dkt. No. 234, 6 Indian Claims Commission 208, 211 (April 1958) (Opinion of the Commission) (also "*Chinook ICC*"); Findings of Fact # # 24-29, 6 ICC at 203-06, FOF #28, 6 ICC 205 ("The Commission further finds that at no time was there a merger of the identifiable groups or tribes known as the Chinook (proper), Kathlamet, Clatsop, Waukikum, and Nue-que-clah-we-muck, and that these identifiable groups maintained their separate identities for many years."). These findings by the Indian Claims Commission are binding precedent on CIN.

The Indian Claims Commission found there is no one Chinook Tribe that negotiated the Anson Dart Tansey Point treaties in 1851, and there was no political merger of the five tribes and bands CIN claims. CIN's assertion on this point is not true.

b. 1855 Chehalis Failed Treaty Negotiations and Quinault Allotments.

CIN relies on the fact that Chehalis, Chinook and Cowlitz members were found to be eligible for Indian allotments on the Quinault Reservation to support its argument. CIN Brief at 3-4. This historical fact was an outgrowth of the failed

1855 treaty negotiations by Washington Territorial Governor and Indian Superintendent Isaac Stevens with the Chehalis, Chinook, Cowlitz and Quinault Indians. By the time this treaty was being negotiated in 1855, Washington was a separate Territory, and the treaty negotiations involved only tribes and bands of Indians in southwest Washington. *E.g.*, *United States v. Washington*, 129 F.Supp.3d 1069, 1075 (W.D. Wash., July 9, 2015) ("Governor Stevens . . . first attempted to negotiate a treaty with the Quinault and other tribes of southwest Washington in February 1855") (emphasis added), *aff'd sub nom., Makah Indian Tribe v. Quileute Indian Tribe*, 873 F.3d 1157, 1164-65 (9th Cir. 2017).

This treaty negotiation failed when the tribes involved refused to move to the Quinault Reservation. *Id.* Stevens' treaty commission then negotiated a separate treaty with the Quinault, Quileute and Hoh Tribes known as the Treaty of Olympia. *Id.* Congress subsequently passed legislation authorizing individuals from the Chehalis, Chinook and Cowlitz Tribes to obtain allotments on the Quinault Reservation. *See Halbert v. United States*, 283 U.S. 753 (1931).[6] This authority was extended to "the Chehalis, Chinook and other coastal tribes in southwestern Washington". *Id.* at 757 (emphasis added), and the 1911 legislation

[6] This case was brought by individual Indian descendants, and not by any Tribe. Because the eligibility for allotments extended to "fish-eating Indians," the Court had to determine whether a particular tribe from which a person descended was such a tribe. There was no ruling in the case that any particular tribe still existed as a political or legal matter.

extended eligibility for allotments on the Quinault Reservation to "all members of the Hoh, Quileute, Ozette or other tribes of Indians in Washington . . . , meaning in that section of the Territory of Washington." *Id.* at 758.

These quotes, judicial decisions and legislation make clear beyond any dispute that eligibility for allotments on the Quinault Reservation was extended only to members of one Chinook tribe – the Lower Band of Chinook Indians – and only in Washington, and not to any Oregon Chinookans such as the Clatsop Tribe.

c. The 1912 Congressional Act did not distribute money to any Tribe, but only to individual descendants of certain tribes.

On August 24, 1912, Congress passed a law compensating members and lineal descendants of the tribes and bands that had signed the Anson Dart treaties in 1851 for the inadequate compensation paid to those tribes and bands under the unratified treaties. 37 Stat. 518, 535, 62nd Cong., Ch. 388, Sec. 19. CIN asserts that these funds were paid to "the Chinook Tribe," meaning that payment was only made to CIN, not to individual tribes or individual Indian descendants. CIN Brief at 4 ("Those payments were made to the tribes, as representatives of their people . . . .").

This is the opposite of what occurred. The statute expressly directed funds to be paid on behalf of each separate tribe, and directed that the compensation should be paid to "those [individuals] now living and the lineal descendants of those who may have died." *Id.* No money was paid under this law to any tribe as a

political entity. *See id.* ("That said Indians shall accept said sum, or their respective portions thereof, in full satisfaction of all demands and claims against the United States for the lands described in the . . . unratified treaties between the United States and said Indians."); (If all members or lineal descendants of any of the listed tribes and bands are dead, none of the money appropriated hereunder shall be paid to any person). *See Chinook ICC case*, Findings of Fact, 6 ICC at 197-98, ¶ 17 (citing Hodge, *supra* – the named tribes and bands are "now extinct" or "practically extinct"); *Duwamish Tribe of Indians v. United States*, 79 Ct. Cl. 530, 608-10 (1934) (Chinook petitioners in the case were Chinook bands in the State of Washington).[7]

The 1912 Act did not pay money to the Chinook Tribe.

d. The Indian Claims Commission (ICC) did not recognize the Chinook Tribe as the tribal representative of the persons seeking compensation in ICC Dkt. No. 234.

CIN claims that the ICC, in its decisions in Dkt. # 234, *The Chinook Tribe and Bands of Indians v. United States*, 6 Ind. Cl. Comm'n 208 (April 16, 1958), recognized the Chinook Tribe (the five tribes and bands CIN claims are part of its

[7] CIN also argues that this federal legislation ratified the 1851 Anson Dart treaties. CIN Brief at 4. There is no indirect or inferential ratification of a United States treaty. The United States Constitution sets out a specific process for ratifying federal treaties. United States Constitution, art. II, § 2, cl. 2 (advice and consent of Senate required). This is the only constitutional method to formally approve a treaty, and there is no legal basis to approve a treaty by other means.

tribe) as the representative of its people claiming compensation for the 1851 Dart treaties. CIN Brief at 5. This is not what the ICC decided in that case; it expressly refused to hold that the individuals bringing that case were an existing group or the successors in interest to any historical tribe or band.

The Indian Claims Commission Act was enacted in 1946 to allow land compensation claims to be brought that would otherwise not be cognizable in the federal courts. Act of August 13, 1946, 60 Stat. 1049, 1050, Ch. 939, codified at 25 U.S.C. § 70 et seq., Sec. 2 (the statute has now been omitted from the Federal Code because it has expired). Section 10 of the statute established who could bring suit for compensation on behalf of any tribe, band or identifiable group of Indians:

> 'Any claim within the provisions of this Act may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but wherever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion, or laches on the part of such organization be shown to the satisfaction of the Commission.'

60 Stat. 1052.

As this Section sets out, there were two ways to bring a claim under the Act: (1) if a tribe exists and is recognized by the Secretary of Interior as having authority to represent the tribe, only the tribe itself can bring a claim under the Act;

or (2) if no tribe currently exists, a member of the tribe can bring a claim under the Act as "the representative of all its members." *See Snoqualmie Tribe of Indians v. United States*, 372 F.2d 951, 957-58 (Ct. Cl. 1967) (Where an Indian tribe exists, only the tribe can bring a case under the ICC Act; individual "members" of a tribe may bring a claim under the ICC Act as representatives of all lineal descendants of that tribe "even though the tribe no longer has an organization").

The *Chinook* ICC case fell within the second category. The *Chinook ICC* Opinion specifically analyzed which of the two categories under the ICC Act the petitioners fell into and stated that its job was:

> To attempt to ascertain whether this so-called tribe, organized ostensibly for the sole purpose of presenting this claim, is the successor in interest to the claims of the Chinook, Waukiakum, Shoalwater Bay (Willipa-Chinook), Kathlamet, Clatsop, and Nuequeclawemuck Indians or is entitled to bring this action for and on behalf of said Indians. The record in this respect is far from satisfactory.

6 Ind. Cl. Comm'n at 212 (emphasis added). *See id.* at 211(petitioner Chinook Tribe "newly organized" and only "organized in August 1951"). The Commission dismissed petitioners' claim that it had legal status to bring the claims of any of the named tribes other than the Chinook (proper) and the Clatsop Tribe, but then only as descendants of members of those tribes, not as tribes themselves:

> [T]here exists grave doubts as to the capacity of petitioner to present the claims of all of the tribes or bands petitioner contends it represents herein. Because of the necessity of liberally analyzing the pleading in the record with respect to capacity (citing *Upper Chehalis Tribe v. United States*, 140 Ct. Cl. 192, 155 F. Supp. 226 (1957), reversing 4 Ind. Cl.

> Comm'n 301), the right of petitioner to present the claims of the Chinook (proper) and Clatsop Tribes on behalf of the descendants of such tribes is recognized.

6 Ind. Cl. Comm'n 228.

The *Upper Chehalis* decision found that because the petitioners could arguably show that they were descendants of members of the tribe in question, they had standing to bring their ICC claim as individual representatives on behalf of all such descendants. 140 Ct. Cl. at 197-99. It did not rule that the tribes still existed. The Indian Claims Commission never held or found that the Chinook Tribe was an actual Indian tribe or the successor to the historical Chinook Tribe or any other tribe, only that individuals could present claims on behalf of that tribe for the descendants of members of such tribe. *Cf. Samish Tribe of Indians v. United States*, 6 Ind. Cl. Comm'n 169, 172 (March 16, 1958) ("The [Samish Indians] have continued to perpetuate their identity as a tribal entity into contemporary times. They appeared as a tribe before the Court of Claims in 1927. . . . We conclude that petitioners, which alleges it is a tribal organization recognized by the Secretary of Interior of the United States, has shown itself to be the descendants and successors in interest of the Samish Indians of aboriginal times").

The Indian Claims Commission, contrary to CIN's assertions, never recognized the Chinook Tribe as a tribe. It only recognized that the individual petitioners could bring claims before the ICC for the Chinook and Clatsop as

individual representatives of descendants of those tribes. Under the ICC Act and the Distribution of Judgment Funds Act, Pub. L. No. 93-134, 87 Stat. 466, Oct. 19, 1973, there is a process for the BIA and Congress to decide how to distribute any monies awarded under ICC claims.

e. CIN's Petition for Federal Acknowledgment did not include or decide the Clatsop.

CIN in its appellate brief does not discuss its 1987 administrative petition to the Bureau of Indian Affairs for Federal Acknowledgment, but that process was a large part of its Amended Complaint in the district court. *See* ER 115-123, ¶¶ 49-70. A few points about CIN's petition for Federal Acknowledgment under the BIA regulations illustrate how CIN does not include the Clatsop Indian Tribe.

The BIA's Federal Acknowledgment Regulations do not permit the BIA to administratively recognize an Indian tribe that has been terminated by Congress because the BIA lacks the legal authority to overturn Congressional action. 25 C.F.R. § 83.4(c) (2021). The Western Oregon Indians Termination Act of 1954, 25 U.S.C. § 691 et seq., terminated over fifty named tribes and bands of Indians in Oregon, including not only the Siletz Tribe but also its constituent bands and tribes, including the Clatsop and Chinook tribes and bands. 25 U.S.C. § 692. While separate Washington termination legislation was proposed, it was never enacted.

What this means is that when CIN applied for federal acknowledgment in 1987, it excluded the Clatsop Tribe and any Chinook bands or tribe in Oregon.

Only a few members who had mixed Chinook and Clatsop blood were allowed to be included in CIN's membership.[8] Only the Lower Band of Chinook Indians was included as the tribal entity involved in CIN's recognition petition. It is this Chinook Tribe that CIN brought a claim on behalf of in federal court, to be permitted to re-petition for federal acknowledgment. CIN's current claim of legal status, and its request on appeal that it be judicially recognized to include the Clatsop Tribe and other Oregon based Chinook bands, is contrary to who it claimed to be – and was temporarily found to be – in the federal acknowledgment process.

C. Conclusion.

While CIN's version of its history would, if accepted on its face without any inquiry, appear to support its claim that it is a confederated tribe of five different tribes and bands that have been one-political entity since 1851, the actual facts show the exact opposite – that the Lower Chinook Band of Indians, assuming it could sustain its burden in an appropriate federal administrative proceeding, is the sole separate, independent Indian entity that is the current CIN and whose historical territory is located only within the State of Washington. The Clatsop

[8] *See Chinook ICC*, 6 ICC at 212 (Secretary-Treasurer of one Chinook group testified that "there are . . . no full-blood Clatsops on the group enrollment").

Tribe, which is part of the Siletz Confederation, is not part of CIN and never has been.

These illustrative facts show how dangerous CIN's request for relief is in this appeal. The Siletz Tribe was not notified of CIN's judicial claims and was not included in the district court action. CIN was allowed to allege facts without any close examination or the opportunity to contest those factual allegations. If CIN's claim that the federal courts have subject matter jurisdiction to directly recognize Indian tribes is upheld in this appeal, the Siletz Tribe would be confronted with an unknown number of additional judicial claims for recognition in the future, all of which would have to first be discovered by the Siletz Tribe and then contested at great expense and effort.

The Indian Claims Commission concluded in 1958, in a decision that is binding on CIN and which precludes it from now claiming to the contrary:

> There is no substantial evidence to support the contention of petitioner that these autonomous villages of Chinook, Clatsop, Kathlamet, Wauhkiakum, Willipa, and Nuequeclahwemuck Indians consolidated to form the so-called Chinook Nation after the coming of the white man. . . . The evidence, therefore, does not support petitioner's contention that there was a consolidation of these various groups into the "The Chinook Nation" after the coming of the white man.

6 Ind. Cl. Comm'n at 225. CIN's assertions to the contrary are without any actual factual support and CIN is not entitled to any opposite presumption. CIN's appeal should be denied.

DATED this 25th day of November, 2024.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 25, 2024.

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