

*The Honorable Ricardo S. Martinez*

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

STATE OF WASHINGTON, *et al.*,

Defendants.

**Case No. C70-9213  
Subproceeding: TBD**

**INTERVENOR PLAINTIFF  
QUINAULT INDIAN NATION’S  
MOTION FOR RECONSIDERATION  
OF ORDER DENYING MOTION FOR  
LEAVE TO OPEN NEW  
SUBPROCEEDING**

**NOTE ON MOTION CALENDAR:  
JUNE 3, 2026**

Plaintiff-Intervenor Quinault Indian Nation (“Quinault” or the “Nation”) moves the Court to reconsider its June 2, 2026 Order Denying Motion for Leave to Open New Subproceeding (“Order”). Dkt. 22738. The Order rests upon a manifest error of law and fact and, therefore, results in manifest injustice to the Nation. The Court should grant reconsideration, vacate the Order, and grant leave to open the new subproceeding.

**I. THE COURT SHOULD RECONSIDER THE ORDER**

Although reconsideration is generally disfavored, it is appropriate where, as here, the Court has committed a manifest error of law or fact. Fed. R. Civ. P. 59(e); W.D. Wash. Local Civ. R. 7(h)(1); *Chung v. Washington Interscholastic Activities Ass’n*, 550 F. Supp. 3d 920, 923 (W.D. Wash. 2021) (discussing standard). Reconsideration is warranted because the Order rests on both a mistaken understanding of (1) the Court’s role under the Supplemental Order on Paragraph 25

1 Procedures and (2) the scope of Subproceeding 09-1, which never adjudicated Quinault’s southern  
2 boundary.

3 **A. The Supplemental Order on Paragraph 25 Procedures Requires Liberal Granting of**  
4 **Requests for Determination That Appear to Fall Within Paragraph 25(a)**

5 The Court’s Order departs from the Supplemental Order on Paragraph 25 Procedures. For  
6 the first time in *United States v. Washington*, the Court denied a tribal party leave to open a new  
7 subproceeding *sua sponte* on purported jurisdictional grounds. The Court committed manifest  
8 error in misapplying the Supplemental Order on Paragraph 25 Procedures and resolving an  
9 ultimate jurisdictional question by concluding Quinault’s southern boundary had been adjudicated  
10 without first opening the case and allowing briefing.

11 The Supplemental Order on Paragraph 25 Procedures provides “[t]he Court is to consider  
12 the motion [for leave to file a new subproceeding] as soon as practicable and shall liberally grant  
13 such motions, provided the Request for Determination appears to fit within the purposes set forth  
14 at Paragraph 25(a) of the Permanent Injunction.” Dkt. 19893 at 2 (citing Dkt. 13599) (hereinafter  
15 “Supplemental Order”). This standard is intentionally permissive and ministerial, and Quinault’s  
16 Motion and proposed Request for Determination easily satisfy it.

17 Nothing in Supplemental Order contemplates that the Court determine jurisdiction before  
18 allowing a subproceeding to be opened. To the contrary, the Supplemental Order contemplates  
19 that jurisdictional objections will be raised and litigated after leave is granted. *Id.* The  
20 Supplemental Order is very clear on this point: “The Order granting the motion for leave to file  
21 **shall not** constitute a final determination that the dispute is within the Court’s jurisdiction under  
22 Paragraph 25, and such jurisdiction may still be questioned by the responding party.” Dkt. 19893  
23 at 2 (emphasis added). Yes, that is precisely what the Court’s Order purports to do.

24 The question before the Court at the leave-to-file stage is neither whether the requesting  
25 tribe will ultimately prevail, nor whether every jurisdictional issue has already been resolved.  
26 Rather, the only inquiry is: does the Request for Determination “appear[] to fit within the purposes  
27 set forth at Paragraph 25(a) of the Permanent Injunction.” *Id.* If it does, the Court must open the

1 subproceeding. By the Supplemental Order's own terms, there is no room for the Court to exercise  
2 discretion to do anything other than decide whether, on its face, the proposed Request for  
3 Determination "fits within" one of the grounds of Paragraph 25(a).

4 As this Court is aware, Paragraph 25(a) provides the mechanism to seek judicial  
5 recognition of usual and accustomed fishing grounds that were not specifically determined in Final  
6 Decision #1. *See United States v. Washington*, 384 F. Supp. 312, 419 (W.D. Wash. 1974). A tribe  
7 invoking Paragraph 25(a)(6), as Quinault has done here, asks the Court to determine "the location  
8 of any of a tribe's usual and accustomed fishing grounds not specifically determined by Final  
9 Decision #1." *United States v. Washington*, 18 F. Supp. 3d 1172, 1213 (W.D. Wash. 1991). Such  
10 proceedings require a tribe to present generations of history, oral tradition, cultural practice, and  
11 evidence supporting its understanding of the promises exchanged at the treaty grounds. The stakes  
12 are substantial. A determination under Paragraph 25(a)(6) represents a tribe's only opportunity to  
13 adjudicate the rights reserved by their ancestors during treaty times and to preserve those treaty  
14 rights for future generations.

15 It is for this reason that the Supplemental Order instructs requests that "appear to fall within  
16 the purposes of Paragraph 25(a)" be "liberally granted". Dkt. 19893. The purpose of the leave-  
17 to-file stage is not to prematurely resolve disputed jurisdictional or factual questions. It is to ensure  
18 that potentially unresolved treaty-right claims may be fully briefed, argued, and adjudicated on a  
19 complete record. Where a tribe presents a proposed Request for Determination concerning fishing  
20 grounds it reasonably believes have never been specifically determined, the Court must permit the  
21 matter to be opened so that those issues may be resolved through the normal adjudicative process  
22 of motion practice, argument, and consideration of evidence.

23 Rather than applying the Supplemental Order as written and determining whether  
24 Quinault's proposed Request for Determination "appears to fall within" Paragraph 25(a)(6), the  
25 Court *sua sponte* resolved the ultimate jurisdictional question at the filing stage by concluding  
26 Quinault's southern boundary had already been adjudicated. This was not for this Court to  
27 determine at the leave-to-file stage. The Nation's proposed Request for Determination falls

1 squarely within the purposes of Paragraph 25(a)(6) and, therefore, should have been liberally  
2 granted.

3 This alone provides ground for reconsideration. However, as discussed below, the Order's  
4 conclusion also rests upon a manifest misunderstanding of Subproceeding 09-1.

5 **B. The Court's Order Rests on a Manifest Factual Error Regarding the Scope of**  
6 **Subproceeding 09-1**

7 The Nation's proposed Request for Determination seeks adjudication of treaty fishing areas  
8 south of Grays Harbor, including Willapa Bay, Shoalwater Bay, the mouth of the Columbia River,  
9 and related waters that have never been specifically determined under Final Decision #1 or any  
10 subsequent subproceeding. In denying leave, the Court's Order concluded Quinault's southern  
11 boundary had already been fully and finally adjudicated in Subproceeding 09-1 because the marine  
12 polygon adopted by the Court contained a southwestern point, a southeastern point, and a line  
13 connecting the two. Dkt. 22738 at 3. Not so. The issue presented in Subproceeding 09-1 was not  
14 Quinault's southern boundary. *United States v. Washington*, 129 F.Supp.3d 1069, 1071-1073  
15 (W.D. Wash. 2015). The record in Subproceeding 09-1 demonstrates the error.

16 First, Quinault did not initiate Subproceeding 09-1. Rather, the Makah Indian Tribe filed:

17 a request for this Court to determine the usual and accustomed fishing grounds and  
18 stations of the Quileute Indian Tribe and the Quinault Indian Nation, to the extent  
19 not specifically determined by Judge Boldt in Final Decision #1. In particular, **the**  
20 **Makah ask the Court to define the western and northern boundaries of the**  
**Quileute U&A and the western boundary of the Quinault's U&A** in the Pacific  
Ocean.

21 *United States v. Washington*, 129 F.Supp.3d at 1073 (emphasis added). Subproceeding 09-1 was  
22 a proceeding Quinault had to defend; it was not a Paragraph 25(a)(6) action by Quinault.

23 Second, the second sentence of Subproceeding 09-1's Findings of Fact and Conclusions of  
24 Law defined the issues presented: "The Court is specifically asked to determine **the western**  
25 **boundaries** of the U&As of the Quileute and Quinault in the Pacific Ocean, **as well as the**  
26 **northern boundary** of the Quileute's U&A." *Id.* at 1071 (emphasis added). Because of this,  
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1 Quinault understood that it only bore the “burden of proving where the **western boundary** of its  
2 ocean usual and accustomed area existed some 160 years ago when its ancestors put their mark on  
3 the Treaty of Olympia.” *See* Dkt. 20852 at 5. Quinault’s southern boundary was simply “not in  
4 dispute in this subproceeding.” *Id.*

5 Third, the Court repeated its then-understanding of the scope of the case throughout the  
6 opinion in Subproceeding 09-1. Section C of its Conclusions of Law, titled “Pacific Ocean U&A  
7 Boundaries at Issue,” considered only Quinault’s western and northern boundaries. Specifically,  
8 the Court determined “[t]he **western boundary** of the Quinault Indian Nation’s usual and  
9 accustomed fishing ground in the Pacific Ocean is 30 miles from shore” and “the **western**  
10 **boundary** of the Quileute Tribe’s usual and accustomed fishing ground is 40 miles offshore and  
11 the **northern boundary of the Quileute Tribe’s** usual and accustomed fishing ground is a line  
12 drawn westerly from Cape Alava.” *United States v. Washington*, 129 F.Supp.3d at 1117 (emphasis  
13 added).

14 No claim concerning Quinault’s southern boundary was presented to the Court for  
15 adjudication. *See United States v. Washington*, 873 F.3d 1157, 1168 (9th Cir. 2017) (appeal of  
16 subproceeding 09-1 considered only Quinault’s western boundaries). As applied to Quinault, only  
17 its western boundaries were at issue, and only its western boundaries were adjudicated in  
18 Subproceeding 09-1.

### 19 **C. Quinault’s Southern Boundary Was Never Litigated or Adjudicated**

20 The Court’s Order contends that if it were to grant Quinault’s Motion it would “overrule  
21 the Court’s prior adjudication.” Dkt. 22738 at 3. The Court reasons it established a southern  
22 boundary after it “was presented with ‘evidence demonstrating that Quinault marine fishing  
23 practices were oriented southward and westward along the coast ‘between Cape Flattery and the  
24 Columbia River’ as well as ‘60 miles south of Quinault in Shoalwater Bay,’ but nevertheless drew  
25 the line more than 10 miles north of Willapa Bay, Shoalwater Bay, and the Columbia River.” *Id.*  
26 This is incorrect. Such evidence was not offered to establish a southern boundary; rather, the  
27

1 record is clear that the southern line was simply used to close a polygon created by the western  
2 boundary. *See* Dkt. 21702 (“Order Regarding Boundaries of Quinault and Quileute U&A’s”). This  
3 fact is repeated in Dkt. 21071, the Quinault Notice of Longitudinal Line at 3, filed post-trial. There,  
4 Quinault reiterated that “The northern and southern boundaries of the Quinault usual and  
5 accustomed fishing area are not in dispute, and those boundaries were not at issue in this  
6 subproceeding (09-01).” *Id.*

7 Quinault presented its southern marine practices as proof of Quinault’s extensive marine  
8 capabilities and ocean-going customs in support of the western-boundary claims being litigated.  
9 *See United States v. Washington*, 129 F.Supp.3d at 1079-85 (section titled “Quinault’s Western  
10 Boundary”). In discussing Quinault’s western boundary, this Court observed that “the position of  
11 the Quinault on the Olympic Peninsula coast played an undeniable role in shaping and orienting  
12 the tribe’s culture, trade, and economic activities.” *Id.* at 1080. And, this coastal position allowed  
13 the Quinault to “regularly travel[] the Washington coast between Cape Flattery and the Columbia  
14 River.” *Id.* Likewise, the Court discussed evidence concerning Shoalwater Bay and other southern  
15 coastal locations as part of its analysis of Quinault culture, maritime capabilities, coastal travel,  
16 and ocean resource use. *Id.* at 1080-1082.

17 These findings were relevant to the issue presented in Subproceeding 09-1; namely, the  
18 extent to which the Quinault customarily traveled westward into the Pacific Ocean to harvest  
19 marine resources. The Court relied upon this evidence to assess the extent of Quinault marine  
20 activity and ultimately determine only the Nation’s western Pacific Ocean boundary. *See id.* at  
21 1117. None of these findings purport to establish the southern extent of Quinault’s treaty-reserved  
22 fishing grounds which was never at issue in the Subproceeding. *Id.* at 1071, 1073, 1117 (noting  
23 the issues before the Court as limited to the western boundaries of the Quinault and Quileute and  
24 the northern boundary of the Quileute). The Court never identified Quinault’s southern boundary  
25 as an issue to be decided, never analyzed competing claims regarding the extent of Quinault’s  
26 southern treaty fishing area, and never made findings directed toward establishing a southern  
27 boundary.

1 The trial record confirms this fact. The only substantive discussion of Quinault’s southern  
2 boundary is from a witness for Makah, who was asked, “What U&A issues have come up in your  
3 dealings with Quinault?” The witness stated, “[a]s I recall, only the western boundary. They are  
4 not the immediate neighbor of the Makah, and so there is no overlap, no adjoining areas. So that  
5 is not – their north/south boundaries have never been an issue.” Trial Tr. at 108:20-109:10, *United*  
6 *States v. Washington*, No. C70-9213, Subproceeding No. 09-1 (W.D. Wash. April 3, 2015). The  
7 southern boundary was not an issue. That testimony is consistent with the Makah’s Request for  
8 Determination, the issues identified by the Court, and the findings ultimately entered. In short,  
9 Quinault’s southern boundary was never presented, litigated, or adjudicated in Subproceeding 09-  
10 1 or any other subproceeding.

11 The Court’s belief Quinault’s southern boundary was previously adjudicated rests on a  
12 manifest factual error warranting reconsideration.

### 13 CONCLUSION

14 For the foregoing reasons, the Quinault Indian Nation respectfully requests the Court  
15 reconsider its Order Denying Motion for Leave to Open New Subproceeding, vacate that Order,  
16 and grant Quinault leave to open a new proceeding under Paragraph 25(a)(6).

17 DATED this 3rd day of June, 2026.

18  
19 By: /s/ Rob Roy Smith

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