

ELLEN F. ROSENBLUM
Attorney General
SARAH WESTON #085083
ANIKA MARRIOTT #104364
Assistant Attorney General
DARSEE STALEY #873511
Senior Assistant Attorney General
Department of Justice
100 SW Market Street
Portland, OR 97201
Telephone: (971) 673-1880
Fax: (971) 673-5000
Email: Sarah.Weston@doj.state.or.us
Anika.E.Marriott@doj.state.or.us
Darsee.Staley@doj.state.or.us

Attorneys for State of Oregon

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

STATE OF OREGON, et al.,

Defendants.

Case No. 3:68-CV-00513-MO

DEFENDANT STATE OF OREGON'S
RESPONSE TO JOINT MOTION TO
RECONSIDER, ALTER OR AMEND
MARCH 19, 2018 ORDERS

The State of Oregon responds to the Joint Motion to support a modification of the court's order approving the parties 2018-2027 Management Agreement (ECF 2614) and the court's order of dismissal (ECF 2615). Like the States of Idaho and Washington, Oregon responds separately to present its reasons for supporting the requested relief and to respond to points submitted by the moving parties.¹ Oregon supports modification of these orders to make explicit

¹ Notably, while Oregon did not anticipate the order of dismissal, Oregon does not agree that retained jurisdiction was a condition of the 2018-2027 Management Agreement or an essential element of the meeting of the minds. Oregon did not rely on retained jurisdiction in its negotiation of that agreement.

and specific the ongoing availability of the federal forum for disputes that arise affecting the Treaty fishing rights that are subject matter of case 68-513, including with respect to both personal jurisdiction and subject matter jurisdiction.

Oregon supports this relief because the moving parties have expressed strong concerns for clarity about the availability of a judicial forum to resolve potential disputes. This is a unique case that warrants different treatment because the order of dismissal is threatening to disrupt the very fisheries co-management that this court has urged the parties to develop.

Oregon joins in the parties' shared recognition that substantial progress in collaborative management of fisheries over the course of nearly 50 years has been made while under the court's explicit statement of "retained jurisdiction." The history of occasions on which the parties benefited from seeking assistance from the court are detailed in the other parties' memoranda. Oregon acknowledges that the backstop provided by the parties' understanding of the availability of the district court forum has at times been critical to achieving effective management of the resource. Oregon believes that this progress is also due to recognition of each party's rights and a better understanding that differences in opinion on a particular issue need not preclude the opportunity for agreement on an approach to resolving that matter.

Since the adoption of the 2008 Management Agreement, the co-management structure adopted by the parties has led to minimal necessity for court intervention. Although this experience bolsters Oregon's expectation that the need for future court intervention is likely to be infrequent, intervention at some point may be needed. Oregon is confident that the parties' continued cooperation and collaboration is achievable. However, Oregon agrees that explicit terms for retained jurisdiction are necessary at this time to ensure that efficient, and therefore meaningful and effective, relief may be granted should judicial intervention be necessary.

Even recognizing that the order of dismissal without prejudice leaves the option for parties to petition for the court's consideration of disputes, Oregon nonetheless sees significant value in an order outlining the specific terms on which the parties may reopen the case for the

duration of the current Management Agreement. Moreover, if making the terms of the court's ongoing jurisdiction express is critical to even *one* of the necessary parties in this dispute (though the request here is supported by all parties), the progress to date and the associated achievements are placed in jeopardy because successful co-management requires *every* party at the table working together with confidence. Therefore, if retaining jurisdiction helps ensure the parties resolve their disputes *outside of the courtroom* then Oregon finds that retained jurisdiction is appropriate.

In summary, Oregon supports the request to reinstate this case. Alternatively, Oregon supports the United States' request for clarification of the order of dismissal to explicitly describe the court's subject matter jurisdiction over enforcement of its prior orders and judgments (with or without the phrase "retained jurisdiction") and personal jurisdiction over the parties bound by those orders and judgments.

DATED May 7, 2018.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ Darsee Staley

SARAH WESTON #085083
ANIKA E. MARRIOTT #104364
Assistant Attorneys General
DARSEE STALEY #873511
Senior Assistant Attorney General
Trial Attorneys
Tel (971) 673-1880
Fax (971) 673-5000
Sarah.Weston@doj.state.or.us
Anika.E.Marriott@doj.state.or.us
Darsee.Staley@doj.state.or.us
Of Attorneys for State of Oregon

CERTIFICATE OF SERVICE

I certify that on May 7, 2018, I served the foregoing DEFENDANT STATE OF OREGON'S RESPONSE TO JOINT MOTION TO RECONSIDER, ALTER OR AMEND MARCH 19, 2018 ORDERS upon the parties hereto by the method indicated below, and addressed to the following:

Peter Monson
U.S. Dept. of Justice
Environment & Natural Resources Division
Ben Franklin Station,
P.O. Box 7397
Washington, DC 20044-7397
Of Attorneys for Plaintiff U.S.A.

☐ HAND DELIVERY
☒ MAIL DELIVERY
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☐ E-SERVE

Eric J Nielsen
Richard Reich
Quinault Indian Nation
P.O. Box 189
Taholah, WA 98587
*Of Attorneys for Amicus Quinault Indian
Nation and Tulalip Tribes*

☐ HAND DELIVERY
☒ MAIL DELIVERY
☐ OVERNIGHT MAIL
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Of Attorneys for State of Oregon