David J. Cummings, OSB# 922695
Nez Perce Tribe, Office of Legal Counsel
P.O. Box 305, Lapwai, ID 83540
Tel. (208) 843-7355; Fax: (208) 843-7377 (Fax); Email: djc@nezperce.org
Of Attorneys for Nez Perce Tribe

John W. Ogan, OSB# 065940
Law Office of John W. Ogan
PO Box 1192, Sisters, Oregon 97759
Tel. (541) 410-4766; Fax: (541) 719-1263; Email: john.ogan@jwoganlaw.com
Attorney for the Confederated Tribes of the Warm Springs Reservation of Oregon

Thomas Zeilman, Washington State Bar # 28470
Law Offices of Thomas Zeilman
32 N. Third Street, Suite 310, P.O. Box 34, Yakima, WA 98907
Tel. (509) 575-1500; Email: tzeilman@qwestoffice.net
Attorney for Confederated Tribes and Bands of the Yakama Nation

Brent H. Hall, OSB# 992762
Confederated Tribes of the Umatilla Indian Reservation, Office of Legal Counsel
46411 Timíne Way, Pendleton, Oregon 97801
Tel. (541) 429-7407; Fax: (541) 429-7407; Email: brenthall@ctuir.org
Of Attorneys for the Confederated Tribes of the Umatilla Indian Reservation

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

STATE OF OREGON, *et al.*,

Defendants.

No. 3:68-cv-0513-MO

JOINT MEMORANDUM IN SUPPORT OF JOINT MOTION TO RECONSIDER, ALTER OR AMEND THIS COURT'S MARCH 19, 2018 ORDERS PURSUANT TO Fed. R. Civ. P. 59(e) AND 60(b)

Table of Contents

I. INTRODUCTION *1*

II. BACKGROUND *2*

A. Procedural History and Foundation of This Court's Retained Jurisdiction. 3

B. Negotiation of Partial Settlements at the Urging of the Court. 4

C. Resolution of Disputes Under The Court's Retained Jurisdiction in this Case. 6

1. Disputes Among Parties 7

2. Collateral Attacks or Interference by Third Parties. 9

D. Termination of this Court's Jurisdiction and Dismissal of the Case Without Prejudice. 10

III. STANDARDS OF REVIEW *11*

A. Rule 59(e) 11

B. Rule 60(b)(6) 11

IV. ARGUMENT *12*

A. Absent Retained Jurisdiction the Parties may not be Able to Obtain Meaningful and Complete Resolution of Disputes Because of Eleventh Amendment, Sovereign Immunity and Necessary Party Jurisdictional Defenses ... 13

B. This Court's Retained Jurisdiction, Including the Dispute Resolution Process set Forth in the Court-Approved Agreement, is a Model That Encourages Parties to Attempt to Resolve Disputes Before Pursuing Claims Before This Court, Thereby Serving the Interests of Judicial Economy. 15

C. This Court's Retained Jurisdiction is Necessary to Resolve Disputes That Not Only Arise Under the 2018 Agreement, but Also Outside the Agreement That may Affect the Treaty Fishing Rights or State Interests Central to This Case. 18

D. The Court's Retained Jurisdiction Will Likely be Needed in the Foreseeable Future. 19

E. The Parties Have a Long List of Unresolved Issues to Negotiate in the Next Few Years, Which Will Likely Require the Court's (and its Technical Advisor's) Assistance. 20

F. The 2018 Agreement, Like the Prior Fisheries Management Plan and Agreements, Includes a Dispute Resolution Mechanism That is Integrated With This Court's Retained Jurisdiction. **23**

G. This Court's Retention of Jurisdiction, and the Dispute Resolution Provisions of the 2018 Agreement Effectively Serves the Interests of Judicial Economy. **24**

H. The Court's Orders Work a Manifest Injustice Against These Tribes That Should be Remedied Pursuant to Rules 59(e) and 60(b). **25**

V. CONCLUSION ***26***

TABLE OF AUTHORITIES

Cases

38 F.3d 1058 (9th Cir. 1994) 18

384 F. Supp. 312, 346-347 (W.D. Wash. 1974) 3

Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011).......... 11

Barcellos & Wolfsen, Inc. v. Westlands Water Dist., 849 F. Supp. 717, 728 (E.D. Cal. 1993) . 12

Gagan v. Sharar, 376 F.3d 987, 992 (9th Cir. 2004) 12

Idaho Dep't of Fish and Game v. Nat'l Marine Fisheries Serv., 850 F. Supp. 886, 888-89 (D. Or. 1994) 7

In re Int'l Fibercom, Inc., 503 F.3d 933, 941 (9th Cir. 2007) 11

Kingvision Pay–Per–View Ltd. v. Lake Alice Bar, 168 F.3d 347, 351–52 (9th Cir. 1999) 12

Lal v. California, 610 F.3d 518, 524 (9th Cir. 2010) 12

Latshaw v. Trainer Wortham & Co., 452 F.3d 1097, 1103 (9th Cir. 2006) 12

O'Neill v. United States, 50 F.3d 677 (9th Cir. 1995) 12

Pacific Northwest Generating Coop v. Brown, 822 F.Supp.1479, 1511 (D. Or. 1993) 18

Puget Sound Gillnetters Ass'n v. U.S. District Court, 573 F.2d 1123 (9th Cir. 1978).......... 9

Sohappy v. Smith/ United States v. Oregon, 302 F.Supp 899, 911 (D.Or. 1969). 3

United States v. Confederated Tribes of the Colville Indian Reservation, 606 F.3d 698 (9th Cir. 2010) 19

United States v. Crookshanks, 441 F.Supp 268 (D.Or. 1977) 9

United States v. Oregon, 1992 WL 613238.......... 9

United States v. Oregon, 657 F.2d 1009 (9th Cir. 1982) 7

United States v. Oregon, 699 F. Supp 1456, 1459 (D. Or. 1988)....................4

United States v. Oregon, 718 F.2d 299, 305 (9th Cir. 1983)....................8

United States v. Oregon, 769 F.2d. 1410, 1415 (9th Cir. 1985)....................8

United States v. Oregon, 913 F.2.d 576 (9th Cir. 1990)....................8

Washington v. Washington Comm'l and Pass. Fishing Vessel Ass'n, 443 U.S. 658, 692 n.32 (1979)....................7

Court Documents

United States v. Oregon , Dkt. 104, Judgment at 4 (D. Or. October 10, 1969)……Exhibit 1

United States v. Oregon, Order Amending Judgment of October 10, 1969,Dkt. 181 (D. OR. May 10,1974)…………………………………………………….. ………..Exhibit 2

United States v. Oregon, docket and ECF citations……………………..…………*passim*

United States v. Washington, docket and ECF citations……………………..…….*passim*

Other

2017 Joint Staff Report: Stock Status and Fisheries at 37 (Table 3) and 42 (Table 8), ...22

2018 Joint Staff Report: Stock Status and Fisheries, at 58 (Table 1), 65 (Table 8), 70 (Table 12) and 73 (Table 15), *http://www.dfw.state.or.us/fish/OSCRP/CRM/reports/18_reports/2018_spring_jsr.pdf*.......22

https://theconservationangler.files.wordpress.com/2017/11/tca-2017-report-final-revised.pdf....................20

I. INTRODUCTION

The Columbia River Treaty Tribes ("Treaty Tribes" or "tribes"), on whose behalf this case was initiated and who intervened as parties to protect their Treaty-reserved fishing rights and fisheries, join with all parties to this landmark proceeding, respectfully requesting this Court to amend paragraph 3 of the Order Approving 2018-2027 *United States v. Oregon* Management Agreement (ECF 2614) and to provide relief from the Order Dismissing Case Without Prejudice (ECF 2615) to confirm that there continues to be a judicial forum for civil resolution of the disputes that arise affecting the Treaty fishing rights that are subject matter of case 68-513. In doing so, these tribes believe the Court can prevent a manifest injustice to the tribes and all parties.

Each of the duly elected governing bodies of the Confederated Tribes of the Umatilla Indian Reservation, the Yakama Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Nez Perce Tribe urge this Court to grant this relief because of the adverse impact these orders would have, if not altered, on the administration of justice with respect to their Treaty-reserved fishing rights that are the subject matter of this case. The tribes support this requested relief to ensure that there is the ability to obtain complete and meaningful judicial relief in this case as needed against both parties and non-parties (consistent with the understandings in this case, and particularly the understanding of the parties in negotiating the new Management Agreement).

///

The tribes join the all parties' motion requesting amendment of paragraph 3 of the *Order Approving* (ECF 2614) and relief from the *Order Dismissing* (ECF 2615). With respect to relief from the Order Dismissing, the tribes specifically and respectfully suggest that the Court provide clarity by withdrawing or vacating that order, or in the alternative, amending that order to provide that this case is not dismissed (and that any case management tool intended or used, does not have the jurisdictional consequences that dismissing this case would have on all parties).

II. BACKGROUND

The *United States v. Oregon* litigation is a unique proceeding involving constitutionally-protected Native American Treaty rights; federal, state and tribal statutes and regulations; changing ecosystems; and different interpretations of the best science applied to fishery management regimes; all revolving around highly variable and complex fishery resources. The salmon and steelhead fishery provides not only subsistence and economy for many, but the salmon are also a "First Food" central to the Native American culture and religion. This overlay is the foundation for this Court's retention of jurisdiction to resolve disputes among the parties and related to the proceeding. This retained jurisdiction, with the Court's direction, has allowed the parties to develop management frameworks that provide "rules of the road" for many (but not all) of the disputes that may arise among the parties or that otherwise affect their rights.

///

A. Procedural History and Foundation of This Court's Retained Jurisdiction.

Judge Belloni, in his July 8, 1969 Opinion in this case, explained the inherent nature of the Treaty reserved Indian fishery and anadromous fishery management in a changing environment, and how they relate to the Court's retention of jurisdiction and the administration of justice:

> This court cannot prescribe in advance all of the details of appropriate and permissible regulation of the Indian fishery, nor do the plaintiffs ask it to. As the Government itself acknowledges, "proper anadromous fishery management in a changing environment is not susceptible of rigid pre-determination.… the variables that must be weighed in each given instance make judicial *review* … through retention of continuing jurisdiction, more appropriate than overly-detailed judicial predetermination."

Sohappy v. Smith/ United States v. Oregon, 302 F.Supp 899, 911 (D.Or. 1969).

Consistent with its Opinion, the Court's October 10, 1969 Judgment retained "jurisdiction of the matters in suit herein for disposition of the remaining claims of the parties or to grant further or amended relief upon application of any of the parties." Judgment at 4 (Dkt. No. 104) (Exhibit 1). The *United States v. Washington* treaty fishing rights litigation adopted a similar approach. Judge Boldt's 1974 Final Decision #1, citing Judge Belloni's description of these dynamics, also retained continuing jurisdiction. *See United States v. Washington,* 384 F. Supp. 312, 346-347 (W.D. Wash. 1974)).

In 1974, consistent with Judge Boldt's ruling on harvest allocation in that case, this Court modified its 1969 Judgment with respect to the Indian treaty fishermen's "fair share" of the harvest:

> The Indian treaty fishermen are entitled to have the opportunity to take up to 50 percent of the harvest of the spring chinook salmon run destined to reach the tribes' usual and accustomed grounds and stations. *Except insofar as amended here, the 1969 judgment remains in full force and effect.*

United States v. Oregon, Order Amending Judgment of October 10, 1969 (Dkt. No. 181.) (Exhibit 2) (Emphasis added.)

B. Negotiation of Partial Settlements at the Urging of the Court.

Pursuant to the Court's urging, encouragement, and occasional orders, the parties negotiated and entered into a series of Columbia River management plans and agreements. The overarching focus of these plans was to provide a procedural and policy framework for protecting, rebuilding, and enhancing salmon and steelhead runs and for allocating and planning Columbia River harvest activities.

Judge Belloni first urged the parties to negotiate such a plan in 1975 and 1976. *See, e.g., United States v. Oregon*, 699 F. Supp 1456, 1459 (D. Or. 1988) ("Between 1975 and 1976 the parties appeared before this Court several times with Judge Belloni urging the parties to adopt a comprehensive plan for allocation and management of Columbia River anadromous fish."). Upon presentation of that plan ("1977 Plan") to the Court, Judge Belloni heralded the parties' agreement while at the same time cautioning that it did not resolve all disputes:

> The extreme importance of this settlement and consent decree is difficult to express. Every person in the Northwest gains by it. It's the most important development involving Columbia River Indian Treaty Fishing Rights and Responsibilities since the treaties became effective in 1855.
>
> ********
>
> Of course, problems will continue to plague us. All of our problems are not solved. The Court might be called upon to resolve some disputes. But now, everyone knows the rules of the road."

United States v. Oregon, Transcript of Proceedings at 4-5 (Dkt. No. 295).

A few years later, Judge Craig implored and subsequently ordered the parties to negotiate another plan. *See* Record of Hearing (Dkt. No. 1050). *See also United States v. Oregon*, Civ. 68-513, slip op. (Aug. 24, 1983) (Dkt. No. 1144). In 1987, this Court held a series of status conferences with the parties to assist them in negotiating a new management plan. The negotiations ordered by Judge Craig eventually resulted in the 1988 Columbia River Fish Management Plan ("1988 Plan"), which had a term of ten years. As with the 1977 Plan, the 1988 Plan was recognized by the Court as a partial settlement of the issues among the parties. *See, e.g., United States v. Oregon*, Transcript of 1994 Fall Season Dispute Hearing at 3-5 (Dkt. No. 2039) (In harvest dispute this Court rejected the federal government position that available remedies were limited by the 1988 Plan, stating "that [1988] Plan is not all encompassing of all the issues in the case of *United States vs. Oregon.*").

Prior to the expiration of the 1988 Plan, the parties worked on a successor plan with little success. Indeed, from June 2002 until March 2008, this court presided over 40 status conferences with the parties to ascertain, encourage and order the parties' negotiation of a successor long-term agreement. *See, e.g., United States v. Oregon,* Transcript, February 8, 2006, ("You are still under court order to get this done.") (ECF 2414). While several short-term agreements were reached during the 1999-2007 period, the parties did not agree on a new long-term plan until 2008. On August 11, 2008 the parties submitted a Joint Motion and Stipulated Order Approving the 2008-2017 *United*

States v. Oregon Management Agreement ("2008 Agreement") to the Court (ECF 2544). This Court issued a Stipulated Order approving the 2008 Agreement (ECF 2546).

Beginning in 2015, the parties negotiated the current long-term agreement, the 2018-2027 *United States v. Oregon* Management Agreement ("2018 Agreement") with the assistance of Judge Edward Leavy as mediator. Even with Judge Leavy's assistance, because of time limitations due in part to expiration of Endangered Species Act ("ESA") documentation and a divergence of views between the parties on fishery management and science issues, all that could be achieved was essentially a continuation of the 2008 agreement. The tribes understood that updating and extending the 2008 Agreement would provide the parties a continuing procedural framework and more time to work on difficult outstanding issues that they could not resolve in the past few years. The parties agreed the 2008 dispute resolution procedures would be carried forward in the 2018 Agreement. This approach was acceptable to the tribes because it is based on the assumption that this Court would retain jurisdiction in this case and over the new Management Agreement just as it had in 2008. *See, e.g.*, ECF 2607-1 at 7 ("This Agreement will be submitted as a stipulated order in *United States v. Oregon*, Civil No. 68-513-MO (D. Or.). If approved by the Court, this Agreement shall be binding on the Parties as a decree of the Court").

C. Resolution of Disputes Under The Court's Retained Jurisdiction in this Case.

The Court's retained jurisdiction in this case has been needed to resolve disputes among the parties regarding the negotiated terms of the management plans, and to resolve disputes among parties regarding other issues that have fallen outside the scope of

those plans. As the Court has repeatedly recognized, the harvest and allocation management agreements the parties negotiate are only "partial settlements," and the Court's retained jurisdiction ensures that it can address disputes that arise within the scope of this case aside from any agreement or consent decree. *See, e.g., United States v. Oregon,* Transcript of Proceedings at 4-5 (Dkt. No. 295); *see also Idaho Dep't of Fish and Game v. Nat'l Marine Fisheries Serv.*, 850 F. Supp. 886, 888-89 (D. Or. 1994) (describing 1988 Plan as a "partial settlement"). Examples of these disputes are numerous.

1. Disputes Among Parties

In 1980, this Court entertained a dispute outside the 1977 Agreement concerning tributary subsistence fisheries and enjoined the Yakama Nation from continuing its spring chinook fishery on the Yakima River on the Yakama Reservation. Yakama appealed, and the Ninth Circuit held that this Court had jurisdiction in this 68-513 proceeding to enjoin the Yakama fishery, rejecting the tribe's argument that it had not waived its sovereign immunity from suit. *United States v. Oregon*, 657 F.2d 1009 (9th Cir. 1982). The Court of Appeals emphasized that this Court "retained post-judgment jurisdiction to modify its decree" and that such "[r]etention of jurisdiction is characteristic of equitable decrees." *Id.* at 1015. It further stated that the *United States v. Oregon* proceeding was analogous to an equitable action *in rem,* and that in such a proceeding "a court processed of the res in a proceeding in rem, such as one to apportion a fishery, may enjoin those who would interfere with that custody." *Id.* (*citing Washington v. Washington Comm'l and Pass. Fishing Vessel Ass'n,* 443 U.S. 658, 692 n.32 (1979)). While the Ninth Circuit also opined that this was the type of dispute that the 1977 Plan envisioned sending to the Court (*Id.* at 1016),

neither the Parties nor this Court treated the matter as a Plan-based dispute. *United States v. Oregon,* Civ. 68-513, Washington Motion for TRO (Dkt. No. 406), Yakama Memorandum in Opposition (Dkt. No. 410), Transcript of Hearing (Dkt. No. 413), Preliminary Injunction (Dkt. No. 419). The 1977 Plan was clear that it did not apply to on-Reservation tributary fisheries. 1977 Plan at 5, ¶ 12 (Dkt. No. 295).

The Court's jurisdiction was also invoked to resolve two parties' objections to the entry of the 1988 Plan as an order of the Court. The Court overruled those objections and approved the Plan, and the Ninth Circuit affirmed. *United States v. Oregon*, 699 F. Supp. 1456 (D.Or. 1988); *aff'd United States v. Oregon*, 913 F.2.d 576 (9th Cir. 1990). In so doing, the Ninth Circuit affirmed prior rulings that approval of a fisheries management plan does not deprive the Court of the power to grant other necessary relief, holding that "the district court retains continuing jurisdiction to grant further or amended relief." *Id.* at 584-585 (citing *United States v. Oregon*, 718 F.2d 299, 305 (9th Cir. 1983)); *see also United States v. Oregon*, 769 F.2d. 1410, 1415 (9th Cir. 1985) (upholding the district court's exercise of discretion whether the 1977 Plan remained in effect or was terminated following two parties' withdrawal).

In 1994, a dispute over fall season fisheries related to the intersection of Treaty rights and the Endangered Species Act that was also outside the scope of the 1988 Plan. The Court in that instance addressed a jurisdictional issue raised by the United States – whether the relief available in this case was restricted to what was available under the 1988 Plan. That position was soundly rejected:

> [t]he Government has – first of all, contents(sic) that relief that could be granted in this forum under the title of this case [*United States v. Oregon*],

> would be restricted to the relief that was available to the parties under the Columbia River Fish Management Plan. Now, I would extend that, *because I think that that plan is not all encompassing of all the issues in the case of United States vs. Oregon.*

United States v. Oregon, Transcript of 1994 Fall Season Dispute Hearing at 3-5 (Dkt. No. 2039) (Emphasis added.)

2. Collateral Attacks or Interference by Third Parties.

More than once, the Court's retained jurisdiction was invoked to address attempted interference with fisheries by non-parties. In 1977, the Court enjoined non-Indian lower river commercial fishers when their actions interfered with the implementation of the 1977 Plan. *United States v. Oregon*, Order (Dkt. No. 322), *aff'd on appeal Puget Sound Gillnetters Ass'n v. U.S. District Court*, 573 F.2d 1123 (9th Cir. 1978). Judge Belloni also issued a temporary restraining order after the Thurston County Superior Court in Washington enjoined Washington officials from enforcing fishery management decisions made in accordance with the 1977 Plan. *See United States v. Crookshanks*, 441 F.Supp 268 (D.Or. 1977) (denying motions to dismiss criminal contempt prosecutions for violation of TRO and discussing *United States v. Oregon* Court's personal jurisdiction over non-parties to enforce its orders).

The Court also used its retained jurisdiction to resolve interference by third parties who obtained an injunction by a state Circuit Court in Clatsop County, Oregon allowing local fishermen to fish in contravention of the 1988 Plan. *United States v. Oregon*, 1992 WL 613238 (Dkt. No. 1948). After granting the State of Washington's motion for a temporary restraining order against the County injunction, the Court held that with respect to the Court's jurisdiction:

> The factual circumstances that exist in this case are unique. First ... this case involves public entities and tribal parties who have clearly recognized interests in maintaining sovereign immunity from actions in state court. Second is absolute need for *coordinated* and centralized management of fish resource management in the Columbia River to protect fish and the balance between treaty Indian and nontreaty fisheries. If Compact members or nonparties are permitted to interfere with this carefully balanced process by seeking eleventh hour restraining orders from judge unfamiliar with the case and its background, the state's fisheries management departments would be confronted with confusion and chaos. Based on these unique factors and the duty of this court to protect its jurisdiction and effectuate its judgements, I find that the anti-injunction act does not bar the relief sought by the State of Washington.

United States v. Oregon, Civ. 68-513, slip op. at 2 (February 29, 1992) (Dkt. No. 1948), 1992 WL 613238.

D. Termination of this Court's Jurisdiction and Dismissal of the Case Without Prejudice.

On February 26, 2018 the parties submitted to the Court a Motion and Stipulated Order to approve the successor 2018-2027 *United States v. Oregon* Management Agreement (ECF 2607). That Stipulated Order, almost identical to the 2008 request and like other previous ones, included provisions in Paragraph 1 referencing the Court's 1969 Judgment and 1974 Amended Judgment (retaining jurisdiction in this case) and in Paragraph 3 retaining jurisdiction over the 2017-2028 Management Agreement. The Court ordered a telephonic status conference, held on March 19, 2018. At that status conference the Court approved the 2018 Agreement and issued a order amending paragraph three of the Stipulated Order (ECF 2614) to terminate the court's jurisdiction, and issued a separate order dismissing this case without prejudice (ECF 2615). Two parties requested an opportunity to submit briefing on these actions. Immediately thereafter, the Court denied the requests and ended the hearing. Transcript (ECF 2616).

The court's termination of retained jurisdiction and dismissal of this case took the parties by surprise as there was no indication the Court had any questions or concerns about the status quo.

III. STANDARDS OF REVIEW

A. Rule 59(e)

Federal Rule of Civil Procedure 59(e) authorizes motions "to alter or amend judgment", often referred to as motions for reconsideration, and provides that such motions "must be filed no later than 28 days after the entry of the judgment." "Since specific grounds for a motion to amend or alter are not listed in the rule, the district court enjoys considerable discretion in granting or denying the motion." *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). Amending a judgment after its entry "remains an extraordinary remedy which should be used sparingly." *Id.* (internal quotation marks omitted). In general, there are four basic grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law. *Id.*

B. Rule 60(b)(6)

Under Fed. R. Civ. P. 60(b)(6), a party may seek relief from a judgment or order for "any [ ] reason that justifies relief." The Ninth Circuit has stated that Rule 60(b)(6) should be "liberally applied to accomplish justice." *In re Int'l Fibercom, Inc.*, 503 F.3d 933,

941 (9th Cir. 2007) (quotations omitted). At the same time, "[j]udgments are not often set aside under Rule 60(b)(6)." *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1103 (9th Cir. 2006). Rather, this section should be applied "sparingly as an equitable remedy to prevent manifest injustice," *Lal v. California*, 610 F.3d 518, 524 (9th Cir. 2010) (quoting *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993)), or to correct a clear error, *Gagan v. Sharar*, 376 F.3d 987, 992 (9th Cir. 2004). *See also Barcellos & Wolfsen, Inc. v. Westlands Water Dist.*, 849 F. Supp. 717, 728 (E.D. Cal. 1993), *aff'd sub nom*, *O'Neill v. United States*, 50 F.3d 677 (9th Cir. 1995). The court also can *sua sponte* reconsider a final order under Rule 60(b) to correct its own mistakes. *Kingvision Pay–Per–View Ltd. v. Lake Alice Bar*, 168 F.3d 347, 351–52 (9th Cir. 1999).

IV. ARGUMENT

The Court's termination of retained jurisdiction and dismissal of this case directly and adversely impacts these tribes and the other parties' abilities to meaningfully resolve disputes that may arise regarding the treaty fishing rights and interests that are the subject matter of this case. The orders of dismissal work manifest injustice upon the parties. All parties support amending those orders as follows:

A. Alter paragraph 3 of the Order Approving 2018-2027 United States v. Oregon Management Agreement (ECF 2614) to state as follows:

> 3. In the event a dispute arises concerning the Management Agreement, the Parties shall follow the dispute resolution provisions in the Agreement, and in the event a Party or Parties seek judicial review they shall file a timely motion with this Court. This Court's Judgment of October 10, 1969 as

amended May 10, 1974 retaining jurisdiction, shall remain in effect, unless expressly modified by this Court.

B. The Parties jointly request relief from the "Order Dismissing Case Without Prejudice" (ECF 2615) to confirm that there continues to be a judicial forum for civil resolution of the disputes that arise affecting the Treaty fishing rights that are subject matter of case 68-513.

A. Absent Retained Jurisdiction the Parties may not be Able to Obtain Meaningful and Complete Resolution of Disputes Because of Eleventh Amendment, Sovereign Immunity and Necessary Party Jurisdictional Defenses.

In the *United States v. Washington* treaty fishing rights litigation, Judge Rothstein and Magistrate Judge Weinberg proposed a "Sunset Order" in 1993 that included a proposal to dismiss the case and discontinue jurisdiction. They then provided the parties an opportunity to brief their proposal. Following that briefing and argument, "The court decline[d] to enter the proposed 'Sunset Order' lodged on April 12, 1993, and … retain[ed] jurisdiction over this case." *United States v. Washington*, 70-cv-09213, Order Regarding Status Conference (ECF 13292).

In arguing against the proposed Sunset Order issue, the parties all expressed very similar concerns. Washington pointed out that the "sovereign immunity of the tribal parties, the Eleventh Amendment immunity of the State of Washington and the proscriptions of CR 19, however, present real and substantial obstacles to the utilization of the federal courts as a vehicle to resolve future disputes in new lawsuits." *United States v. Washington*, 70-cv-09213, Response of State of Washington at 6-7 (ECF 13235). As the United States directly acknowledged: "Because of sovereign immunity and

related doctrines, entry of the sunset order would effectively deprive the parties of a forum in which to have Treaty fishing rights issues decided." *United States v. Washington*, 70-cv-09213, United States' Response at 2, 7-8 (ECF 13223). Similarly, the western Washington treaty tribes were in accord with the states and federal parties: "Where the doctrine of sovereign immunity is coupled with the doctrine of indispensability under Federal Rule of Civil Procedure 19, it can easily become virtually impossible, as a practical matter, to adjudicate intergovernmental disputes." *United States v. Washington*, 70-cv-09213, Joint Tribal Response at 8 (ECF 13234).

Judge Rothstein was particularly concerned with the availability of jurisdictional defenses pointed out by the parties that had evolved since the 1960s. Weighing relevant considerations, she explained at the Status Conference:

> THE COURT: [I] have reviewed the pleadings that were submitted, the joint tribal pleadings, the state's pleadings, and the United States Government's pleadings. And let me just preface everything by saying you have thoroughly convinced me that my idea about starting anew, dismissing any of this, not continuing jurisdiction, is a poor one. It didn't take much to point out to me that whatever practical benefit that may have had in terms of making this file manageable is more than offset by the disadvantages to the parties. *I have no intention putting all of you through the hoops of getting sovereign immunity [waived] and getting all the parties here.*
>
> You have also convinced me that if there ever was a case where there is a role of the Court for continuing jurisdiction, where it serves a good purpose and not a dilatory purpose, this is it. I mean it clearly is the kind of proceeding that is deserving of the time and effort that all of you have put into it. You know, I should tell you that my leaning as a judge who likes to keep calendars current is to think, you know, sort of prima facie, anything that's around for 20 years, there must be something wrong here. And obviously, you know, that the best thing to do is get rid of it and start all over again. And I think both Magistrate Judge Weinberg and I thought that surely everybody would think it was a great idea. And you have easily persuaded me that that is not the way to go on the case. You have also persuaded me that there are other ways that the case can be brought

> into manageable proportions. And some of your suggestions have been very good ones.

United States v. Washington, 70-cv-09213, Reporter's Transcript of Proceedings at 6-7 (ECF 13440). (Emphasis added.)

The sovereign immunity and indispensable party concerns that were expressed to the court in *United States v. Washington* in 1993 are as relevant now as they were at that time. These concerns are present to a greater degree in *United States v. Oregon,* where three states are parties to the proceeding and the tribes' Zone 6 fishery occupies shared sections of an interstate boundary river. These concerns are magnified given the geographic span of this case, which includes multiple federal district courts within these three states, which could result in an even more fragmented ability to obtain relief.

These tribes firmly believe that the Court's retained jurisdiction over this case has been the key to the cooperative, collaborative co-management that is the hallmark of this proceeding and each of the Court-approved Management Plans or Agreements, including the most recent one. These tribes submit that, based on their 100 plus years of experience with state and federal agencies, commissions and enforcement entities, the ability to readily access the *United States v. Oregon* Court has greatly influenced the parties' developing the ability to meaningfully cooperate, compromise and co-manage, whenever possible.

B. This Court's Retained Jurisdiction, Including the Dispute Resolution Process set Forth in the Court-Approved Agreement, is a Model That Encourages Parties to Attempt to Resolve Disputes Before Pursuing Claims Before This Court, Thereby Serving the Interests of Judicial Economy.

The Court's retained jurisdiction in *United States v. Oregon* and the mechanisms set forth in the Court-approved Management Agreements together serve as a model that promotes dispute resolution and furthers judicial economy. Indeed, when Judge Rothstein expressed an interest in case management tools in *United States v. Washington*, all the *United States v. Washington* parties (the United States, Washington, and the tribes) offered the *United States v. Oregon* 1988 Plan as a potential example for assisting the parties with dispute resolution prior to disputes reaching the Court.

In offering *United States v. Oregon* as one of two examples that would minimize the number of disputes which ultimately require judicial attention, the United States explained:

> This [dispute resolution] approach has been adopted in the two other major Indian fishing rights cases in which the United States has been involved, and these procedures have, as a general matter, been successful in limiting judicial review of only those matters which are unresolvable in any other manner. For example, in United States v. Oregon, supra, a case involving the Indian treaty fishing rights on the Columbia River, the district court per Judge Marsh adopted a fishery management plan proposed by the tribal, state and federal parties, which provides for the resolution of disputes and establishes a standard for judicial review of unresolved disputes. United States v. Oregon, 699 F.Supp. 1456, 1460 (D. Or. 1988) aff'd 913 F.2d 576 (9th Cir. 1990) cert. denied sub nom Makah Indian Tribe v, United States, ___ U.S. ___, 111 S.Ct. 2889 (1991). A copy of the Plan is attached hereto as Attachment B. That plan establishes a Technical Committee and a Production Committee composed of representatives of the parties to review fishery management and hatchery production issues. If a consensus is not reached in those committees, the matter is referred to the Policy committee, composed of policy representatives of all parties. Except for certain emergency matters requiring immediate judicial attention, all disputes must go through this process prior to presentation before the court.

United States v. Washington, 70-cv-09213, United States' Response at 11-12 (ECF 13223).

The United States concluded:

> For the foregoing reasons, the United States respectfully submits that the interests of fairness and judicial economy favor the Court retaining continuing jurisdiction over this action. At the same time, we submit that procedures adopted by other courts for managing Indian fishing rights cases over which they have retained continuing jurisdiction may be adapted to this case, in order to assure that disputes which reach this Court are minimized and the issues carefully framed. As to those disputes which do ultimately reach this Court's docket, they should be managed to the extent possible in the same manner as other cases.

Id. at 14.

Washington concurred with this suggestion: "The state would propose a dispute resolution process similar to that utilized in *United States v. Oregon,* with an option of utilizing a special master where appropriate." *United States v. Washington*,70-cv-09213, Response of State of Washington at 8(ECF No. 13235). The Tribes also concurred, "The parties anticipate a dispute resolution process using concepts similar to those utilized in the cases of *United States v. Oregon*, *United States v. Michigan*, and *Hoh v. Baldrige*." *United States v. Washington*, 70-cv-09213, Joint Tribal Response at 2 (ECF 13234).

As all of the parties to *United States v. Oregon* can attest, the retained jurisdiction of this Court and the dispute resolution provisions of the Court-approved Management Agreements or Plans have assisted the parties in ensuring that technical information in the Production Advisory Committee and Technical Advisory Committees is freely shared and that full discussion is encouraged; that technical, policy, or legal issues are identified as soon as possible; that parties promptly advance points of concern; and that issues are elevated to the Policy Committee as appropriate. Further, the parties are sensitive to the timeframe for making decisions from the perspective of the needs of the fishery resource, the parties' fisheries and other actions.

C. This Court's Retained Jurisdiction is Necessary to Resolve Disputes That Not Only Arise Under the 2018 Agreement, but Also Outside the Agreement That may Affect the Treaty Fishing Rights or State Interests Central to This Case.

The unique nature of this case involving Indian treaty-reserved fishing rights, as well as the inherent nature of the fisheries and the anadromous fish resource in a changing environment, makes it impossible to predict the universe of conflicts and disputes that may arise. Even the relationships and positions of the parties are subject to change in short order. For example, in addressing the tribes' arguments with respect to being necessary and indispensable parties in a case involving listed salmon and harvest and hatchery management and hydropower operations in the Columbia Basin, Judge Marsh observed the ever-evolving relationships of the parties in *United States v. Oregon* as fishery management issues arise and evolve:

> To say that the tribes' interests are so "aligned" with those of the [federal] government that they are already adequately represented flies in the face of decades of controversy and, again, fails to take into consideration that parties that are in agreement now may be in bitter disagreement within a very short time frame.

Pacific Northwest Generating Coop v. Brown, 822 F.Supp.1479, 1511 (D. Or. 1993), *aff'd* 38 F.3d 1058 (9th Cir. 1994).

Disputes arise not only under the Court-ordered Plan or Agreement, but also arise from the actions of third parties or between the parties concerning matters that are not covered under the Plan or Agreement. Reviewing this Court's resolution of both types of disputes, pursuant to its retained jurisdiction in this case, is illustrative. Such disputes are not remnants of the past. During the course of 2008-2017 *United States v. Oregon* Management Agreement, the Court of Appeals for the Ninth Circuit and this

Court ruled on both types of disputes: one involving the Treaty right to take fish that arose from actions of a party outside any agreement, and one among parties to the 2008 Agreement.

Eight years ago, the Ninth Circuit affirmed this Court's bench trial decision (*United States v. Oregon,* 68-513, Judgment (ECF 2552)) regarding disputed fishing rights at Icicle Creek in Washington between the non-party Confederated Tribes of the Colville Reservation and the Yakama Nation. *United States v. Confederated Tribes of the Colville Indian Reservation,* 606 F.3d 698 (9th Cir. 2010). The Appeals Court observed: "[t]his appeal is the latest chapter in the saga of Pacific Northwest Native American treaty fishing rights; a saga that has spanned many generations and over forty years of federal litigation. If history is our guide, it will not be the last chapter written." *Id.* at 700.

In 2011, this Court ruled (ECF 2589) on the Nez Perce Tribe and Confederated Tribes of the Umatilla Indian Reservation's Joint Motion for Enforcement of Court Order and 2008-2017 *United States v. Oregon* Management Agreement (ECF 2580). That dispute reached the Court despite going through the dispute resolution procedures contained in the 2008 Agreement.

D. The Court's Retained Jurisdiction Will Likely be Needed in the Foreseeable Future.

The Court may well be needed in the near future to resolve claims asserted by non-parties that affect the Treaty right to harvest or state interests; claims between parties that go through the dispute resolution procedure of the 2018 Agreement; and

possibly claims by parties that withdraw from the 2018 Agreement. Absent the Court's retained jurisdiction, these disputes may not be capable of complete resolution.

Over the past year non-governmental organizations outside of the *United States v. Oregon* proceeding have made repeated requests for documents, primarily centering on steelhead harvest management. One of them, The Conservation Angler, states in its most recent annual report:

> US v. Oregon Harvest Management Agreement Renegotiation: NOAA Fisheries has just completed an analysis of its role in the key harvest management policy framework that governs harvest between the states and the Columbia and Snake River Treaty Tribes. TCA provided extensive comments throughout the process, and if, after review of the final environmental analysis, we find it inadequate, *we will initiate legal challenges*…."

https://theconservationangler.files.wordpress.com/2017/11/tca-2017-report-final-revised.pdf (emphasis added). Whether this third party would seek relief against the tribes is unknown, but its actions could affect all parties' interests in sustaining orderly implementation of the 2018 Management Agreement. With clear and direct threats of litigation from third-parties, we respectfully submit that the "duty" that Judge Marsh declared in 1992 of the court to "protect its jurisdiction" so that the "carefully balanced process" is preserved is immediate and compelling.

E. The Parties Have a Long List of Unresolved Issues to Negotiate in the Next Few Years, Which Will Likely Require the Court's (and its Technical Advisor's) Assistance.

While the parties have worked diligently to develop a productive working relationship over the years, the last three years of negotiations revealed there is still a divergence of views on fishery science, management and regulation. Despite

negotiating in good faith for three years, the parties were unable to resolve many of these issues for inclusion in the fisheries harvest and production policy directives in the 2018 Agreement. These include, but are not limited to: actions concerning production programs that may affect the number of fish returning to tribal usual and accustomed fishing places (2018 Agreement at 4); run timing and stock resolution methodology of Snake River spring and summer chinook (2018 Agreement at 28); escapement goals and harvest schedules for upper Columbia River summer chinook (2018 Agreement at 29); steelhead management principles (2018 Agreement at 36-37); and several production issues requiring further development (2018 Agreement at 53-57) (ECF 2607-1).

As mentioned above, the Parties agreed to the 2018 Agreement expecting the Court's retained jurisdiction would continue and with no expectation or notice that the case would be dismissed. Given the number of issues the parties hope to resolve in the coming years, the likely need for the Court's Technical Advisor and judicial review of these issues is high. This is especially so because run sizes in recent years have declined after a series of high returns in some of the most sought-after stocks. *See, e.g.,* 2018 Joint Staff Report: Stock Status and Fisheries, at 58 (Table 1), 65 (Table 8), 70 (Table 12) and 73 (Table 15),
http://www.dfw.state.or.us/fish/OSCRP/CRM/reports/18_reports/2018_spring_jsr.pdf; and
2017 Joint Staff Report: Stock Status and Fisheries at 37 (Table 3) and 42 (Table 8),
http://www.dfw.state.or.us/fish/OSCRP/CRM/reports/17_reports/2017falljsr.pdf.
As the number of fish to harvest becomes more scarce, the number of disputes may increase as evidenced by the parties' previous actions in the 1990s.

To the extent the parties do reach agreement on unresolved issues, the parties will need to document any agreements with modifications to the 2018 Agreement. In the past, the parties submitted those modifications to the Court to amend the Court order approving the operative Agreement. *See, e.g.,* ECF 2569, 2592, 2594, 2595, 2599, and 2601. Absent the Court's retained jurisdiction, it is unclear how that can be accomplished.

Given the number of issues the parties have to negotiate and resolve in the coming years, it is also possible that one or more of the parties may withdraw from the 2018 Agreement, may take harvest or management action inconsistent with the Agreement, or initiate suit against the other parties. Given the current collaboration of the parties it would be regrettable if that did occur. Should that occur, however, timely and meaningful relief will be difficult if not impossible given the availability of the jurisdictional defenses discussed above.

It would be fundamentally inequitable, unfair, and work manifest injustice to all parties to effectively overturn the law of this case and retain jurisdiction only to enforce the 2018 Agreement entered into by the parties, and to dismiss this case. Such a posture eliminates the only existing judicial forum with any subject matter jurisdiction for civil resolution of the disputes that may arise affecting the Treaty fishing rights that are the subject of this case. And, as discussed below, this in turn negatively impacts the co-management decision making among the state, federal, and tribal sovereigns that this Court has consistently urged and supported by ensuring that parties have the ability to obtain judicial relief when necessary.

F. The 2018 Agreement, Like the Prior Fisheries Management Plan and Agreements, Includes a Dispute Resolution Mechanism That is Integrated With This Court's Retained Jurisdiction.

Similar to prior *United States v. Oregon* agreements and plans, the 2018 Agreement integrates this Court's retained jurisdiction in its structure and implementation in the following provisions:

> PREAMBLE: By this Agreement, the Parties have established procedures to facilitate communication and to resolve disputes fairly. It is the intent of the Parties that these procedures will permit the Parties to resolve disputes outside of court, and that litigation will be used only after good faith efforts to settle disagreements through negotiation are unsuccessful.
>
> I.B.1. This Agreement will be submitted as a stipulated order in *United States v. Oregon*, Civil No. 68-513-MO (D.Or). If approved by the Court, this agreement shall be binding on the Parties as a decree of the court.
>
> I.B.2. … The Tribes reserve their rights to seek judicial relief in *United States v. Oregon* with respect to any federal action concerning production programs that may affect the number of fish returning to tribal usual and accustomed fishing places, or that otherwise impact their Treaty-reserved fishing rights.
>
> I.C.7. Emergency matters may require immediate judicial action without compliance with this Section, and nothing in Part I.C.6 shall be construed as limiting a Party's right to seek such relief when those emergency matters arise.
>
> I.D.1. In the event that a dispute arises concerning this Agreement and, after compliance with the foregoing Part I.C.6, to the extent required thereunder, a Party may petition the Court in Case No. 68-513 for a determination of the dispute. Unresolved disputes over matters that are not within the retained jurisdiction in Case No. 68-513, may be submitted to any court having subject matter and personal jurisdiction.
>
> I.D.2. The Parties expect and intend that review by the Court in Case No. 68-513 of any dispute that has been subject to a Policy Committee proceeding under the foregoing Part I.C.6. will be limited to documents or other written materials submitted to or considered by the Policy Committee. The Parties understand that the Court may consider other documents or materials where good cause is shown why such documents

> or materials were not submitted to the Policy Committee during its deliberations. A Party may present oral testimony, declarations or affidavits concerning any documents and materials before the Court.
>
> III.I.1. …. The Parties will consider the relationship of the proposed modification to the overall Agreement and the valuable exchange of consideration the Agreement represents. After considering any modification, the Parties may agree to modify the Agreement, renegotiate the Agreement, or pursue any and all options they may have, including but not limited to dispute resolution pursuant to this Agreement, withdrawal from this Agreement, or initiating legal action.

2018-2027 *United States v. Oregon* Management Agreement (ECF 2607, Exhibit 1).

G. This Court's Retention of Jurisdiction, and the Dispute Resolution Provisions of the 2018 Agreement Effectively Serves the Interests of Judicial Economy.

Retention of jurisdiction, and access to this Court to decide legal disputes that arise in this case, not only ensures judicial resolution of issues that are brought before the Court but also encourages and allows for the sovereign parties to attempt to work out their differences. The parties to this case, will, as they always have, continue to face fishery management issues as they implement the Management Agreement, and there are many issues that all the parties have an interest in continuing to work on. *See* discussion above at page 21.

It is important to appreciate that this Court's retained jurisdiction and the dispute resolution mechanism set forth in the Court-approved agreements and plans have encouraged the resolution of disputes, whether at the technical level, the Policy Committee level, or settlement after filing with the Court but before a hearing. For those disputes that do reach this Court those procedures ensure that the issues have

been fully vetted, narrowed, and precisely presented to this Court for judicial determination.

H. The Court's Orders Work a Manifest Injustice Against These Tribes That Should be Remedied Pursuant to Rules 59(e) and 60(b).

"Manifest injustice" flows from the Court's orders (ECF 2614 and 2615) that depart from the parties' understanding of the continuing jurisdiction framework within which the parties negotiated and agreed to the 2018 Agreement. It is evident from the Management Agreement that the parties carefully considered the court's ongoing jurisdiction in this matter. Section IV.F *supra.* The tribes understood the court's retention of jurisdiction in this case for fifty years to be durable. As discussed in section II *supra*, observations from this Court led these tribes to believe that the Court would continue its jurisdiction in Case No. 68-513.

The tribes did not anticipate a departure from the Court's past practices and were surprised by the Court's decision to dismiss the case and terminate its jurisdiction, especially without hearing from the United States, tribes and other parties. While questions on the merits of continuing jurisdiction have been addressed by the Court and the parties in *United States* v. *Washington*, with ample notice and opportunity to be heard, similar questions have not arisen in *United States v. Oregon* until now. These tribes and other parties did not propose dismissal of this case without prejudice or termination of jurisdiction in their motion or in the 2018 Agreement.

Had the tribes known that case dismissal and termination of the Court's jurisdiction was a topic for consideration let alone a potential outcome of the parties' joint motion and stipulated order, they and likely other parties would have engaged in

negotiating a far broader scope of issues than those contemplated in the 2018 Agreement or in any prior plans or agreements.

The court's termination and dismissal orders impose surprise and manifest injustice upon the tribes who participated in the negotiations of this Agreement on the basis that, as in the past, this Court would retain jurisdiction in this case to safeguard the *res* of this case and resolve disputes whether those disputes involve enforcement of the "partial settlement" that the 2018 Agreement represents, or outside the 2018 Agreement. Without reconsideration and amendment of this Court's recent orders, these fundamental understandings and the protections that retained jurisdiction provides are uncertain.

V. CONCLUSION

This Court's reasoning for retaining jurisdiction set forth in its 1969 Opinion was prescient in describing the unique circumstances of this case involving the intersection of the Treaty-reserved right to take fish at all usual and accustomed places at the heart of this case, the inherent nature of the Indian fishery, and anadromous fishery management in a changing environment. This Court's retained jurisdiction set forth in its 1969 Judgment, continued in full force and effect in its 1974 Judgment, remains necessary to resolve disputes among the parties to this case, to enforce this Court's orders against both parties and non-parties in a judicial forum without presenting dilemmas for related to sovereign immunity or indispensable party status, and to enforce the Management Agreements this Court has encouraged the parties to develop. This Court's retained jurisdiction, integrated in the 2018-2027 *United States v. Oregon*

Management Agreement, serves as a model for dispute resolution, promotes judicial economy, and assists this Court with ensuring the administration of justice. Consequently, the Columbia River Treaty Tribes respectfully request the following relief:

A. Amend paragraph 3 of the *Order Approving 2018-2027 United States v. Oregon Management Agreement* (ECF 2614) to state:

> 3. In the event a dispute arises concerning the Management Agreement, the Parties shall follow the dispute resolution provisions in the Agreement, and in the event a Party or Parties seek judicial review they shall file a timely motion with this Court. This Court's Judgment of October 10, 1969 as amended May 10, 1974 retaining jurisdiction, shall remain in effect, unless expressly modified by this Court.

B. The Parties jointly request relief from the "Order Dismissing Case Without Prejudice" (ECF 2615) to confirm that there continues to be a judicial forum for civil resolution of the disputes that arise affecting the Treaty fishing rights that are subject matter of case 68-513.

Specifically, on the relief from the *Order Dismissing* (ECF 2615), the Tribes believe that the clearest approach would be to withdraw or vacate that order, or in the alternative, to amend that order to provide that this case is not dismissed (and that any

case management tool intended or used, such as the administrative closure the United States references) does not have the jurisdictional consequences that dismissing this case would have on all parties.

DATED 16 April 2018.

Respectfully submitted,

s/Brent H. Hall
Brent H. Hall, OSB #992762
Phone: (541) 429-7407
Fax: (541) 429-7407
brenthall@ctuir.org
Attorneys for Confederated Tribes of the Umatilla Indian Reservation

s/David J. Cummings
David J. Cummings, OSB #92269
Phone: (208) 843-7355
Fax: (208) 843-7377
djc@nezperce.org
Attorneys for Nez Perce Tribe

s/Thomas Zeilman
Thomas Zeilman, WSB # 28470
Phone: (509) 575-1500
tzeilman@qwestoffice.net
Attorney for Confederated Tribes and Bands of the Yakama Nation

/s/John W. Ogan
John W. Ogan, OSB # 065940
Phone: (541) 410-4766
Fax: (541) 719-1263
John.ogan@jwoganlaw.com
Attorney for Confederated Tribes of the Warm Springs Reservation of Oregon

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on April 16, 2018 via the Court's CM/ECF system on all counsel of record.

s/Thomas Zeilman
Thomas Zeilman, WSB # 28470
Phone: (509) 575-1500
tzeilman@qwestoffice.net
Attorney for Confederated Tribes and Bands of the Yakama Nation