10-CV-09213-BCST

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JUN 23 1993
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. STATE OF WASHINGTON, et al., Defendants.	NO. 9213 ORDER DISMISSING WITHOUT PREJUDICE PHASE II AND CERTAIN SUBPROCEEDINGS IN PHASE I

cc: cmsl, BJR, ER, JLW

HAVING reviewed the responses of the parties to the interrogatories propounded by the court on February 10, 1993, the court's proposed "Sunset Order," and an earlier draft version of this order, and having held a status conference on Thursday, June 10, 1993, the court hereby finds and rules as follows:

1. Phase II. The United States Court of Appeals for the Ninth Circuit addressed Phase II of this case in United States v. Washington, 759 F.2d 1353 (en banc) (9th Cir. 1983). The Ninth Circuit affirmed this court's determination as to hatchery fish, but reversed the declaratory judgment entered by this court that the State had a duty to refrain from degrading or

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authorizing the degradation of the fish habitat to an improper degree. The Ninth Circuit concluded that this issue was not appropriate for resolution by declaratory judgment, and added:

> The legal standards that will govern the State's precise obligations and duties under the treaty with respect to the myriad State actions that may affect the environment of the treaty area will depend for their definition and articulation upon concrete facts which underlie a dispute in a particular case.

759 F.2d at 1357. In the ten years since the Court of Appeals decision in 1983, there has been little or no activity by any party in Phase II of this case.

In light of the determination by the Ninth Circuit, and the failure to prosecute for a decade, Phase II is DISMISSED without prejudice to the right of any party to raise the issue in any subproceeding in which that party alleges "concrete facts which underlie a dispute in a particular case."

2. Sub-Proceedings 80-1, 80-2, 83-7, 87-5, and 92-2. It appears that these five subproceedings have been concluded and require no further action by the court. Each of these subproceedings is therefore DISMISSED without prejudice.

3. "Moderate Living". The State of Washington filed a "Request for Determination Moderate Living" on June 20, 1980. The Request did not receive a subproceeding designation because it was filed before that numbering system began. The State has not pursued the Request in the 13 years since it was filed. It is therefore DISMISSED without prejudice. To the extent "moderate living" has been raised as an issue in other active subproceedings, it may be resolved in those subproceedings.

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4. Active Subproceedings. The Court deems only the following subproceedings to be active and pending: 83-3, 83-4, 83-5, 86-2, 86-5, 86-7, 88-1, 89-2, 89-3, 90-1, 91-1, and 92-1. Subproceeding 89-3 is pending before Judge Rafeedie. All other active subproceedings are pending before Chief Judge Rothstein.

DATED at Seattle, Washington this 22nd day of June, 1993.

BARBARA J. ROTHSTEIN
CHIEF UNITED STATES DISTRICT JUDGE

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Point No Point Treaty Council

Port Gamble S'Klallam • Lower Elwha Klallam • Jamestown Klallam • Skokomish

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JUN 12 1993

1993 Lower Elwha S'Klallam Summer/Fall Chinook Regulations #93-02

These regulations shall apply to the Lower Elwha S'Klallam Commercial fisheries on and off reservation in the management areas described below.

Section I. General Provisions

Topic 1. Management Areas

Elwha River, and that portion of Area 6C known as Freshwater Bay, lying south of a line drawn from Angeles Point to Observatory Point (Bachelor Rock).

Topic 2. Management Periods

Elwha River: July 18, 1993 through September 18, 1993.

Area 6C (Freshwater Bay): June 27, 1993 through August 14, 1993.

Topic 3. Legal Gear

Elwha River: Set gillnets with minimum stretched mesh size of 6-1/2 inches, with a maximum off-shore length of 20 fathoms and a maximum lead length of 3 fathoms, not to exceed more than one-half of the river cross section, which is navigable by adult salmon at a particular tidal and/or river stage.

Area 6C (Freshwater Bay): Set gillnets with a minimum stretched mesh size of 6-1/2 inches, and maximum length of 150 fathoms.

Section II. Areas and Times Opened

Elwha River: Closed until further notice.
Freshwater Bay: Open June 27, 1993 through August 8, 1993, 7 days a week, 24 hours a day.

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Section III. Fishing Restrictions

A. The area within a 1000 ft. radius from the mouth of each channel of the Elwha River shall remain closed to all fishing unless opened by emergency regulations.

B. A minimum distance of 300 feet in Freshwater Bay and 150 feet in the Elwha River must be maintained between all setnet gear in the area.

C. All setnet gear must be lifted and catches removed at least once in each 24-hour period.

Section IV. Emergency Regulations

Openings as well as restrictions outlined in this regulation may be modified at any time by emergency regulation based on in-season management considerations.

Section V. Expected Effort and Harvest

A. Estimates of expected effort have been submitted separately.

B. The Lower Elwha Klallam Tribe intends to fully harvest its lawful share of summer/fall chinook salmon.

Section VI. Authority

This regulation is promulgated by the Lower Elwha Fisheries Manager under authority specified by the Lower Elwha Klallam Fishing Ordinance.

Patrick V. Crain, Fishery Manager
Lower Elwha Klallam Tribe

"I certify that copies of this document were mailed prepaid on June 10, 1993 to all persons required by the Federal District Court's Order of March 1, 1976."

Signed Liz Romero

Title Fisheries Secretary

U.S. v. WASHINGTON
CIVIL NO. 9213 - PHASE I & II
CERTIFICATE OF SERVICE - MAILING LIST

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