cc to judge kam

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, et al., Plaintiffs, v. STATE OF WASHINGTON, et al., Defendants.	Civil No. 9213 ORDER MODIFYING PARAGRAPH 25 OF PERMANENT INJUNCTION

Paragraph 25 of the court's March 22, 1974, permanent injunction (384 F. Supp. at 419) is modified to provide as follows:

25. (a) The parties or any of them may invoke the continuing jurisdiction of this court in order to determine:

(1) Whether or not the actions intended or effected by any party (including the party seeking a determination) are in conformity with Final Decision # 1 or this injunction;

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(2) Whether a proposed state regulation is reasonable and necessary for conservation;

(3) Whether a tribe is entitled to exercise powers of self-regulation;

(4) Disputes concerning the subject matter of this case which the parties have been unable to resolve among themselves;

(5) Claims to returns of seized or damaged fishing gear or its value, as provided for in this injunction;

(6) The location of any of a tribe's usual and accustomed fishing grounds not specifically determined by Final Decision # I; and

(7) Such other matters as the court may deem appropriate.

(b) To invoke this court's continuing jurisdiction, the party seeking relief shall initiate a subproceeding in this action by filing a request for determination. Subproceedings will be conducted in accordance with the following procedures:

(1) Before a request for determination is filed (except for an emergency matter, addressed below), the party seeking relief ("requesting party") shall meet and confer with all parties that may be directly affected by the request ("affected party") and attempt to negotiate a settlement of the matter in issue. Counsel for the requesting party shall be

responsible for scheduling the initial meeting and shall notify all parties to this action of the time and place of the meeting. All affected parties shall cooperate by participating in such a meeting when requested to do so upon reasonable notice from the requesting party. Policy representatives of and counsel for the participating parties shall be present at the meeting. In addition to other matters the parties may wish to address, the parties shall discuss at the meeting (A) the basis for the relief sought by the requesting party; (B) the possibility of settlement; (C) whether the matter is properly one for the Fisheries Advisory Board (FAB); (D) identification of technical issues relevant to the matter in controversy, areas of agreement and disagreement on such issues, and methods for developing an agreed technical basis to narrow or resolve the controversy; (E) whether independent extra-judicial actions (e.g., regulatory action by a government agency) may remove the need for or warrant deferral of an adjudication; (F) whether earlier rulings of the court may have addressed or resolved the matter in issue in whole or in part; and (G) whether the parties can agree to mediation or arbitration of the issues before or in lieu of litigation. The parties shall continue to meet and negotiate as long as there appears to them to be a substantial possibility of settlement. If the negotiations fail, the parties may proceed to mediation in

accordance with subparagraph (b)(2) or, absent mediation, the requesting party may file its request for determination. Except as provided in subparagraph (b)(7), no request for determination shall be filed sooner than 15 days after the conclusion of negotiations.

(2) If the requesting party and the affected parties are unsuccessful in negotiating a solution to the issue in accordance with subparagraph (b)(1), the requesting party or any affected party may demand mediation within 12 days after the conclusion of the unsuccessful negotiations. Notice of demand for mediation shall be served upon all parties to this action. The requesting party and all affected parties shall participate in the mediation, which shall be conducted pursuant to local Civil Rule 39.1(c)(3)-(7). The requesting party or an affected party may move the court for an order (A) compelling mediation under this subparagraph or (B) waiving mediation under this subparagraph or relieving the moving party from any obligation to participate in a mediation. Unless agreed or ordered otherwise, the parties participating in the mediation will share the mediator's fees and related expenses on a pro rata basis.

(3) After complying with the foregoing requirements (including Rule 39.1 mediation if applicable), a party seeking relief shall file with the clerk

of this court and serve upon all other parties (through their counsel of record, if any) a "request for determination," not to exceed twelve pages in length. The request for determination shall contain a short and plain statement setting forth the factual and legal basis of the claim for relief or other matter presented to the court, and a statement of the relief sought by the requesting party. The request shall not contain legal argument or be accompanied by submission of evidence. Counsel for the requesting party shall file with the request for determination a declaration attesting to that party's compliance with the requirements of subparagraph (b)(1).

(4) A party wishing to file a response to a request for determination shall do so no later than sixty days after the filing date of the request. A party responding to a request may assert a counter-request for determination if such counter-request relates directly to the subject matter of the request for determination. Cross-requests between respondents are discouraged and shall be permitted only with prior permission of the court. Counsel for parties participating in a subproceeding shall submit a separate notice of appearance with the party's request for determination or before or with the party's response.

(5) Motion practice, discovery and case scheduling in subproceedings initiated under this

paragraph 25 shall be conducted in accordance with the Federal Rules of Civil Procedure and the general and civil rules of this court. Each subproceeding shall be subject to local Civil Rule 39.1. The court and the parties may employ the procedures provided by Rule 39.1 to the same extent as if the subproceeding were a separate action, but where the parties have participated in a pre-filing mediation pursuant to subparagraph (b)(2), the court will not require a second mediation in the subproceeding except upon agreement of the requesting party and a majority of the adverse respondents.

(6) No later than ninety days after the initiation of a subproceeding by a request for determination, any party seeking referral of the matter to a special master or United States Magistrate Judge shall file a motion seeking such referral and specifying whether the party seeks appointment of a special master or magistrate judge and the nature of the functions the party proposes to have delegated to that officer. Referrals to special masters or magistrate judges shall be made on a case by case basis, in the discretion of the court, pursuant to Fed. R. Civ. P. 53 or 28 U.S.C. § 636(b). To facilitate appointment of special masters and mediators, the court will maintain a register of persons who are qualified and available to serve in such capacities in this action. The parties may nominate

persons to be named on the register, and the court will consider the nomination on the basis of the candidate's qualifications and the extent of support for the nomination among the parties. Parties may propose persons not named on the register for appointment in individual subproceedings. The parties shall proffer their initial nominations to the court by October 1, 1993.

(7) Any party may seek determination of an emergency matter subject to satisfaction of the following conditions: (A) the party shall initiate a subproceeding (if not previously initiated) by filing and serving on all parties a request for determination; (B) the requesting party shall file with the request and serve on all parties a motion for temporary restraining order or preliminary injunction, which shall comply with and be decided in accordance with the civil rules and legal standards generally governing such motions; and (C) the requesting party shall file and serve a declaration of counsel stating that the party has made a bona fide effort to resolve the emergency issue with the affected parties and has failed to do so; that actual notice of the motion has been provided to each party that is the subject of the motion; and that the matter in issue constitutes an emergency in the judgment of the party and its attorney. Motions for temporary restraining orders shall be filed only in circumstances where irreparable harm is likely to occur before a

hearing on a motion for preliminary injunction can be scheduled.

(8) Upon receipt of a motion for temporary restraining order or preliminary injunction complying with subparagraph (b)(7), the court will advise the parties of the time and date for hearing, whether further briefing will be required before hearing, and whether oral testimony will be permitted or required at the hearing. Unless the ruling on the motion for temporary restraining order or preliminary injunction finally disposes of the request for determination in its entirety, the request shall be decided in accordance with this paragraph 25 in the ordinary course of the court's business.

(9) Except as specifically provided in this paragraph, this injunction shall not alter or deprive the parties of any right to bring motions or other matters before this Court as provided in the Federal Rules of Civil Procedure.

Dated in Seattle, Washington this 23rd day of August, 1993.

BARBARA J. ROTHSTEIN
CHIEF UNITED STATES DISTRICT JUDGE