

cc to judge kam



91-CR-00292-PRAE

No orig  
Sign

FILED  
LOGGED  
ENTERED  
RECEIVED

AUG 11 1993

AT SEATTLE  
DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
CLERK U.S.  
BY

FILED  
AUG 11 1993  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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

cc: Bill, L.H., and J.P.

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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;

18599

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

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

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

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

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

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

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

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

1 responsible for scheduling the initial meeting and shall  
2 notify all parties to this action of the time and place  
3 of the meeting. All affected parties shall cooperate by  
4 participating in such a meeting when requested to do so  
5 upon reasonable notice from the requesting party.

6 Policy representatives of and counsel for the partici-  
7 pating parties shall be present at the meeting. In  
8 addition to other matters the parties may wish to  
9 address, the parties shall discuss at the meeting (A)  
10 the basis for the relief sought by the requesting party;  
11 (B) the possibility of settlement; (C) whether the  
12 matter is properly one for the Fisheries Advisory Board  
13 (FAB); (D) identification of technical issues relevant  
14 to the matter in controversy, areas of agreement and  
15 disagreement on such issues, and methods for developing  
16 an agreed technical basis to narrow or resolve the  
17 controversy; (E) whether independent extra-judicial  
18 actions (e.g., regulatory action by a government agency)  
19 may remove the need for or warrant deferral of an  
20 adjudication; (F) whether earlier rulings of the court  
21 may have addressed or resolved the matter in issue in  
22 whole or in part; and (G) whether the parties can agree  
23 to mediation or arbitration of the issues before or in  
24 lieu of litigation. The parties shall continue to meet  
25 and negotiate as long as there appears to them to be a  
26 substantial possibility of settlement. If the negotia-  
27 tions fail, the parties may proceed to mediation in

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

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

25 (3) After complying with the foregoing  
26 requirements (including Rule 39.1 mediation if applica-  
27 ble), a party seeking relief shall file with the clerk

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

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

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

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

13 (6) No later than ninety days after the  
14 initiation of a subproceeding by a request for determ-  
15 ination, any party seeking referral of the matter to a  
16 special master or United States Magistrate Judge shall  
17 file a motion seeking such referral and specifying  
18 whether the party seeks appointment of a special master  
19 or magistrate judge and the nature of the functions the  
20 party proposes to have delegated to that officer.  
21 Referrals to special masters or magistrate judges shall  
22 be made on a case by case basis, in the discretion of  
23 the court, pursuant to Fed. R. Civ. P. 53 or 28 U.S.C.  
24 § 636(b). To facilitate appointment of special masters  
25 and mediators, the court will maintain a register of  
26 persons who are qualified and available to serve in such  
27 capacities in this action. The parties may nominate

1 persons to be named on the register, and the court will  
2 consider the nomination on the basis of the candidate's  
3 qualifications and the extent of support for the nomina-  
4 tion among the parties. Parties may propose persons not  
5 named on the register for appointment in individual sub-  
6 proceedings. The parties shall proffer their initial  
7 nominations to the court by October 1, 1993.

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

1 hearing on a motion for preliminary injunction can be  
2 scheduled.

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

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

20 Dated in Seattle, Washington this 23<sup>rd</sup> day of August, 1993.

21   
22 BARBARA J. ROTHSTEIN  
23 CHIEF UNITED STATES DISTRICT JUDGE  
24  
25  
26  
27