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Honorable Ricardo S. Martinez

IN THE 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.

No. C70-9213 RSM

STIPULATION AND ORDER
REGARDING BOUNDARIES OF
HOH INDIAN TRIBE U&A

Pursuant to LCR 7(d)(1) and LCR 10(g), the Hoh Indian Tribe (“Hoh” or “Hoh Tribe”),
Quileute Indian Tribe (“Quileute”), Quinault Indian Nation (“Quinault”), State of
Washington (“State”), and Makah Indian Tribe (“Makah”) (collectively, the “Stipulating
Parties”), through their undersigned counsel of record, hereby stipulate to the following:

STIPULATION

WHEREAS, the undersigned Stipulating Parties are parties to the ongoing litigation in
United States v. Washington, Case No. C70-9213 RSM in the United States District Court for
the Western District of Washington;

WHEREAS, the Hoh Tribe seeks a determination solely of the western boundary of its
Pacific Ocean treaty-based usual and accustomed fishing grounds and stations (“U&A”),

1 reserved under the Treaty of Olympia, 12 Stat. 971, beyond the three nautical mile ocean
2 boundary of State jurisdiction;

3 WHEREAS, on September 2, 2020, the Hoh Tribe held a meet and confer pursuant to
4 the requirements of Paragraph 25 of the Permanent Injunction of March 22, 1974, 384 F. Supp.
5 312 (W.D. Wash. 1974), as amended and supplemented by the Order Modifying Paragraph 25
6 of the Permanent Injunction dated August 23, 1993 (Dkt. 13599) and the Amended
7 Supplemental Order on Paragraph 25 Procedures dated November 20, 2012 (Dkt. 20254)
8 (collectively, the “Permanent Injunction”), in which the Stipulating Parties engaged in
9 preliminary settlement discussions and ascertained that a stipulated resolution regarding the
10 western boundary of the Hoh Tribe’s Pacific Ocean treaty-based U&A should be possible;

11 WHEREAS, the Hoh Tribe exchanged information regarding the factual and legal basis
12 for the western boundary of its Pacific Ocean treaty-based U&A with the Stipulating Parties,
13 which exchanges included other parties to *U.S. v. Washington*;

14 WHEREAS, on May 26, 2023, the Hoh Tribe reconvened the meet and confer at the
15 request of Makah, which was attended by the Stipulating Parties and other parties to *U.S. v.*
16 *Washington*;

17 WHEREAS, the Stipulating Parties, mindful of the Court’s persistent encouragement
18 for the parties of *U.S. v. Washington* to reach agreement without the need for a determination
19 by the Court, especially on the issue of treaty fishing U&A areas, *see, e.g.*, Order Granting
20 S’Klallam and Squaxin Island Tribes’ Motions for Summary Judgment and Denying
21 Skokomish Indian Tribe’s Cross-Motion for Summary Judgment in Subproceeding 17-03 dated
22 August 30, 2017 at 18 (Dkt. 21555) (“Time and time again, this Court has stated that the Tribes
23 are in the best position to craft agreements that will adequately meet their needs.”), engaged in

1 further exchanges of information and settlement discussions, through which they reached
2 agreement on the terms of the present Stipulation and proposed Order regarding the western
3 boundary of the Hoh Tribe’s Pacific Ocean treaty-based U&A; and

4 WHEREAS, the Hoh Tribe agrees that entry of this Stipulation and Order will
5 satisfactorily resolve the western boundary of the Hoh Tribe’s Pacific Ocean treaty-based
6 U&A.

7 NOW THEREFORE, THE STIPULATING PARTIES STIPULATE AS FOLLOWS:

8 (1) The western boundary of the Hoh Tribe’s Pacific Ocean treaty-based U&A has not
9 previously been “specifically determine[d]” by the Court in Final Decision #1, 384
10 F. Supp. 312, or pursuant to Paragraph 25(a)(6) of the Permanent Injunction;

11 (2) Although the Stipulating Parties may dispute certain information shared by the Hoh
12 Tribe, the direct evidence and reasonable inferences drawn from documentary
13 exhibits, expert testimony, and other relevant sources, *U.S. v. Washington*, 129 F.
14 Supp. 3d 1069, 1110 (W.D. Wash. 2015) (citing *U.S. v. Washington*, 626 F. Supp.
15 1405, 1531 (W.D. Wash. 1985)), viewed in light of applicable law are sufficient to
16 support a western boundary of the Hoh Tribe’s Pacific Ocean treaty-based U&A
17 located 30 or 40 nautical miles from the mainland Pacific coast shoreline,
18 depending on the latitude (as specified in (4) below);

19 (3) Certain findings of fact and conclusions of law in Final Decision #1, in which the
20 Hoh Tribe was a party, and Subproceeding No. 09-01, 129 F. Supp. 3d 1069 (W.D.
21 Wash. 2015), in which the Hoh Tribe was an interested party, also support a
22 western boundary of the Hoh Tribe’s Pacific Ocean treaty-based U&A located 30 or
23

1 40 nautical miles from the mainland Pacific coast shoreline, depending on the
2 latitude (as specified in (4) below);

3 (4) Consistent with the Amended Order Regarding Boundaries of Quinault and
4 Quileute U&As in Subproceeding 09-01 dated March 21, 2018 (Dkt. 449), a
5 narrative description of the Hoh Tribe's ocean offshore U&A is:

6 **Hoh offshore U&A:** A polygon commencing at the Pacific coast shoreline near the
7 mouth of the Quillayute River, located at latitude 47°54'30" north, longitude
8 124°38'31" west; then proceeding west approximately forty nautical miles at that
9 latitude to a northwestern point located at latitude 47°54'30" north, longitude
10 125°38'18" west; then proceeding in a southeasterly direction mirroring the
11 coastline at a distance no farther than forty nautical miles from the mainland Pacific
12 coast shoreline, to a point located at latitude 47°31'42" north, longitude 125°20'26"
13 west, then proceeding east along that line of latitude approximately ten nautical
14 miles to a point located at latitude 47°31'42" north, longitude 125°5'48" west,
15 then proceeding in a southeasterly direction mirroring the coastline at a distance no
16 farther than thirty nautical miles from the mainland Pacific coast shoreline to a
17 point located at latitude 47°21'00" north, longitude 125°2'52" west; then
18 proceeding east along that line of latitude to the Pacific coast shoreline near the
19 mouth of the Quinault River, located at latitude 47°21'00" north, longitude
20 124°18'8" west;

21 (5) The Hoh Tribe expressly reserves the right to seek a determination pursuant to
22 Paragraph 25(a)(6) of the Permanent Injunction of the latitudinal northern and/or
23 southern ocean boundaries of its Pacific Ocean treaty-based U&A in the future, but

1 in no event will the Hoh Tribe claim U&A north of a line drawn westerly from the
2 Norwegian Memorial along latitude 48°2'15" north; and provided further that by
3 entering into this Stipulation no Stipulating Party waives any claims, defenses, or
4 arguments relating to a future request for determination of the Hoh Tribe's northern
5 or southern U&A boundaries pursuant to Paragraph 25(a)(6); and

6 (6) Nothing in this Stipulation or proposed Order modifies, amends, or otherwise alters
7 any finding of fact, conclusion of law, or order of the Court in Final Decision #1 or
8 Subproceeding 09-01. Nothing in this Stipulation or proposed Order may be
9 construed as a waiver by any Stipulating Party of any claims, defenses, or
10 arguments relating to any future request for determination of a Tribal Stipulating
11 Party's U&A, except with respect to: (a) the Hoh Tribe's commitment in (5) above
12 that it will not claim U&A north of 48°2'15"; and (b) the western boundary of the
13 Hoh Tribe's Pacific Ocean treaty-based U&A that is the subject of this Stipulation.

14 (7) The Stipulating Parties agree that this Stipulation may be entered as an order of the
15 Court in the Court's exercise of its continuing jurisdiction in the main case of *U.S.*
16 *v. Washington* because the Stipulating Parties have reached a settlement and
17 agreement regarding the western boundary of the Hoh Tribe's Pacific Ocean treaty-
18 based U&A through the Permanent Injunction's Paragraph 25(b)(1) procedures,
19 which are designed and intended to resolve issues in the case without resort to
20 litigation, in precisely the manner demonstrated by this Stipulation. Further, the
21 subject of the Stipulation is appropriate for an order of the Court because entry of
22 orders regarding Tribal U&As has been a core function of the Court throughout the
23 long history of this case. Accordingly, the Stipulating Parties request that the Court

1 enter an order in the main case adopting their settlement and agreement regarding
2 the western boundary of the Hoh Tribe’s Pacific Ocean treaty-based U&A because
3 there are no remaining issues requiring resolution in a new subproceeding.

4 However, in the event the Court, after an opportunity for briefing and argument,
5 were to determine that filing of a separate “Request for Determination” (RFD) is
6 necessary to enter this stipulated proposed Order, the Stipulating Parties agree that:
7 (1) the Paragraph 25(b)(1) pre-conditions necessary for the filing of an RFD have
8 been satisfied; and (2) the Hoh Tribe may proceed with filing an RFD, which shall
9 consist in material part of this Stipulation and proposed Order.

10 (8) The Stipulating Parties respectfully request that the Court defer adoption of the
11 proposed Order for 30 days in order to provide *U.S. v. Washington* parties with
12 notice and an opportunity to review and submit any views to the Court regarding
13 this Stipulation and proposed Order. In the event of any submissions, the
14 Stipulating Parties request 14 days from the end of the 30-day period to respond.

15
16 Respectfully submitted this 16th day of October 2023.

17 *Attorneys for the Hoh Indian Tribe*

Attorneys for the Quileute Indian Tribe

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1 **ORDER**

2 The Stipulating Parties having assented to the foregoing Stipulation as evidenced by the
3 signatures of their respective counsel of record, it is hereby

4 ORDERED THAT THIS STIPULATION IS HEREBY ADOPTED AS AN ORDER
5 OF THIS COURT.

6 DATED this 16th day of November, 2023.

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8 RICARDO S. MARTINEZ
9 UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2023, I electronically filed the Stipulation and [Proposed] Order Regarding Boundaries of Hoh Indian Tribe U&A with the clerk of the court using the CM/ECF system which will send notice of the filing to all parties registered in the CM/ECF system for this matter.

DORSAY & EASTON LLP

/s/ Craig J. Dorsay

Craig J. Dorsay, WSBA #9245