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6   UNITED STATES DISTRICT COURT

7   EASTERN DISTRICT OF WASHINGTON

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9 JOSEPH A. PAKOOTAS, an individual

10 and enrolled member of the Confederated   No. 2:04-CV-00256-SAB

11 Tribes of the Colville Reservation; and

12 DONALD R. MICHEL, an individual and   **ORDER GRANTING JOINT**

13 enrolled member of the Confederated   **MOTION AS TO CERTAIN**

14 Tribes of the Colville Reservation; and   **AFFIRMATIVE DEFENSES**

15 THE CONFEDERATED TRIBES OF

16 THE COLVILLE RESERVATION,

17   Plaintiffs,

18   *and*

19 THE STATE OF WASHINGTON,

20   Plaintiff-Intervenor,

21   v.

22 TECK COMINCO METALS, LTD., a

23 Canadian corporation,

24   Defendant.

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**ORDER GRANTING JOINT MOTION AS TO CERTAIN
AFFIRMATIVE DEFENSES** #1

A motions hearing was held in the above-captioned matter on December 14, 2023 in Spokane, Washington. Defendant was represented by Deborah Baum, Amanda Halter, Deanna Willman, and Ashleigh Myers. Plaintiff Pakootas and the Confederated Tribes of the Colville Reservation were represented by Paul Dayton. Intervenor-Plaintiff State of Washington was represented by Joshua Osborne-Klein and Dylan Stonecipher.

Pending before the Court was Plaintiffs' Motion for Partial Summary Judgment on Certain Affirmative Defenses, ECF No. 2771, Defendant's Motion for Partial Summary Judgment on Plaintiffs' Joint Natural Resource Damage Claims, ECF No. 2774, and Defendant's Motion for Partial Summary Judgment on the Colville Tribes' "Tribal Service Loss" Claims, ECF No. 2777.

At the hearing, the Court heard oral argument on Defendant's two motions for partial summary judgment. The Court took both motions under advisement. As to Plaintiff's motion for partial summary judgment, Defendant indicated that the motion did not need to be argued because Defendant no longer wished to utilize affirmative defenses 10 – 16 in answer to CCT's Fourth Amended Complaint and affirmative defenses 15 – 21 in answer to Washington State's Fifth Amended Complaint. *See* ECF Nos. 2117 and 2569. The Court interpreted this as stipulation and granted Plaintiffs' motion.

Accordingly, **IT IS HEREBY ORDERED**:

1.　　Plaintiffs' Motion for Partial Summary Judgment on Certain Affirmative Defenses, ECF No. 2771, is **GRANTED**.

2.　　Affirmative Defenses 10 – 16, listed in ECF No. 2117, are **DISMISSED**.

　　　　　No. 10 – Harm Was Not Caused by Defendant

　　　　　No. 11 – Any Harm Suffered Was Caused by Plaintiff/Third-Parties

　　　　　No. 12 – Disposal and Release not at Same Facility

ORDER GRANTING JOINT MOTION AS TO CERTAIN AFFIRMATIVE DEFENSES #2

No. 13 – Joint and Several Liability Not Permitted

No. 14 – Apportionment

No. 15 – Release Caused by a Third Party

No. 16 – Release Permitted by Law

3.   Affirmative Defenses 15 – 21, listed in ECF No. 2569, are

DISMISSED.

No. 15 – Harm Was Not Caused by Defendant

No. 16 – Any Harm Suffered Was Caused by the State/Third

Parties

No. 17 – Disposal and Release Not at Same Facility (CERCLA)

No. 18 – Joint and Several Liability Not Permitted

No. 19 – Liability Proportionate to Apportionment

No. 20 – Release Caused by a Third Party

No. 21 – Release Permitted by Law

IT IS SO ORDERED. The District Court Clerk is hereby directed to enter this Order and to provide copies to counsel.

DATED this 27th day of December 2023.

Stanley A. Bastian
Chief United States District Judge

ORDER GRANTING JOINT MOTION AS TO CERTAIN AFFIRMATIVE DEFENSES #3