

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 10, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSEPH A. PAKOOTAS, an individual
and enrolled member of the Confederated
Tribes of the Colville Reservation; and
DONALD R. MICHEL, an individual and
enrolled member of the Confederated
Tribes of the Colville Reservation, and
THE CONFEDERATED TRIBES OF
THE COLVILLE RESERVATION,

Plaintiffs,

and

THE STATE OF WASHINGTON,
Plaintiff-Intervenor,

v.

TECK COMINCO METALS, LTD., a
Canadian corporation,
Defendant.

No. 2:04-CV-00256-SAB

**ORDER DENYING MOTION
FOR RECONSIDERATION**

Before the Court is Plaintiff Confederated Tribes of the Colville
Reservation’s Motion for Reconsideration or in the Alternative for Immediate
Review Pursuant to 28 U.S.C. § 1292, ECF No. 2838.

ORDER DENYING MOTION FOR RECONSIDERATION # 1

1 Plaintiff Confederated Tribes of the Colville Reservation (CCT) requests
2 that the Court reconsider its Order Granting Defendant’s Motion for Partial
3 Summary Judgment on Cultural Resource Damages, ECF No. 2831, or certify the
4 controlling issues of law for appeal to the Ninth Circuit Court of Appeals pursuant
5 to 28 U.S.C. § 1292(b).

6 CCT argues that CCT had not previously asserted any claims for “cultural
7 resource damages” under the Comprehensive Environmental Response,
8 Compensation, and Liability Act (CERCLA) and Teck’s motion encouraged this
9 error by conflating resource injury and resulting service loss by labelling them both
10 “cultural.” CCT states that this framing misconstrued CCT’s natural resource
11 damage claim and distracted this Court from the regulatory framework and
12 supporting authority. Upon review, and being fully informed, this Court disagrees
13 and denies the motion and certifies the controlling issues of law for appeal
14 pursuant to 28 U.S.C. § 1292(b).

15 Reconsideration is an extraordinary remedy, to be used sparingly in the
16 interests of finality and conservation of judicial resources.” *Kona Enterprises, Inc.*
17 *v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). A motion for
18 reconsideration may be reviewed under either Federal Rule of Civil Procedure
19 59(e) (motion to alter or amend a judgment) or 60(b) (relief from judgment). *Sch.*
20 *Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). “A district court
21 may properly reconsider its decision if it ‘(1) is presented with newly discovered
22 evidence, (2) committed clear error or the initial decision was manifestly unjust, or
23 (3) if there is an intervening change in controlling law.’” *Smith v. Clark Cnty. Sch.*
24 *Dist.*, 727 F.3d 950, 955 (9th Cir. 2013) (quoting *Sch. Dist. No. 1J*, 5 F.3d at 1263).
25 “There may also be other, highly unusual, circumstances warranting
26 reconsideration.” *Sch. Dist. No. 1J*, 5 F.3d at 1263. Whether to grant a motion for
27 reconsideration is within the sound discretion of the court. *Navajo Nation v.*
28

1 *Confederated Tribes and Bands of the Yakima Nation*, 331 F.3d 1041, 1046 (9th
2 Cir. 2003).

3 Plaintiff did not meet the standard for reconsideration outlined in case law.
4 No new evidence was discovered, nor did the Court commit clear error or make an
5 initial determination that was manifestly unjust, and there was not an intervening
6 change in controlling law. Whether termed cultural resource damages or lost
7 services, this is not the type of loss contemplated by Congress when passing and
8 amending CERCLA. Therefore, CCT's motion for reconsideration is denied and
9 the Court certifies this issue for appeal pursuant to 28 U.S.C. § 1292(b)

10 Accordingly, **IT IS HEREBY ORDERED:**

11 1. Plaintiff Confederated Tribes of the Colville Reservation's Motion for
12 Reconsideration or in the Alternative for Immediate Review Pursuant to 28 U.S.C.
13 § 1292, ECF No. 2838, is **DENIED**.

14 2. The controlling issues of law related to service loss/cultural resource
15 damages under CERCLA are certified for appeal pursuant to 28 U.S.C. § 1292(b).

16 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to file
17 this Order and provide copies to counsel.

18 **DATED** this 10th day of April 2024.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

24 Stanley A. Bastian
25 Chief United States District Judge
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