UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, et al., Plaintiffs, and SAMISH INDIAN NATION Plaintiff-Intervenor, v. STATE OF WASHINGTON, et al., Defendants.	NO. C70-9213 Subproceeding No. 01-2 ORDER DENYING THE SAMISH TRIBE'S MOTION TO REOPEN JUDGMENT

cc: BJR, 9213 ens!

THIS MATTER comes before the court on the Samish Indian Tribe's (hereinafter "Samish" or "Tribe") motion, filed pursuant to Rule 60(b)(6), to reopen the judgment in United States v. Washington, 476 F. Supp. 1101 (W.D. Wash. 1979), aff'd 641 F.2d 1368 (9th Cir. 1981). In this motion, the Tribe argues that its 1996 federal recognition from the Department of Interior is an "extraordinary circumstance" that warrants reexamination of its treaty fishing rights under the Treaty of Point Elliott, which rights were previously denied the Tribe. Nine of the 22 treaty tribes (referred to herein as the "Opposition Tribes"), fearing

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dilution of their fish harvest and disruption of long-standing allocation and management agreements, oppose the Samish's motion, as does, by separate pleading, the United States.[1] The Opposition Tribes and the United States believe both that there are procedural bars to the Samish's motion and that the Tribe's federal recognition is not an "extraordinary circumstance" that justifies reopening this case.

Having reviewed the documents filed in support of and in opposition to this motion, and considered the parties' oral arguments, the court finds and rules as follows:

I. BACKGROUND

A. Treaty Fishing Rights

In 1970, the United States, on its own behalf and as trustee for seven Indian tribes, brought suit seeking an injunction requiring the State to protect those tribes' share of runs of anadromous fish. Seven other tribes intervened as plaintiffs. In 1974, United States District Judge Boldt ruled that all fourteen tribes had treaty fishing rights under several Indian treaties, including the Treaty of Point Elliott, which entitled them to take up to fifty percent of the harvestable fish passing through their off-reservation fishing grounds. United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974) ("Washington I").

[1]The State of Washington has filed a brief statement of non-opposition to the Samish's motion.

Washington I declared the treaty fishing rights of only those "14 Indian entities" that had participated as plaintiffs in that proceeding and that were defined as "Treaty Tribes" in the ruling.[2] 384 F. Supp. at 405. Washington I contemplated that additional Indian entities might become parties in the case if any such entities demonstrated that it was "entitled to exercise fishing rights under the treaties construed herein within the Western District of Washington." Id.

On September 20, 1974, shortly after Judge Boldt's initial decision, the Samish Tribe, as well as the Duwamish, Snohomish, Steilacoom, and Snoqualmie Tribes, moved to intervene in United States v. Washington, to assert their own treating fishing rights. Judge Boldt referred the issue of the Samish's treaty status to Magistrate Judge Robert Cooper sitting as a Special Master. After a five-day trial, Magistrate Judge Cooper determined that the Samish was neither a treaty tribe nor a political successor to the signatory treaty tribe.

The Samish appealed this determination to Judge Boldt, who thereafter conducted a *de novo* evidentiary hearing. The Samish submitted additional evidence to Judge Boldt, who heard argument

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[2]On appeal, the State challenged Judge Boldt's confirmation of Treaty rights for the then-unrecognized Stillaguamish and Upper Skagit, Sauk-Suiattle tribes, which thereafter attained federal recognition between Judge Boldt's decision and the appeal. The Ninth Circuit affirmed Judge Boldt's conclusion that these tribes were entities possessing treaty rights, holding that "[n]onrecognition of the tribe by the federal government . . . can have no impact on vested treaty rights." United States v. Washington, 520 F.2d 676, 692 (9th Cir. 1975).

in January 1977. Judge Boldt issued his decision in March 1979, ruling that the Samish were not a Treaty Tribe as defined in Washington I and that its members were not entitled to exercise treaty rights under the Treaty of Point Elliott. United States v. Washington, 476 F. Supp. 1101, 1111 (W.D. Wash. 1979) ("Washington II"). Judge Boldt found that the Samish Tribe was not a successor in interest to any treaty signatory and had not maintained an organized tribal structure. Id. at 1106. Judge Boldt also concluded that the Samish were not entitled to exercise treaty rights because the Tribe was not "federally recognized" by the United States Department of Interior (DOI). Id. at 1111.

The Samish appealed Judge Boldt's ruling to the Ninth Circuit, arguing *inter alia* that Judge Boldt improperly adopted without substantial change the proposed findings and conclusions submitted by the United States. United States v. Washington, 641 F.2d 1368, 1371 (9th Cir. 1981). The Samish also appealed Judge Boldt's Finding of Fact No. 27, in which Judge Boldt found that the Samish had "not lived as a continuous separate, distinct and cohesive Indian cultural or political community." 476 F. Supp. at 1105. Because Judge Boldt had in fact adopted most of the United States' proposed findings of fact and conclusions of law, the Ninth Circuit applied close scrutiny to the Samish's claims. The Ninth Circuit concluded that Judge Boldt had applied an incorrect legal test in determining whether a tribe had treaty rights. Rejecting the notion that federal recognition or nonrecognition was dispositive, the Ninth Circuit instead stated

that the "single necessary and sufficient condition for the exercise of treaty rights is" whether a "group of Indian descendants . . . have maintained an organized tribal structure." 641 F.2d at 1372.

Applying this test to the record, the Ninth Circuit concluded "[a]fter close scrutiny, . . . that the evidence supported [Judge Boldt's] finding of fact" that the Samish had not functioned since treaty times as "continuous separate, distinct and cohesive Indian cultural or political communit[ies]." Id. at 1373. As for the effect of the Samish's nonrecognition, the court stated that "[n]onrecognition of the tribe by the federal government . . . may result in loss of statutory benefits, but can have no impact on vested treaty rights." Id. The court, therefore, affirmed Judge Boldt because "the district court correctly resolved this question despite its failure to apply the proper standard." Id. at 1374. The Samish appealed this decision to the United States Supreme Court, which denied certiorari. 454 U.S. 1143 (1982).

By the early 1980s, therefore, the Samish Tribe had failed to persuade at least three judicial bodies -- Magistrate Judge Cooper, Judge Boldt, and the Ninth Circuit -- that it was entitled to be a party to this case.

B. Federal Recognition Proceeding

In 1972, after Congress began conditioning eligibility for most programs benefitting Indians upon status as a federally recognized tribe, the Samish first sought federal recognition.

See 25 U.S.C. §§ 450-450n. In 1978 the DOI published final regulations governing the procedure for official recognition of Indian Tribes. Apparently, the DOI took no action on the Samish's original petition until after the 1978 regulations were promulgated, and the Samish filed a revised petition under the new regulations in October 1979. Thereafter, the Bureau of Indian Affairs (BIA) conducted an independent inquiry into the Samish's recognition petition. The recognition petition was denied first in 1982, when the Assistant Secretary for Indian Affairs first published a preliminary determination concluding that the Samish should not be recognized. Samish objected to this decision and submitted a response and additional information and, after several years of delay, the Deputy to the Assistant Secretary for Indian Affairs issued a final decision in 1987 denying federal recognition to the Samish. 52 Fed. Reg. 3709 (Feb. 5, 1987).

In 1989, the Samish filed a federal action in this district, alleging that the BIA's denial of its recognition petition violated the Tribe's due process rights and that the Samish was the successor in interest to the treaty Samish Tribe for purposes of showing entitlement to federal recognition. Greene v. Lujan, No. 89-645Z (W.D. Wash.).[3] The Tulalip Tribe sought to intervene in this case, believing that if Samish were to gain federal

[3]Bruce Babbitt was later substituted for Manuel Lujan as Secretary of the Interior.

recognition, then treaty fishing rights would likely follow. Judge Zilly denied Tulalip's intervenor application but permitted it to participate as *amicus curiae*. On an interlocutory appeal, the Ninth Circuit affirmed the denial of the Tulalip's intervenor application on the grounds that "the calculus for tribal treaty rights under Ninth Circuit law is separate and distinct from that for federal acknowledgment." Greene v. United States, 996 F.2d 973, 976-77 (9th Cir. 1993). Thus, the Ninth Circuit reasoned, Tulalip's interest in the recognition proceeding did not rise to intervenor status since "[e]ven if [the Samish] obtain federal tribal status, [they] would still have to confront the decisions in Washington I and II before they could claim fishing rights." Id.

On the merits, Judge Zilly held that the Samish had been denied due process in the recognition proceedings and vacated the decision denying recognition and remanded the recognition petition to the DOI for formal adjudication under the Administrate Procedure Act (APA). February 25, 1992 Order, 1992 WL 533059. The Ninth Circuit affirmed Judge Zilly's due process ruling, requiring an APA due process hearing for the Samish. Greene v. Babbitt, 64 F.3d 1266 (9th Cir. 1995).

On remand, Administrative Law Judge (ALJ) David Torbett of the DOI Office of Hearings and Appeals conducted an APA due process hearing on the Samish's recognition proceeding. After an eight-day hearing, on August 31, 1995 Judge Torbett issued *recommended findings of fact and conclusions of law in favor of*

Samish recognition.

In his recommended decision, ALJ Torbett found that the Samish met all seven mandatory criteria necessary for federal recognition as an Indian tribe. See 25 C.F.R. § 83.7 (1993). Reviewing ALJ Torbett's decision, the Assistant Secretary for Indian Affairs rejected some of his findings and conclusions, but ultimately ruled in favor of Samish recognition on November 8, 1995. The Samish appealed these rejections, and Judge Zilly reinstated the finding of fact and conclusions of law that had been rejected and affirmed the Samish recognition decision. Greene v. Babbitt, 943 F. Supp. 1278, 1288-89 (W.D. Wash. 1995).

Now, having achieved federal recognition, the Samish set out again,[4] pursuant to Rule 60(b)(6), to reopen the judgment in this case.

II. DISCUSSION

A. Rule 60(b)(6) Standards

Federal Rule of Civil Procedure 60(b) permits a court to relieve a party from an otherwise final judgment. Rule 60(b) states in relevant part: "On motion and upon such terms as are

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[4]An earlier, unrelated attempt to set aside the judgment in Washington II occurred on November 22, 1993, when three Tribes, including the Samish, moved for relief under Rule 60(b)(6) on the grounds that Judge Boldt might have been mentally incompetent at the time he signed the final findings in the case. This court, on January 23, 1995, denied the motion on three grounds: (1) that courts should avoid the finality of judgments; (2) that a ruling for the Tribes would open the floodgates to future challenges to judgments on grounds of judicial incompetence; and (3) the Tribes suffered no manifest injustice since the magistrate judge and the Ninth Circuit reached the same conclusion as Judge Boldt. The Ninth Circuit affirmed this court's ruling. United States v. Washington, 98 F.3d 1159 (9th Cir. 1996).

just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons . . . ." The Rule then identifies five specific provisions, for such things as mistake, discovery new evidence, fraud, etc., that could be grounds for relief under the Rule. Subsection (b)(6) acts as a "catch-all" provision, stating that a court may grant relief from a judgment if there is "any other reason justifying relief from the operation of the judgment." This provision applies only when there are reasons for relief other than those set out in the more specific clauses of Rule 60(b). See Liljeberg v. Health Servs. Corp., 486 U.S. 847, 863 & n.11 (1988).

Rule 60(b)(6) "does not particularize the authority adequate to enable [courts] to vacate judgments whenever such action is appropriate to accomplish justice, [but it should] only be applied in extraordinary circumstances." United States v. Washington, 98 F.3d 1159, 1163 (9th Cir. 1996) (internal citations and quotations omitted). The Ninth Circuit has cautioned that the Rule should be used "sparingly as an equitable remedy to prevent manifest injustice" and only "where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." Id.

Rule 60(b) is designed to allow courts to reconsider both factual findings and legal conclusions under the limited circumstances permitted by the Rule. Thus, even though the issue of the Tribe's treaty status has been previously litigated, this court is not barred from reconsidering Washington II were it to find the existence of circumstances under the Rule that warrant

it.[5]

B. Motion to Reopen

While numerous issues are raised in this matter, the court is of the opinion that there are two principal issues: (1) whether the Samish's federal recognition is an "extraordinary circumstance" that justifies reopening the judgment in Washington II; and (2) whether the interests in finality are paramount to other interests. Each is discussed below.

1. *"Extraordinary Circumstances"*

The primary inquiry on any motion under Rule 60(b)(6) is whether there are "extraordinary circumstances" that warrant vacating the judgment. United States v. Washington, 98 F.3d at 1163. Thus, the burden is on the Samish to show that their achievement of federal recognition constitutes an "extraordinary

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[5]The court is mindful of the fact that Judge Zilly, in the recognition litigation, ruled that the Samish were precluded by Washington II from litigating its treaty tribe status. See Order, 1992 WL 533059 at 2. While Judge Zilly could not, in unrelated litigation, properly reconsider the findings and conclusions in Washington II, this court is not barred from such reconsideration if there are "extraordinary circumstances" within the meaning of Rule 60(b) that justify it. To hold otherwise would preclude Rule 60(b) motions, since the non-moving party could always plead *res judicata*.

A related issue, raised by the United States, is whether this court can properly consider the Samish's motion in light of the Ninth Circuit's decision affirming Washington II. This issue is easily resolved. In Standard Oil Co. of Cal. v. United States, 429 U.S. 17 (1976), the Supreme Court stated that an appellate mandate "relates to the record and issues then before the court, and does not purport to deal with possible later events." See also 11 Wright, Miller & Kane, Federal Practice & Procedure § 2873 (1995) ("An appellate court may not know whether the requirements for reopening a case under the rule are met until there has been a full record developed. Such a record can only be made in the trial court.").

circumstance" in this context.

From the outset, the Samish face a significant burden because it has been well established that federal recognition does not necessarily restore Samish treaty rights. See Washington I, 520 F.2d at 692 ("Nonrecognition of the tribe by the federal government . . . may result in loss of statutory benefits, but can have no impact vested treaty rights."). Indeed, the Ninth Circuit has been clear that it "regards the issues of tribal treaty status and federal acknowledgment as fundamentally different." Greene, 64 F.3d at 1270. The Ninth Circuit denied the Tulalip Tribe's attempt to intervene in the Samish recognition proceeding because it "disagreed with their position that Samish success [in the recognition proceeding] would undermine the finality of the Washington II decision." Id. at 1271. Put even more sharply, the Ninth Circuit has stated that "[f]ederal recognition is not a threshold condition a tribe must establish to [exercise treaty rights]" and that the Samish's recognition would have a "marginal influence at best" on the determination of whether the Tribe may exercise treaty rights. Greene, 996 F.2d at 976, 978. Thus, the Samish's position that federal recognition is an "extraordinary circumstance" in this case is seemingly at odds with the Ninth Circuit's pronouncements to the contrary.

Indeed, the kind of "extraordinary circumstances" usually alleged in Rule 60(b)(6) motions are not present here. That is, the Samish have not alleged that the Washington II proceeding was in any way inadequate or defective, precluding the Samish from adducing all evidence to support its claim to treaty fishing

rights. The absence of such allegations is significant. The Samish have not identified, nor has the court's research revealed, an instance in which Rule 60(b)(6) was successfully invoked where there was no allegation or finding that the underlying proceeding had fundamental flaws. Cf., e.g., Liljeberg, 486 U.S. at 863 (setting aside the judgment because the trial judge had a conflict of interest and failed to recuse himself); Klapprott v. United States, 335 U.S. 601 (1949) (setting aside denaturalization judgment because at the movant was unable to defend himself in the proceeding due to imprisonment); Ervin v. Wilkinson, 701 F.2d 59, 61-62 (7th Cir. 1983) ("Where the moving party has been prevented from presenting the merits of his case by the conduct of which he complains, Rule 60(b) relief is most appropriate.").

The Samish argue, nonetheless, that the "nature and quality of [its] recognition" is the kind of circumstance that could warrant reexamining Washington II and that the evidence submitted during the recognition proceeding was "substantially different" -- broader and more detailed -- than the evidence it submitted in Washington II.[6] Samish contend that a "more detailed historical

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[6]The Samish also contend, relying on a phrase in a Finding of Fact in Washington II, that that decision was not intended to be the final word on its treaty status. See Washington II, 476 F. Supp. at 1111 ("[T]he Samish . . . [are not] *at this time* a treaty tribe in the political sense within the meaning of [Washington I]."") (emphasis added). The Samish believe that the phrase "at this time" suggests that, should the Tribe later achieve the requisite continuity and organization of treaty tribes, the court might reconsider its treaty status. This argument merits only a brief response. First, the phrase "at this time," at the very least, admits of another interpretation -

picture" emerged in the recognition proceeding and that, by meeting the standard for recognition, it also met the standard for exercise of treaty fishing rights under Washington I.[7]

None of these arguments is persuasive. Whatever the "nature and quality" of the Samish's recognition, the fact remains that, as discussed supra, a tribe's recognition, or nonrecognition, has no impact on whether it may exercise treaty rights. The standard for treaty rights and for tribal recognition, while similar, are not identical, with "each determination serv[ing] a different legal purpose and ha[ving] an independent legal effect." Greene, 996 F.2d at 976. To gain federal recognition, the Samish had to establish the requisite social cohesion and community, continuity of political authority and ancestry from a historic tribe.[8] See

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- namely, that, while the Tribe might have at one time exhibited the attributes of a treaty tribe, it no longer did so. Second, the standard for exercise of treaty rights includes, *inter alia*, that a tribe "have *maintained* an organized tribal structure," which suggests that a break in that necessary structure forecloses a tribe's ability to meet the standard.

[7]The Samish point out that they could not use the Treaty of Point Elliott in the recognition proceeding. That they nonetheless achieved recognition, the Samish contend, is a testament to the strength of the evidence, as treaties are the primary way of showing recognition.

[8]In announcing Samish federal recognition in 1996, the federal government found that the Samish met this standard:

> We find that the Samish Tribal Organization has been continuously identified through history as Indian or aboriginal, has existed as a distinct community since first sustained European contact, has maintained political influence within itself as an autonomous entity and that 80 percent of its members are descendants of the historical Samish tribe or

25 C.F.R. §§ 83-1 thru 83.7(c). To assert fishing rights, the Samish must demonstrate that they descended from a treaty signatory and "have maintained an organized tribal structure." Washington II, 641 F.2d at 1372. Three different judicial bodies in Washington II considered the evidence the Samish submitted in that proceeding and concluded that the Tribe had not "clearly established the continuous informal cultural influence [that is] required." Washington II, 641 F.2d at 1373. Thus, the Samish cannot rightly argue that having met the recognition standard, it has, *a fortiori*, met the standard for asserting treaty rights.

Furthermore, the Samish are precluded from arguing, as they appear to, that the evidence it submitted in the recognition proceeding should persuade this court that Washington II was wrongly decided. If, as the Samish assert, the evidence it submitted in the recognition proceeding was different and more comprehensive, creating a more "detailed historical picture," such a fact does not entitle the Tribe to relief under Rule 60(b). First, such a claim would be properly brought pursuant to Rule 60(b)(2), which requires that motions based on newly-discovered evidence be filed within one year of the judgment. Furthermore, in addition to the timeliness problem, it is not clear that the different evidence touted by the Samish was, in fact, "newly discovered" or that it could not have been produced during the

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> families which became incorporated into that tribe. We conclude, therefore, that the Samish Tribal Organization has met the mandatory criteria for acknowledgment . . . .

Samish Acknowledgment Decision, Ex. 8, 61 Fed. Reg. 15826.

Washington II proceeding. Cf. Frederick S. Wyle P.C. v. Texaco Inc., 764 F.2d 604, 609 (9th Cir. 1985) (stating that "movant is obliged to show not only that this evidence was newly discovered . . . but also that it could not with reasonable diligence have discovered and produced such evidence at the hearing") (internal quotations omitted). There must be an end to litigation, and for that reason Rule 60(b) does not provide parties another chance at relitigating matters based on evidence gathered several years after a final judgment.

The court is mindful that the Samish's recognition decision was excessively delayed and that, had the Samish been recognized at the time it sought to intervene in Washington II, the outcome might have been different.[9] Such speculation, however, cannot be grounds for granting relief under Rule 60(b).[10] In any event,

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[9]Judge Zilly noted that the "Samish people's quest for federal recognition as an Indian tribe has a protracted and tortured history, and their long journey for recognition has been made more difficult by excessive delays and governmental misconduct." Greene, 943 F. Supp. at 1281.

[10]Nor can the Tribe rely on the fact that the United States has in the past qualified its opposition to Samish intervention on the grounds that future federal recognition might justify reconsideration. The Samish stress that their potential future recognition was stressed at all stages of Washington II because, they argue, it was relevant in allowing the court to deny treaty status at that time. The United States cannot dispute its previous statements regarding the potential effect of Samish recognition, but it asserts only that it agreed to consider whether recognition might justify reconsideration. Whether the United States agreed to reconsider its opposition to the Samish's treaty tribe status upon federal recognition is of little moment. Samish place great weight on these statements, but there are no comparable statements *from the court* in Washington II that recognition might justify reconsideration. To the contrary, the Ninth Circuit in Washington II specifically stated that

other Washington tribes, including the Stillaguamish and the Upper Skagit, exercise treaty fishing rights even though not federally recognized. Washington I, 520 F.2d at 692-93. Furthermore, while the Samish's non-recognition was dispositive to Judge Boldt in Washington II, the Ninth Circuit, after conducting its own review employing the proper standard, concluded that the Samish had not met the standard for exercising treaty rights.

In conclusion, the court finds for the foregoing reasons that the Samish's 1996 recognition is not an "extraordinary circumstance" that justifies reopening the judgment in Washington II.

2. *Finality concerns*

An equally compelling factor weighs against reopening the judgment in this case: the interest in finality.

The United States and the Opposition Tribes point out that, in reliance on Washington II, this court has approved many state-tribal fish management plans, mediated and decided intertribal disputes on treaty fishing issues, determined treaty tribes' usual and accustomed fishing places, and decided allocation issues. See, e.g., United States v. Washington, 626 F. Supp. 1405 (W.D. Wash. 1985) (collecting court's finding and orders including, *inter alia*, 1985 Puget Sound Salmon Management Plan and agreements between the Tulalip Tribe and other Tribe). The United States and Opposition Tribes rightly observe that management of fish harvest involves a delicate balancing of interests

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"[n]onrecognition of the tribe . . . [has] no impact on vested treaty rights." See Washington I, 520 F.2d at 692.

within the overall framework and that these management plans -- achieved after considerable time and expense -- would be upset by the addition of another Tribe at this late stage.

The Samish, however, do not believe that granting the instant motion will "upset the fabric" of United States v. Washington, arguing that state tribal fish management plans and allocation decisions will suffer minimal disruption should the Samish ultimately be granted treaty status. The Samish's accommodating intentions notwithstanding, the background of this case shows that this assertion rings false. The parties have worked diligently and extensively over the many years this case has been active to establish management frameworks that accommodate the fiercely competing needs of the various tribes and of the State. The issues have been complicated by the increasing scarcity of fish stocks and the need to preserve and conserve certain fish species. This case over a 28-year period has proven to be a battleground where many of these issues have been fought and solutions hammered out. The Samish have not convincingly rebutted, nor could they, the unmistakable conclusion that, at this stage, their addition would wreak havoc on hard-wrought management agreements and plans.[11]

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[11]At oral argument, counsel for the United States pointed out that, in addition to the Samish, two of the other five Tribes that sought intervention in Washington II have attained federal recognition since that decision. Therefore, if the court were to grant the Samish intervention in United States v. Washington, it is likely that at least two other tribes would also move to reopen the judgment in Washington II, thereby potentially injecting further complications into the long-negotiated management plans in this case.

The Supreme Court has recognized that the interests of finality, as embodied in the policies of *stare decisis* and *res judicata*, are at their zenith in cases, such as this one, which involve natural resource allocation. See Nevada v. United States, 463 U.S. 110 (1983) (rejecting attempt to reopen a water rights decree to accommodate new claims to water); Arizona v. California, 460 U.S. 605, 620 (1983) (noting that major purpose of the case was "to provide the necessary assurance to states of the Southwest . . . of the amount of water they can anticipate to receive from the Colorado River system" and that "[r]ecalculating the amount of practicably irrigable acreable runs directly counter to strong interest in finality in this case"). Just as states in the West rely on the finality of water-rights agreements, so too do the 22 treaty tribes in this case, as well as the State of Washington, rely on the finality of fish-allocation and countless other agreements that have been entered in this case. In reliance on the finality of such agreements, the treaty tribes have invested significant time and capital to secure their take of what, for some, might be their only natural resource. Changes in allocation agreements (on which some tribes have relied for years) could have serious repercussions for already financially hard-pressed Tribes.

III. CONCLUSION

While the court recognizes that the Samish Tribe's quest for treaty fishing rights, beginning in the mid-1970s and concluding here, has taken them down a long and difficult path, and appreciates the commitment and perseverance demonstrated in this

pursuit, there have been 28 years of post-Washington I litigation in this case, all under the assumption that Washington II was binding and conclusive. Reexamining the Samish intervention issue could require changing scores of orders and management plans in this case, thereby affecting the rights of 22 other treaty tribes as well as the United States and the State of Washington. Finality and certainty require that long-resolved issues in this case remain undisturbed.[12]

Now, therefore, the motion [docket no. 39-1] is hereby DENIED.

DATED at Seattle, Washington this 19th day of December, 2002.

BARBARA JACOBS ROTHSTEIN
UNITED STATES DISTRICT JUDGE

[12]Having found that the Samish's recognition does not constitute an "extraordinary circumstance" and that finality concerns outweigh other considerations, the court need not consider the remaining issues, including whether the Samish's motion was filed within a reasonable period. Another issue of no import is the Samish's motion to strike, in which motion the Samish argue that the Opposition Tribe's brief was filed three days late. Assuming that the brief was filed late, the Samish have suffered no prejudice, having filed its reply brief, as provided by the agreed briefing schedule, thirty days after receipt of the Joint Opposition brief.