

8-24-1979

# Memorandum of Department of Ecology Re: Motion of Spokane Tribe to Amend Findings and Motion of Department of Natural Resources to Reconsider

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FILED IN THE  
U. S. DISTRICT COURT,  
Eastern District of Washington

AUG 24 1979

J. R. FALLOQUIST, Clerk  
*[Signature]*  
Deputy

8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF WASHINGTON

10 UNITED STATES OF AMERICA, )  
11 )  
12 Plaintiff, )  
13 v. )  
14 BARBARA J. & JAMES J. ANDERSON, )  
15 et al., )  
Defendants. )

CIVIL NO. 3643

MEMORANDUM OF DEPARTMENT OF  
ECOLOGY RE: MOTION OF SPOKANE  
TRIBE TO AMEND FINDINGS AND  
MOTION OF DEPARTMENT OF  
NATURAL RESOURCES TO  
RECONSIDER

16 The State of Washington, Department of Ecology, requests this  
17 Court to defer briefing on and consideration of the Motion of the  
18 Spokane Tribe to Amend Findings in the Court's Memorandum Opinion  
19 and the Motion of the Department of Natural Resources to Reconsider.  
20 These pending motions and all similar motions which may be filed  
21 should be noted for argument at the same time as hearing on ex-  
22 ceptions to the proposed Judgment expressly directed for submission,  
23 to the Court, July 23, 1979.

24 Federal Rule 52(b) governs motions to amend findings. It does  
25 not clearly state that motions to reconsider or motions to amend  
26 findings may not be made or heard before entry of judgment. However,  
27 in this case, given the local rules for the eastern district and the  
28 Court's express directions to plaintiffs, waiting until after pre-  
29 sentation of the proposed Judgment is the better procedure.

30 The Court in its Memorandum Opinion of July 23, 1979, allowed  
31 the plaintiffs 20 days to submit a proposed Judgment. Given the

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1 briefing schedule set out in Local Rule 11 and the 5 day notice  
2 requirement for hearing motions, we note that a hearing on a pre-  
3 Judgment motion could not have taken place before the expiration of  
4 this 20-day period.

5 Although we understand that the United States may seek an  
6 extension of the 20-day period for submission of the proposed  
7 Judgment, the Court nevertheless should defer consideration of  
8 motions until such time as all parties have a draft Judgment before  
9 them. This will allow the Court to make one order on all such  
10 motions and exceptions to the proposed Judgment. Once Judgment is  
11 entered, parties may move to amend findings or move to reconsider.  
12 The Court also should hear all post-Judgment motions at once and  
13 issue an order relating to them. That order would commence the time  
14 in which any appeals could be taken.

15 We have discussed this procedure with the attorney for the  
16 Department of Natural Resources, and he has no objection to this approach.

17 DATED this 21st day of August, 1979.

18 Respectfully submitted,

19 SLADE GORTON  
20 Attorney General

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32 MEMO OF DOE, RE:  
33 MOTS TO AMEND AND  
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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF WASHINGTON

10 UNITED STATES OF AMERICA, )  
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12 Plaintiff, )  
13 v. )  
14 BARBARA J. & JAMES J. ANDERSON, )  
et al., )  
15 Defendants. )

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16 STATE OF WASHINGTON )  
17 ) ss.  
COUNTY OF THURSTON )

18 SUSAN CLINTON, being first duly sworn on oath, deposes and  
19 says:

20 That she is a secretary in the legal division of the Department  
21 of Ecology and that on the 32<sup>nd</sup> day of August, 1979, she duly  
22 forwarded by United States mail, postage prepaid, copies of the  
23 Memorandum of Department of Ecology Re: Motion of Spokane Tribe  
24 to Amend Findings and Motion of Department of Natural Resources to  
25 Reconsider to the following people at the following addresses:

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13  
14 Susan Clinton  
SUSAN CLINTON

15 SUBSCRIBED AND SWORN TO before me this 22<sup>nd</sup> day of

16 August, 1979.  
17

18 Robert V. Jensen  
19 NOTARY PUBLIC, in and for the  
State of Washington, residing  
20 at Cassidy.