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**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

WILD FISH CONSERVANCY,)
)
Plaintiff-Appellee/Cross-Appellant,)
)
v.) Appeal Nos. 23-35322,
) 23-35323, 23-35324, 23-35354
JENNIFER QUAN, in her official capacity as)
the Regional Administrator for the) D.C. No. 2:20-cv-00417-RAJ-
National Marine Fisheries Service, et al.,) MLP
)
Defendants-Appellants/Cross-)
Appellees,)
)
and)
)
STATE OF ALASKA and ALASKA)
TROLLERS ASSOCIATION,)
)
Intervenor-Defendants-)
Appellants/Cross-Appellees.)
_____)

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

Pursuant to Federal Rule of Appellate Procedure 29(a), the Central Council of Tlingit & Haida Indian Tribes of Alaska, Angoon Community Association, Chilkat Indian Village, Chilkoot Indian Association, Craig Tribal Association, Hoonah Indian Association, Hydaburg Cooperative Association, Organized Village of Kake, Organized Village of Kasaan, Ketchikan Indian Community, Metlakatla Indian Community, Petersburg Indian Association, Organized Village of Saxman, Skagway Village, Wrangell Cooperative Association, Yakutat Tlingit Tribe, the Sealaska Corporation, the Huna Totem Corporation, the Kake Tribal Corporation, the Klawock Heenya Corporation, Kootznoowoo, Incorporated, and Shaan-Seet, Incorporated (“Tribal Amici”) respectfully move this Court for leave to file out-of-time the accompanying Amici Curiae brief in support of the State of Alaska’s Motion for Stay Pending Appeal.¹ Counsel for Tribal Amici endeavored to obtain the consent of all parties to the filing of the brief before filing this motion. All parties consented to the filing of the brief except for Plaintiff-Appellee Wild Fish Conservancy, which reserves its position on the brief and its opportunity to respond to this motion.

¹ See Mot. for Stay Pending Appeal, No. 23-35322 (May 26, 2023), ECF No. 15-1.

I. The Tribal Amici's Interest.

Tribal Amici are sixteen federally and state recognized Tribes located in Southeast Alaska, the Sealaska Corporation (the Alaska Native Claims Settlement Act (ANCSA) Regional Corporation for Southeast Alaska) and five Southeast ANCSA Village Corporations. Tribal Amici have a unique interest in this litigation given the devastating and disproportionate impact that closure of the troll fishery will have on indigenous communities in Southeast Alaska.

The Central Council of Tlingit & Haida Indian Tribes (“Tlingit & Haida”) is a federally recognized Indian tribe with over 35,000 tribal citizens.² Tlingit & Haida’s ancestral lands and waters encompass all of Southeast Alaska. The Tlingit & Haida peoples have lived in this area and fished for salmon since time immemorial. Tlingit & Haida’s recognized communities in Southeast Alaska include Angoon, Craig, Haines, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Ketchikan, Klawock, Klukwan, Metlakatla, Pelican, Petersburg, Saxman, Sitka, Wrangell, and Yakutat. In addition to Tlingit & Haida, fifteen additional federally recognized Southeast Alaska Tribes from across the region—from Yakutat to Metlakatla—join this motion as prospective Amici.³ Joining as well are Sealaska

² 88 Fed. Reg. 2112, 2115 (Jan. 12, 2023).

³ All tribal and ANCSA prospective Amici are located in Southeast Alaska. Angoon Community Association is a federally recognized Tribe located on Admiralty Island.

Corporation and five Southeast ANCSA Village Corporations, whose shareholders are overwhelmingly Alaska Natives living and working in the region.⁴

The indigenous people represented by Tribal Amici have depended on the waters of the Lingít Aaní (Tlingit homelands) and Haida Gwai’i (Haida homelands) to provide them with sustenance for thousands and thousands of years. They have

Chilkat Indian Village is a federally recognized Tribe located in Klukwan. Chilkoot Indian Association is a federally recognized Tribe located in Haines. Craig Tribal Association is a federally recognized Tribe located on Prince of Wales Island. Hoonah Indian Association is a federally recognized Tribe located on Chichagof Island in Southeast Alaska. Hydaburg Cooperative Association is a federally recognized Tribe located on Prince of Wales Island. Organized Village of Kake is a federally recognized Tribe located on the northwest coast of Kupreanof Island. Organized Village of Kasaan is a federally recognized Tribe located on Prince of Wales Island. Ketchikan Indian Community is a federally recognized Tribe located on Revillagigedo Island. Metlakatla Indian Community is a federally recognized Tribe located on the Annette Island Reserve, the only Indian Reservation in Alaska. Petersburg Indian Association is a federally recognized Tribe located on Mitkof Island. Organized Village of Saxman is a federally recognized Tribe located on Revillagigedo Island. Skagway Village is a federally recognized Tribe located in the City of Skagway. Wrangell Cooperative Association is a federally recognized Tribe located on the northern tip of Wrangell Island. Yakutat Tlingit Tribe is a federally recognized Tribe located at Yakutat Bay on the Gulf of Alaska. *See* 88 Fed. Reg. 2112, 2115-16 (Jan. 12, 2023).

⁴ 43 U.S.C. § 1606. The Huna Totem Corporation is an ANCSA Village Corporation whose aboriginal ties are to the Village of Hoonah on Chichagof Island. The Kake Tribal Corporation is the ANCSA Village Corporation for the Organized Village of Kake, on Kupreanof Island. Klawock Heenya Corporation is an ANCSA Village Corporation in Klawock on Prince of Wales Island. Kootznoowoo, Incorporated is the ANCSA Village Corporation for the village of Angoon, on Admiralty Island. Shaan-Seet, Incorporated is the ANCSA Village Corporation for Craig, on Prince of Wales Island. *See* 43 U.S.C. § 1607.

been the stewards of the salmon over that time. In addition to being a primary food source for the indigenous peoples of Southeast Alaska, salmon also have long played an important role in the cultures of the Tribes and indigenous communities, as shown in their artwork, dances, and other cultural expressions. Over millennia, the ancestors of the region's current indigenous people have trolled for salmon, including Chinook salmon, and passed down to the next generation the knowledge of how, where, and when to troll. While the methods have evolved, tribal citizens still use techniques and knowledge that are based on their traditional practices.

Today, troll-caught salmon remains a crucial food source and economic driver for tribal citizens and communities. Approximately 31% of Southeast Alaska's trollers are tribal citizens of Southeast Tribes, and many of the small, remote communities in Southeast Alaska supported by the fishery are largely Alaska Native. Indigenous people use traditional knowledge to harvest this healthy food source to support and sustain their families and communities. Troll-caught Chinook also help rural Native families offset the high cost of buying imported groceries where staples, such as meat and produce, can cost double or triple the price of more urban areas. Tribal Amici seek leave to submit their brief to ensure that the Court considers the severe disruptive consequences to indigenous communities of closing this

economically critical fishery and denying access to this culturally important food source.

II. Desirability and Relevance of the Amici Curiae Brief.

An amicus brief presenting the Tribes' and indigenous people's perspectives is not only desirable and relevant, but critical to the disposition of this case and motion. Fed. R. App. P. 29(a)(3). Unfortunately, the District Court did not mention Tribes or tribal citizens *at all* in its decision to close the Southeast Alaska troll fishery, and apparently did not *once* consider the impact of its decision on the region's indigenous communities. Tribal Amici were not invited to present their views to the District Court nor were they joined as defendants by the Plaintiff Wild Fish Conservancy. Southeast Alaska's indigenous communities will be disproportionately and irreparably harmed if the District Court's order remains in place. Tribal Amici offer this brief and its accompanying declarations to ensure that the perspectives of the Tribes and tribal citizens are before this Court when it considers the dire and disruptive consequences of the District Court's Order.

III. There is Good Cause to Allow the Tribal Amici to File an Out-of-Time Brief.

Tribal Amici were not parties to the District Court case. The District Court's order on the State's motion to stay was not brought to their attention until very recently. Tribal Amici and their counsel have since worked diligently to prepare and

submit the accompanying brief and exhibits for the Court’s consideration as quickly as possible. The brief and exhibits provide a crucial perspective on the District Court’s order that is inadequately addressed by the other briefs submitted. Accepting the proposed Tribal Amicus brief will not cause undue delay and will not unfairly prejudice the parties. *See* Fed. R. App. P. 29(a)(6) (the Court “may grant leave for later filing, specifying the time within which an opposing party may answer”). There is still time for the Court to review this brief and any responses and issue a decision on the State’s motion to stay by June 23, 2023.⁵

Tribal Amici note that this matter is an accelerated review of the District Court’s refusal to stay its decision vacating the Incidental Take Statement contained in the 2019 Biological Opinion, which effectively bars the Southeast Alaska troll fishery from opening as scheduled for July 1. The time requirements in FRAP 29(a)(6) for filing an amicus brief do not squarely address this situation, where expedited relief is at bar. And regardless, this Court is empowered to accept out-of-time filings for “good cause” under FRAP 26(b).

The time requirements in FRAP 29(a)(6) were designed to govern the filing of amicus briefs related to “a court’s initial consideration of a case on the merits.” Fed. R. App. P. 29(a)(1). When an appellate court is considering an appeal in the

⁵ *See* Mot. for Stay Pending Appeal at 1, *supra* note 1 (requesting relief by June 23).

regular course of a proceeding, there is considerably more time between the issuance of the trial court's decision and the filing of the principal brief on appeal. The seven-day allowable delay period in FRAP 29(a)(6) allows the amicus time to ensure that its briefing is not repetitive of the arguments advanced in the principal brief. In the normal course, an amicus would have much longer notice and a much greater time frame to prepare its proposed filings.

Here, the State of Alaska filed its motion seeking a stay from this Court on the same day that the District Court denied the motion for a stay of its decision.⁶ This gave Tribal Amici minimal time to learn about the decision, measure its potential impact, consult with counsel, and prepare the attached Tribal Amicus brief and accompanying declarations. In considering a stay of the District Court's decision, this Court is sitting in equity. Given the expedited timeline, the immediate and irreparable harm that will result from the District Court's decision, the diligent work of Tribal Amici, and the critical importance of the perspectives being offered, this Court should in equity and good conscience find that there is good cause to allow the indigenous communities of the impacted region to make their voices heard on this pressing issue.

⁶ *See id.* (filed May 26, 2023); Order Denying the Parties' Motions to Stay, No. 2:20-cv-00417-RAJ (W.D. Wash. May 26, 2023), ECF No. 193.

IV. Conclusion

The Tribal Amici respectfully request that the Court grant leave to file the accompanying amicus brief and exhibits and direct the Clerk to accept the proposed brief for filing.

DATED this 16th day of June, 2023, at Anchorage, Alaska.

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CERTIFICATE OF COMPLIANCE

In accordance with Fed. R. App. P. 27(d)(1)(E), this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word for Office 365 Times New Roman 14-point font.

SONOSKY, CHAMBERS, SACHSE
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DATED: June 16, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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