FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SAUK-SUIATTLE INDIAN TRIBE,

Plaintiff - Appellant,

and

UNITED STATES OF AMERICA,

Plaintiff,

UPPER SKAGIT INDIAN TRIBE,

Intervenor-Plaintiff - Appellee,

v.

TULALIP TRIBES OF WASHINGTON; SWINOMISH INDIAN TRIBAL COMMUNITY,

Respondents - Appellees,

STATE OF WASHINGTON,

Defendant - Appellee,

No. 25-1391

D.C. No. 2:24-sp-00001-RSM

OPINION

SUQUAMISH TRIBE,

Intervenor-Defendant - Appellee,

and

JAMESTOWN S'KLALLAM TRIBE, PORT GAMBLE S'KLALLAM TRIBE,

Intervenor-Defendants.

Appeal from the United States District Court
for the Western District of Washington
Ricardo S. Martinez, District Judge, Presiding

Argued and Submitted February 11, 2026
Seattle, Washington

Filed August 31, 2026

Before: M. Margaret McKeown, William A. Fletcher, and Patrick J. Bumatay, Circuit Judges.

Opinion by Judge McKeown

SUMMARY*

Tribal Fishing Rights

The panel affirmed in part, reversed in part, and remanded to the district court for it to exercise subject-matter jurisdiction over Sauk-Suiattle Indian Tribe's Baker River and marine waters claims in a case arising from a decision issued by District Judge Boldt in 1974, *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974) ("*Final Decision I*"), concerning western Washington tribal fishing rights.

Judge Boldt's order interpreted the 1855 Treaty of Point Elliott and other contemporaneous treaties' recognition of tribes' rights to off-reservation fishing "at the usual and accustomed grounds and stations" ("U&A"). *Final Decision I* concerned fourteen tribes who had signed the Treaty or a similar treaty. Paragraph 25(a) of the permanent injunction of *Final Decision I*, as modified in 1993, established the procedure through which a concerned tribe could file a "request for determination" to invoke the court's continuing subject-matter jurisdiction and seek either a clarification or expansion of its existing U&A. Sauk-Suiattle filed a request for a determination under Paragraph 25(a)(6). The district court dismissed for lack of subject-matter jurisdiction based on the injunction's continuing-jurisdiction provision.

The panel held that Sauk-Suiattle's claim to U&A on the Skagit River was foreclosed by this court's decision in

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Upper Skagit Indian Tribe v. Sauk-Suiattle Indian Tribe, 66 F.4th 766 (9th Cir. 2023), and affirmed the district court's conclusion that it lacked jurisdiction over Sauk-Suiattle's request for a determination regarding the Skagit River.

Reversing the district court, the panel concluded that Sauk-Suiattle's claims to U&A on the Baker River and within marine waters were not specifically determined by Judge Boldt and were therefore justiciable now under procedures established in *Final Decision I* and modified in 1993.

COUNSEL

Jack W. Fiander (argued), Towtnuk Law Offices Ltd., Sacred Ground Legal Services Inc., Yakima, Washington; Kehl Van Winkle, Maglio Christopher & Toale PA, Sarasota, Florida; for Plaintiff-Appellant.

David S. Hawkins (argued), Upper Skagit Indian Tribe, Sedro-Wooley, Washington; Ariel A. Martinez and Tyler L. Farmer, Martinez & Farmer LLP, Seattle, Washington; for Intervenor-Plaintiff-Appellee.

John Heidinger and Joseph V. Panesko, Assistant Attorneys General; Nicholas W. Brown, Washington Attorney General, Office of the Washington Attorney General, Olympia, Washington; for Defendant-Appellee.

Emily H. Haley (argued) and Weston LeMay, Attorneys, Office of the Tribal Attorney, Swinomish Indian Tribal Community, La Conner, Washington; Christopher G. Lundberg, Christopher T. Griffith, and Julie A. Weis, Haglund Kelley LLP, Portland, Oregon; Tyler J. Eastman, The Tulalip Tribes, Tulalip, Washington; Maryanne E.

Mohan, Suquamish Indian Tribe, Suquamish, Washington; for Respondents-Appellees.

Josh Newton, Best Best & Krieger LLP, Bend, Oregon, for Intervenor-Defendant-Appellee.

OPINION

McKEOWN, Circuit Judge:

Litigation contesting western Washington tribal fishing rights has ebbed and flowed throughout the past half-century. The proceedings before us mark "another chapter in the 'ongoing saga' arising from" the original "Final Decision I" issued by Judge George H. Boldt in 1974, *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974) (*Final Decision I*), *aff'd and remanded*, 520 F.2d 676 (9th Cir. 1975). *United States v. Lummi Nation*, 876 F.3d 1004, 1008 (9th Cir. 2017) (*Lummi III*) (quoting *Makah Indian Tribe v. Quileute Indian Tribe*, 873 F.3d 1157, 1160 (9th Cir. 2017)).

Judge Boldt's order interpreted the 1855 Treaty of Point Elliott and other contemporaneous treaties' recognition of tribes' rights to off-reservation fishing "at all usual and accustomed grounds and stations" ("U&A"). *Final Decision I*, 384 F. Supp. at 331–32. The injunction granted tribal fishermen the opportunity to take fifty percent of "harvestable fish" at their tribes' determined U&A. *Id.* at 343. A tribe's U&A includes "every fishing location where members of [the] tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters." *Id.* at 332. The meaning of

"usual and accustomed" is interpreted "in [its] restrictive sense" and does not include "areas where use was occasional or incidental." *Id.* at 356.

The questions before us are whether Judge Boldt specifically determined Sauk-Suiattle's U&A in 1974 and whether any subsequent decision by the courts has preclusive effect over Sauk-Suiattle's U&A claims in the current case. We hold that Sauk-Suiattle's claims to the Skagit River are precluded by our prior ruling *Upper Skagit Indian Tribe v. Sauk-Suiattle Indian Tribe*, 66 F.4th 766 (9th Cir. 2023). However, we conclude that the tribe's claims on the Baker River and within marine waters were not specifically determined by Judge Boldt and are therefore justiciable now under procedures established in *Final Decision I* and modified in 1993. We affirm in part, reverse in part, and remand to the district court for it to exercise subject-matter jurisdiction over Sauk-Suiattle's Baker River and marine waters claims.

BACKGROUND

Final Decision I concerned fourteen tribes who had signed the Treaty of Point Elliott or a similar treaty during the 1850s. *Washington*, 520 F.2d at 682. Through the treaties, the nomadic tribes were promised that "that they would remain free to fish off the reservations at their traditional fishing places in common with the white settlers." *Id.* at 682–83.

Judge Boldt's findings and conclusions built upon "exhaustive research in anthropology, biology, fishery management and other fields of expertise" by the parties and the court. *Final Decision I*, 384 F. Supp. at 328. In particular, the court "heavily relied" on anthropologist Barbara Lane's report, which Judge Boldt found to be "'exceptionally well

researched and reported' . . . 'authoritative and reliable,' and . . . not 'controverted by any credible evidence in the case.'" *Upper Skagit*, 66 F.4th at 769, 771 (quoting *Final Decision I*, 384 F. Supp. at 350).

Judge Boldt's factfinding was along two axes: Is a claimant a successor-in-interest to a treaty signatory? And, what are the U&As of those successors-in-interest tribes? The first question is not the focus of this litigation. The second has vexed tribes and courts for decades and is the subject of Sauk-Suiattle's current suit.[1] The determination of the bounds of a tribe's U&A remains an open question because *Final Decision I* expressly recognized that its U&A determinations were incomplete and provided a continuing-jurisdiction mechanism for concerned tribes to seek rights at additional fishing grounds. 384 F. Supp. at 419; *see also id.* at 333 ("For each of the plaintiff tribes, the findings set forth information regarding the organization and membership of the tribe, and some, *but by no means all*, of their principal usual and accustomed fishing places." (emphasis added)).

I. Continuing-Jurisdiction Procedure

Paragraph 25(a) of the permanent injunction of *Final Decision I*, modified in 1993 to its current form, establishes the procedure through which a concerned tribe may file a "request for determination" to invoke the court's continuing subject-matter jurisdiction and seek either clarification or expansion of its existing U&A.[2] *United*

[1] Tribes with overlapping U&As are required to divide between themselves the fifty percent share of harvestable fish allocated to treaty-right fisherman within those bodies of water. *Final Decision I*, 384 F. Supp. at 343–44.

[2] The district court further amended the Paragraph 25 procedures in 2012, but those changes, which focused on the mechanics by which the

States v. Washington, 18 F. Supp. 3d 1172, 1213–16 (W.D. Wash. 1993) ("Paragraph 25"). As relevant here, Paragraph 25(a) allows continuing jurisdiction for the court to determine:

> (1) Whether or not the actions intended or effected by any party (including the party seeking a determination) are in conformity with Final Decision # I or this injunction; [and] . . .
>
> (6) The location of any of a tribe's usual and accustomed fishing grounds not specifically determined by Final Decision # I[.]

Id. at 1213; *see also Upper Skagit*, 66 F.4th at 768 n.1 ("These paragraphs were previously termed paragraphs 25(a) and 25(f), but were renumbered [in] *United States v. Washington*, 18 F. Supp. 3d [at 1213]."). While subsection (a)(1) looks backwards to *Final Decision I* and subsequent decisions to decide if a party's actions violate the court's prior U&A determinations, subsection (a)(6) is forward-looking and permits a tribe to seek to modify or expand its existing U&A.

To successfully invoke subsection (a)(1), the moving party "bears the burden of establishing that its interpretation of *Final Decision I* is consistent with Judge Boldt's intent." *Upper Skagit*, 66 F.4th at 770. By contrast, for a reviewing

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Western District of Washington processes requests for determination, did "not alter or amend the substantive requirements of Paragraph 25, as amended August 11, 1993." *United States v. Washington*, 20 F. Supp. 3d 899, 982–83 (W.D. Wash. 2012). The 2012 changes are not relevant to this appeal.

court to have subject-matter jurisdiction in a subsection (a)(6) action, "the U&A at issue must not have been 'specifically determined' by *Final Decision # I*." *Muckleshoot Indian Tribe v. Tulalip Tribes*, 944 F.3d 1179, 1183 (9th Cir. 2019) (*Muckleshoot III*) (citation omitted).

To make a request for determination under any subsection of Paragraph 25(a), after exhausting the injunction's meet-and-confer and mediation requirements, a tribe must file "a short and plain statement setting forth the factual and legal basis of the claim for relief or other matter presented to the court, and a statement of the relief sought by the requesting party." Paragraph 25(b)(3). The injunction commands that the initial request for determination neither "contain legal argument" nor "be accompanied by submission of evidence." *Id.*

II. Sauk-Suiattle's Request for Determination

In September 2024, Sauk-Suiattle filed a request for determination under Paragraph 25(a)(6). The request focused on *Final Decision I*'s Findings of Fact 131 and 132, in which Judge Boldt found that:

> 131. The usual and accustomed fishing places of the Sauk River Indians at the time of the treaty included Sauk River, Cascade River, Suiattle River and the following creeks which are tributary to the Suiattle River—Big Creek, Tenas Creek, Buck Creek, Lime Creek, Sulphur Creek, Downey Creek, Straight Creek, and Milk Creek. Bedal Creek, tributary to the Sauk River, was also a Sauk fishing ground.

> 132. During treaty times the Sauk River Indians took fish with spears, dip nets, traps and weirs. They procured salmon and steelhead in their upriver region and also traveled to the saltwater to procure marine life unavailable in their own territory. They ate salmon and steelhead in both fresh and cured forms. In modern times the Sauk-Suiattle Indian fishermen, numbering only about thirty, have not fished commercially and are primarily interested in a personal use fishery.

384 F. Supp. at 376 (citations omitted). Sauk-Suiattle argues that Finding 131 was non-exhaustive regarding its riverine U&A and that "the exact locations" of its saltwater U&A have not been specifically determined. The tribe requested recognition of various riverine and marine fishing grounds:

> The Tribe respectfully requests that the Court exercise its authority under the continuing jurisdiction of this case to determine that the Usual and Accustomed fishing grounds and stations of the Sauk-Suiattle Indian Tribe include the Skagit River, the Baker River, and saltwater areas including from Warm Beach to the mouth of the Stillaguamish River, the South Fork of the Skagit Delta and Skagit Bay, the west and north sides of Hat Island, both sides of Camano Island (including Saratoga Passage and Port Susan), Samish Bay, Chuckanut Bay, Padilla Bay, Fidalgo Bay, the east side of Whidbey Island (including Penn Cove, Oak Harbor, Crescent

> Harbor, and Holmes Harbor), Snee-oosh Beach, Similk Bay, Turner Bay, and from Deception Pass west to Lawson's Reef.

The Swinomish, Suquamish, Tulalip, and Upper Skagit tribes filed a motion to dismiss. The tribes argued that the district court lacks subject-matter jurisdiction under Paragraph 25(a)(6) because the entirety of Sauk-Suiattle's U&A was specifically determined by Judge Boldt, that Sauk-Suiattle's request to expand its U&A was fully adjudicated in prior subproceedings to this case, and that Sauk-Suiattle failed to state a claim under Federal Rule of Civil Procedure 12(b)(6).

In response, Sauk-Suiattle rejected those arguments and announced its intent to provide new historical and anthropological evidence to support its claim for an expanded U&A:

> [T]he Sauk-Suiattle Tribe intends to call its expert historian, Dr. Peter Whiteley, whose testimony will feature new historical evidence and constitutes significant new anthropological research and who will explain why each of the evidentiary facts listed above are, in fact, evidence of historical fishing, and how they work in conjunction with the other evidence the Tribe will introduce to support his expert opinion that the Claimed Waters constitute the Tribe's usual and accustomed fishing areas at treaty times. Additionally, the Tribe intends to present anthropological work of Barbara and Robert Lane produced after Final Decision

> # 1 and never considered by the Court in any subproceeding.

III. District Court's Finding of No Subject-Matter Jurisdiction

The district court granted the motion to dismiss under Rule 12(b)(1) for lack of subject-matter jurisdiction based on the injunction's continuing-jurisdiction provision and suggested, in the alternative, that dismissal could be warranted on collateral-estoppel grounds were the court to possess subject-matter jurisdiction.[3] The court concluded that "Sauk-Suiattle's U&A is unambiguous, specifically determined" and "excludes any unnamed waters." The dismissal order also found that Sauk-Suiattle's request "cite[d] no newly discovered information."

Sauk-Suiattle filed a motion for reconsideration presenting various arguments and emphasizing its intent to present evidence through testimony by a historian, Dr. Peter Whiteley, and presentation of a 1981 report authored for the Bureau of Indian Affairs by Barbara and Robert Lane, which was produced after *Final Decision I*. The district court denied the motion for reconsideration.

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[3] Sauk-Suiattle's claim that the district court impermissibly converted the opposing tribes' motion to dismiss into a motion for summary judgment fails. The district court acted correctly when resolving the factual attack on subject-matter jurisdiction by reviewing evidence beyond the complaint while not necessarily presuming the truthfulness of Sauk-Suiattle's allegations. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Because the jurisdictional and merits issues are not "inseparable," the court was not required to construe disputed facts in Sauk-Suiattle's favor. *See Bowen v. Energizer Holdings, Inc.*, 118 F.4th 1134, 1139 (9th Cir. 2024).

ANALYSIS

We reverse the district court's findings that Sauk-Suiattle's U&A has been specifically determined as to the Baker River and marine waters. We do so cognizant of the unique difficulties this case poses for the Western District of Washington. Indeed, as we remarked more than thirty-five years ago, it is hard to think of "a more comprehensive and complex case than this." *United States v. Suquamish Indian Tribe*, 901 F.2d 772, 775 (9th Cir. 1990). Though we "give[] deference" to the district court's finding that it lacks subject-matter jurisdiction because that finding is "based on the court's extensive oversight of the decree from the commencement of the litigation to the current appeal," *Muckleshoot III*, 944 F.3d at 1183 (quoting *United States v. Walker River Irrigation Dist.*, 890 F.3d 1161, 1169 (9th Cir. 2018)), our "deference to the district court is reduced where, as here, the district judge has not overseen the litigation from its inception." *Walker River Irrigation Dist.*, 890 F.3d at 1169.

The district court correctly found that Sauk-Suiattle's claim to U&A on the Skagit River is foreclosed by our decision in *Upper Skagit*, 66 F.4th at 774. Sauk-Suiattle's Baker River and marine claims, however, have not been "decided explicitly or by necessary implication" in prior proceedings, and accordingly the district court must exercise its jurisdiction under *Final Decision I* to hear the tribe's requests for U&A in those bodies of water. *United States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000) (*Lummi II*) (quoting *Liberty Mutual Ins. Co. v. EEOC*, 691 F.2d 438, 441 (9th Cir. 1982)).

I. U&A on the Skagit River

In *Upper Skagit*, we held that "Judge Boldt intentionally omitted the Skagit River from the Sauk tribe's U&As[.]" 66 F.4th at 770. Our recognition that Sauk-Suiattle's U&A was specifically determined to exclude the Skagit River dooms the tribe's new attempt to claim fishing rights on the Skagit.

In an effort to distinguish its new claim to the Skagit River from the clear language of *Upper Skagit*, Sauk-Suiattle emphasizes that it is now requesting a 25(a)(6) proceeding, in which the introduction of new evidence is permitted, whereas *Upper Skagit* arose from a 25(a)(1) proceeding. But whether a finding was made in a 25(a)(1) proceeding or a 25(a)(6) proceeding does not affect the potential preclusive effect of that finding on subsequent proceedings.

The elements of issue preclusion are met for Sauk-Suiattle's Skagit River claim. *See Janjua v. Neufeld*, 933 F.3d 1061, 1065 (9th Cir. 2019) (enumerating issue preclusion's four elements). In both *Upper Skagit* and this proceeding, "the issue at stake" was whether Judge Boldt specifically determined that Sauk-Suiattle lacked U&A on the Skagit River. *Id.* (quoting *Oyeniran v. Holder*, 672 F.3d 800, 806 (9th Cir. 2012)). The issue "was actually litigated" (all the way up to this court) in *Upper Skagit*, with both sides enjoying "a full and fair opportunity to litigate the issue." *Id.* Finally, deciding whether Judge Boldt specifically determined Sauk-Suiattle's U&A as to the Skagit River was "necessary to decide" *Upper Skagit* on the merits. *Id.* As such, Sauk-Suiattle is bound by the prior litigation of its claimed U&A on the Skagit River.

The finding that Sauk-Suiattle's U&A was specifically determined as to the Skagit River necessarily disposes of the tribe's claim in this appeal. The meaning of Paragraph

25(a)(6)'s plain text is clear: "In order for a tribe to bring an action under Paragraph 25(a)(6), the U&A at issue must not have been 'specifically determined' by *Final Decision # I*." *Muckleshoot III*, 944 F.3d at 1183 (citation omitted). Because we held in *Upper Skagit* that Finding 131 "clearly and unambiguously establishes Judge Boldt's intent not to include the Skagit River in the Sauk tribe's U&As," Sauk-Suiattle cannot bring another claim for U&A in the Skagit River. *Upper Skagit*, 66 F.4th at 771. We therefore affirm the district court's conclusion that it lacked jurisdiction over Sauk-Suiattle's request for determination regarding the Skagit River.

II. U&A on the Baker River

Despite the deluge of litigation regarding tribal water rights in Western Washington over the past half-century, claims specifically addressing the Baker River, a southward-flowing tributary of the Skagit River, have never been pressed. Although the Baker River is a tributary of the Skagit River, it is not the same as, or coterminous with, the Skagit River. Until Subproceeding 20-1, which led to our decision in *Upper Skagit*, no order or opinion in *United States v. Washington*—including *Final Decision I*—had mentioned the Baker River by name. Although a lack of mention does not *ipso facto* render a waterway not specifically determined, the repeated reference to the Baker River in Dr. Lane's submissions to Judge Boldt, paired with the absence of any mention of the Baker River in *Final Decision I*, leads us to conclude that Sauk-Suiattle should be permitted to present its claims to U&A on the Baker River.

References to the Baker River are scattered throughout the Lane Report, the primary evidentiary basis for the factual findings made by Judge Boldt in *Final Decision I*.

Discussing the Sakhumehu tribe, a treaty signatory and predecessor-in-interest to Sauk-Suiattle, "Dr. Lane's summary of her report states that the 'principal fisheries' of the Sakhumehu 'were the headwaters of Skagit River including Baker River, Sauk River, and the smaller creeks which belonged to that water system.'" *Upper Skagit*, 66 F.4th at 774. The Lane Report similarly noted that "some of the Sauk people went to the Cascades on the Skagit River to fish and to Baker River to fish with Upper Skagit friends and relatives there." *Id*.

Sauk-Suiattle grounds its Paragraph 25(a)(6) request in evidence from a second report by Dr. Lane and her husband, published in 1981, which was not before Judge Boldt when he issued *Final Decision I* in 1974. The 1981 Report specifically discussed Indian Fisheries on the Baker River. To support its claim to U&A on the Baker River, Sauk-Suiattle underscores that no subproceeding has "mentioned the Baker River in any discussion of Sauk-Suiattle fishing customs and traditions."

If Judge Boldt's omission of the Baker River from Sauk-Suiattle's enumerated U&A were intentional, then Sauk-Suiattle's claim would be precluded. But because *Final Decision I* did not allocate the Baker River by name to *any* tribe, we conclude that Judge Boldt simply never addressed the question of Baker River U&A, and, therefore, that he did not "specifically determine[] by Final Decision # I" the full extent of Sauk-Suiattle's riverine U&A.[4] *Final Decision I*,

[4] U&A over the Baker River has been recognized in decisions subsequent to *Final Decision I*, though never by name. For example, the Swinomish Tribe was allocated U&A over "the Skagit River and its tributaries," which includes the Baker River, in a 1975 order. *United States v. Washington*, 459 F. Supp. 1020, 1049 (W.D. Wash. 1978). That

384 F. Supp. at 419. Our determination that the Skagit River had been specifically excluded from Sauk-Suiattle's U&A in *Upper Skagit* relied on the logic that "Judge Boldt's *inclusion* of the Skagit River in the Upper Skagit tribe's U&As and in the Swinomish tribe's U&As while *omitting* it from the Sauk tribe's U&As, indicates that his omission was intentional." 66 F.4th at 771 (citations omitted and emphasis added). Such logic, rooted in the principle of *inclusio unius est exclusio alterius*, cannot apply to this case because no tribe had U&A on the Baker River recognized by *Final Decision I*. Further, the Baker River is not so clearly related to the existing Sauk-Suiattle riverine U&A as to be excluded by direct implication.

Ultimately, there is no clear answer for why *Final Decision I* omitted the Baker River, despite Dr. Lane's recognition of the river's importance to Sauk-Suiattle's predecessor tribe. In Dr. Lane's 1972 summary of findings,

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award does not change our conclusion. To begin, a generic reference to all tributaries may well suffice to affirmatively define one tribe's U&A, but it is unlikely to demonstrate that another tribe's claim was "specifically determined" to not include that same unnamed tributary. And Paragraph 25(a)(6) is clear that a party may invoke the continuing jurisdiction of the court where the location of a tribe's U&A is "not specifically determined by Final Decision # I." In *Final Decision I*, the Baker River was not a part of any tribe's U&A; the Swinomish only received U&A over the tributaries of the Skagit River (including the Baker River) after *Final Decision I*. Such post-*Final Decision I* grants may be relevant for issue-preclusion purposes, but are of course irrelevant to determining whether Judge Boldt specifically determined a tribe's U&A "by" *Final Decision I*.

entered into evidence in the initial proceedings before Judge Boldt as Exhibit USA-20, she concluded:

> 1. The Sauk-Suiattle Inidan [sic] Tribe is composed primarily of descendants of the Sakhumehu and other Indians who lived on the upper tributaries of the Skagit River in 1855.
>
> 2. The Sakhumehu are named in the preamble to the Treaty of Point Elliott, January 22, 1855. One of the signatories is identified as "Sakhumehu" on that document.
>
> 3. The principal fisheries of the Sakhumehu were the headwaters of [the] Skagit River including Baker River, Sauk River and the smaller creeks which belonged to that water system.

Dr. Lane noted that "[t]he fisheries listed in this summary are not to be taken as the only important fisheries of each group."

Dr. Lane's detailed report about the Sauk-Suiattle tribe, which Judge Boldt entered into evidence as USA-29, also mentioned the Baker River. In the report, which relied in part on earlier ethnographic work conducted by Dr. Sally Snyder, Dr. Lane observed the following:

> Apparently the sites along the Sauk and Suiattle rivers were considered to be the fishing grounds of the Sauk-Suiattle group, although others might sometimes join them in fishing there. In similar fashion some of the Sauk people went to the Cascades on the

> Skagit River to fish and to Baker River to fish with Upper Skagit friends and relatives there.
>
> Evidently Bedal Creek, a tributary of the Sauk River, was a favorite steelhead fishing ground. Other fishing sites mentioned in Dr. Snyder's notes were along Baker River and Cascade River.
>
> There is some historical evidence to suggest that there were either permanent villages or else fishing camps in these areas in the 1880's. References to people living in these locations occurs [sic] in correspondence preserved in the National Archives relating to early surveys in the region. Since the matter is somewhat tangential to present concerns, full documentation is not provided here.

This description aligns with and adds weight to Dr. Lane's summary of her findings regarding Sauk-Suiattle contained within USA-20.

Despite having the summary of findings and the more-detailed Lane Report before him, Judge Boldt did not include the Baker River in his *Final Decision I* findings of fact as to the U&A of Sauk-Suiattle (or any other tribe). The responding tribes urge us to read the Lane Report alongside Finding 131 as an intentional foreclosing of Sauk-Suiattle's Baker River claim. But that is a step too far. Ambiguity compels further exploration of Sauk-Suiattle's claims. We must be cautious when applying the negative inference logic relied upon in *Upper Skagit*; overzealous use of that logic would cement tribal U&As at their 1974 boundaries and ignore Judge Boldt's proclamation that he intended to

resolve "some, but by no means all" of tribal U&A. *Final Decision I*, 384 F. Supp. at 333.

Cognizant of the explicitly incomplete nature of *Final Decision I* and the liberal pleading standard for subproceedings set by Judge Boldt's injunction, we reverse the district court's dismissal of Sauk-Suiattle's request for determination regarding the Baker River. We do not hold that Sauk-Suiattle possesses U&A on the Baker River; instead, we hold only that Judge Boldt did not specifically determine that Sauk-Suiattle lacked U&A on the Baker River. On remand, we instruct the district court to set aside further inquiry into Judge Boldt's subjective intent in 1974 and instead consider the evidence brought by Sauk-Suiattle to determine whether the tribe customarily fished on the Baker River with sufficient regularity to justify the river's inclusion into the tribe's U&A.

III. U&A on the Marine Waters

Judge Boldt's *Final Decision I* mentions that Sauk-Suiattle "traveled to the saltwater to procure marine life unavailable in their own territory" but offers no further detail about the tribe's marine fishing. 384 F. Supp. at 376. Despite this factual finding, Judge Boldt did not assign any marine U&A to Sauk-Suiattle in his decision. *See id.* at 375–76. In *Upper Skagit*, we did not directly address Sauk-Suiattle's marine claims, but we did emphasize that, "[a]s *Final Decision I* made clear, 'occasional and incidental [fishing] was not considered to make the marine waters traveled thereon the usual and accustomed fishing grounds of the transiting Indians.'" 66 F.4th at 774 (quoting 384 F. Supp. at 353). We also recognized that "Dr. Lane's general statement about Indian fisheries is not sufficiently specific to the Sauk

tribe to inform Judge Boldt's intent regarding the Sauk tribe's U&As." *Id.*[5]

Both Judge Boldt in *Final Decision I* and Judge Rothstein in reconfiguring the Paragraph 25 procedures in 1993 expressly left the door open for a future court to exercise continuing jurisdiction to determine "the location of any of a tribe's usual and accustomed fishing grounds not specifically determined by *Final Decision # I*." 384 F. Supp. at 419; 18 F. Supp. 3d at 1213. Neither judge forbade the introduction of new evidence or placed any temporal limits on when requests for determination could be filed. As Judge Boldt laid out in a prior subproceeding, a tribe "may at any future time apply to this court for hearing . . . regarding expanded usual and accustomed fishing places so long as such application is in accordance with paragraph 25 of the court's injunction." *Washington*, 459 F. Supp. at 1068. The roughly eighty subproceedings during the past half century stand as testament to that open door, which we today continue to hold open for Sauk-Suiattle's marine claims (and other potential future claims by Sauk-Suiattle or other tribes).

That Sauk-Suiattle's existing U&A consists entirely of upstream waters some distance from the claimed marine waters does not preclude their marine U&A claims. Almost all affected tribes, including those whose current

[5] The intervening sentence between these two statements in *Upper Skagit* is: "The statement that the Sauk tribe traveled to the saltwater, without more, does not establish customary fishing on the Skagit River to support U&As on it." 66 F.4th at 774. While the main focus of that sentence—whether Sauk-Suiattle can claim Skagit River U&A—is not relevant to Sauk-Suiattle's marine claim, the phrase "without more" supports our conclusion that Sauk-Suiattle's U&A has not been specifically determined for its marine claims.

reservations are far from the ocean, received saltwater fisheries under *Final Decision I*. *See United States v. Muckleshoot Indian Tribe* (*Muckleshoot II*), 235 F.3d 429, 435 (9th Cir. 2000) ("The only tribes for which there is no mention of specific saltwater fisheries [in Dr. Lane's report] are three upriver tribes . . . ."). For example, the Yakama Nation has U&A both on the Puget Sound and on the Yakama Indian Reservation, about one hundred miles away. *See Final Decision I*, 384 F. Supp. at 379–82 (defining the U&A of the Yakama, formerly the Yakima). We explained in *Upper Skagit* how a negative inference may be drawn, in some instances, when an unallocated body of water runs near a body of water on which that tribe was recognized to have U&A. *See* 66 F.4th at 771–72. But the explanatory power of this inference decays for far-apart or dissimilar bodies of water: that Judge Boldt defined the scope of Sauk-Suiattle's upstream riverine U&A has no impact at all on the potential for the tribe's marine U&A.

As we recognized in *Stillaguamish Tribe of Indians v. Washington*, a tribe can bring a request for determination under Paragraph 25(a)(6) in situations where the tribe's U&A is partially specifically determined as to certain bodies of water but is undetermined as to a dissimilar body of water. 102 F.4th 955, 958–59, 962 (9th Cir. 2024). Like for the Stillaguamish—who we permitted to bring claims for the establishment of a marine U&A despite no such U&A being contemplated in Judge Boldt's Stillaguamish-specific findings of fact—Sauk-Suiattle may seek to establish marine water U&As. The fact that Judge Boldt recognized the tribe's historic "travel[] to the saltwater to procure marine life" only strengthens that conclusion. 384 F. Supp. at 376.

We disagree with the district court that the *Muckleshoot* line of cases is controlling, or even relevant, here. *See*

Muckleshoot Tribe v. Lummi Indian Tribe, 141 F.3d 1355 (9th Cir. 1998) (*Muckleshoot I*); *Muckleshoot II*, 235 F.3d 429; *Muckleshoot III*, 944 F.3d 1179. The crux of the *Muckleshoot* cases was that a tribe's U&A can be ambiguous yet still specifically determined: although the phrase "saltwater of Puget Sound" was subject to interpretation, Judge Boldt's intent in *Final Decision I* was to entirely specifically determine the Muckleshoot Tribe's marine water U&A, therefore depriving the court of subject-matter jurisdiction for any subsequent Paragraph 25(a)(6) proceeding. *Muckleshoot II*, 235 F.3d at 432–38; *see also Muckleshoot III*, 944 F.3d at 1186–87 (Ikuta, J., dissenting) (detailing the proceedings in *Muckleshoot I*). The best reading of Sauk-Suiattle's claim here is not that its U&A is *ambiguous*—there is no statement by Judge Boldt that is subject to multiple different meanings, as with the "saltwater of Puget Sound." Judge Boldt's determination of Sauk-Suiattle's existing U&A is straightforward and clear, listing three rivers and several tributaries. *Final Decision I*, 384 F. Supp. at 376. The issue here is instead that the inclusion of the Sauk, Cascade, and Suiattle Rivers in the tribe's U&A says nothing at all about whether the tribe possesses any valid claims to the marine waters some distance away. This framing rings especially true given Judge Boldt's recognition that Sauk-Suiattle's predecessor tribe "procure[d] marine life unavailable in their own territory," 384 F. Supp. at 376, the evidence in Dr. Lane's report, and Judge Boldt's express statement that not all U&A for all tribes would be specifically determined by *Final Decision I*.[6]

[6] *If* Sauk-Suiattle had argued that its U&A was ambiguous, the proper procedural mechanism would have been a 25(a)(1) proceeding. And *if*

Accordingly, we **AFFIRM** the district court's dismissal of Sauk-Suiattle's Skagit River claim on issue-preclusion grounds, and **REVERSE** the district court's dismissal of Sauk-Suiattle's Baker River and marine claims because Judge Boldt did not specifically determine the full extent of Sauk-Suiattle's U&A in *Final Decision I*. We **REMAND** for further proceedings consistent with this opinion. All parties shall bear their own costs on appeal. The clerk shall amend the docket to remove all interested parties.

there had been a finding that the entirety of Sauk-Suiattle's U&A had been specifically determined, the court would necessarily lack subject-matter jurisdiction to expand the tribe's U&A further in this 25(a)(6) proceeding. But as to the maritime claims, Sauk-Suiattle instead asserts that its U&A was not specifically determined—and therefore, the *Muckleshoot* line of cases does not apply.