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FISH & WILDLIFE DIV. OLYMPIA

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

AUG 24 1994

JAMES R. LARSEN, Clerk

Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

8	CONFEDERATED TRIBES OF THE	)	
9	COLVILLE RESERVATION,	)	NO. CY-92-248-JLQ
		)	
10	Plaintiffs,	)	
		)	
11	v.	)	CONSENT DECREE
		)	
12	WASHINGTON DEPARTMENT OF	)	
13	LICENSING, et al.,	)	
		)	
14	Defendants.	)	

The parties consent to entry of this Consent Decree in full settlement of all issues arising in the case, as follows:

I. RECITALS

1.1 The parties have conferred and engaged in negotiations. This Consent Decree is the result of each party's mutual good faith effort to resolve this case.

1.2 Each party to this Consent Decree respects the sovereignty of the other and desires to work within the framework of a government-to-government relationship.

1.3 The parties acknowledge that, pursuant to chapters 82.36 and 82.38 RCW, the State imposes taxes upon the distribution, sale, transfer, use or possession of motor vehicle fuel and diesel

1 and other special fuels within the State, the revenue from which  
2 is used exclusively for highway purposes. The Tribes expend  
3 Tribal funds each year for public highways, roads, and traffic law  
4 enforcement on the Reservation.

5 **II. PURPOSE OF THIS CONSENT DECREE**

6 2.1 The parties agree that this Consent Decree constitutes  
7 a fair resolution and compromise of this matter and its underlying  
8 competing contentions. The parties intend that this Consent  
9 Decree completely resolve, as among them, all issues raised in  
10 this case, or that could properly have been raised in this case,  
11 and that this Consent Decree be binding upon the parties and upon  
12 persons subject to regulation by the parties.

13 2.2 Though intended to resolve all issues in this case, this  
14 Consent Decree primarily addresses the establishment of a  
15 cooperative framework for taxation and regulation, by the Tribes  
16 and by the State, respecting the distribution, sale, transfer, use  
17 or possession of "motor vehicle fuel" and "special fuel" when such  
18 fuel is distributed, sold, used, or possessed on the Reservation.

19 2.3 In general, the parties intend that the State of  
20 Washington's statutory and regulatory law for taxation with  
21 respect to such fuel remain in full force and effect under this  
22 Consent Decree except with respect to:

- 23 a. fuel distributed or sold to the Tribes that is used by  
24 the Tribes for its essential governmental functions and  
25 Tribal businesses, and  
26 b. fuel distributed or sold to Colville businesses that

1 operate tribally-licensed filling stations on the  
2 Reservation, to the extent such fuel is resold by those  
3 businesses through their filling station pumps to Tribal  
4 members, Colville businesses, Tribal businesses, or the  
5 Tribes, by depositing the fuel into the fuel tanks of  
6 motor vehicles owned or leased by such Tribal members or  
7 Colville businesses, or into the fuel tanks of Tribal  
8 vehicles, and not resold, distributed or transferred to  
9 any other person or entity.

### 10 III. DEFINITIONS

11 3.1. "Colville business" means a business that is  
12 (1) wholly-owned and operated by an enrolled member or members of  
13 the Tribes, and that is (2) incorporated under the laws of the  
14 Tribes or possesses a Tribal Business License or a federal Indian  
15 trader's license allowing the business to operate on the Colville  
16 Indian Reservation.

17 3.2. "Distributor" has the meaning given in RCW 82.36.010(3),  
18 as it now exists or as it may hereafter be amended.

19 3.3. "Essential governmental function" has the meaning given  
20 in 26 C.F.R. § 305.7871-1(d) (1993).

21 3.4. "Filling station" means a place of business operated for  
22 the purpose of delivering to the general public motor vehicle fuel  
23 or special fuel into the fuel tanks of motor vehicles.

24 3.5. "Motor vehicle" means every self-propelled vehicle  
25 designed for operation upon land utilizing motor vehicle fuel or  
26 special fuel as the means of propulsion.

1 3.6. "Motor vehicle fuel" has the meaning given in RCW  
2 82.36.010(2), as it now exists or as it may hereafter be amended.

3 3.7. "Reservation" means the Colville Indian Reservation  
4 together with Indian trust lands located outside the boundaries of  
5 the Colville Indian Reservation over which the Tribes exercise  
6 governmental authority.

7 3.8. "Special fuel" has the meaning given in RCW  
8 82.38.020(5), as it now exists or as it may hereafter be amended.

9 3.9. "Special fuel dealer" has the meaning given in RCW  
10 82.38.020(7), as it now exists or as it may hereafter be amended.

11 3.10. "State" means the State of Washington.

12 3.11. "Tribes" means the Confederated Tribes of the Colville  
13 Reservation including its tribal government.

14 3.12. "Tribal business" means a business that is wholly-  
15 owned and operated by the Tribes.

16 3.13. "Tribal member" means a person who is an enrolled  
17 member of the Tribes.

18 3.14. "Tribal vehicle" means a motor vehicle owned or leased  
19 by the Tribes or by a Tribal business, or by the United States and  
20 assigned for use by the Tribes.

21 **IV. ORDER**

22 The Court, having reviewed the parties' agreement and the  
23 record in this case, now HEREBY ORDERS:

24 Proceedings in this Litigation

25 4.1. Plaintiff shall voluntarily dismiss its Complaint in  
26 this action, with prejudice, contemporaneously with entry of this

1 Consent Decree. The Court shall, however, retain jurisdiction  
2 over this case for a period of one year for the limited purpose of  
3 ensuring compliance with this Consent Decree.

4 4.2. Subject to paragraphs 4.5 and 4.6, either the Tribes or  
5 the State may initiate an action in this Court at any time for the  
6 limited purpose of requesting the Court to enforce the terms of  
7 this Consent Decree. If the action is initiated within one year  
8 from the date of entry of this Consent Decree, either party may  
9 file a petition seeking enforcement of the terms of this Consent  
10 Decree under the cause number assigned to this case without paying  
11 an additional filing fee. Any action brought under this Consent  
12 Decree after that one-year period must be filed as a new and  
13 separate action requesting the Court to enforce the Consent  
14 Decree. The parties consent to such an action being brought for  
15 the limited purpose of enforcing this Consent Decree, including an  
16 action to recover monies alleged to be owing either party under  
17 ¶ 4.9, ¶ 4.13, or ¶ 4.15.

18 Government-To-Government Cooperation

19 4.3. The State of Washington and the Confederated Tribes of  
20 the Colville Reservation shall cooperate to the extent legally  
21 permitted to ensure the enforcement of:

- 22 a. The Tribes' laws with respect to the regulation of  
23 Tribal members and Colville businesses that sell or  
24 deliver motor vehicle or special fuel on the  
25 Reservation;
- 26 b. The State's laws and rules respecting the imposition and

1 collection of its fuel taxes from all persons except as  
2 provided under this Consent Decree; and

3 c. The terms of this Consent Decree.

4 4.4. Upon request, the Tribes shall inform the Washington  
5 State Department of Licensing, or any successor agency, which  
6 persons or entities it knows to be engaged in the transport of  
7 motor vehicle fuel or special fuel to the Reservation.

8 Dispute Resolution

9 4.5. Neither the Tribes, nor the State, nor officers acting  
10 on either government's behalf, may petition the Court to enforce  
11 this Consent Decree unless (a) the dispute resolution process  
12 described in ¶ 4.6 has been followed in good faith to completion  
13 without successful resolution, or unless (b) the other party fails  
14 to enter into the dispute resolution process or terminates the  
15 process before its completion.

16 4.6. Should a dispute arise between the Tribes and the State  
17 upon an issue of compliance with the Consent Decree by either  
18 government, or by their officers, employees or agents, the Tribes  
19 and State shall attempt to resolve the dispute through the  
20 following dispute resolution process:

21 a. Either party may invoke the dispute resolution process  
22 by notifying the other, in writing, of its intent to do  
23 so. The notice shall set out the issues in dispute and  
24 the notifying party's position on each issue.

25 b. The first stage of the process shall include a face-to-  
26 face meeting between representatives of the two govern-

1 ments to attempt to resolve the dispute by negotiation.  
2 The meeting shall be convened within 30 days of the date  
3 of the written notice described in ¶ 4.6.a. The  
4 representatives of each government shall come to the  
5 meeting with the authority to settle the dispute.

6 c. If the parties are unable to resolve the dispute within  
7 60 days of the date of the written notice described in  
8 ¶ 4.6.a., the parties shall engage the services of a  
9 mutually-agreed-upon qualified mediator to assist them  
10 in attempting to negotiate the dispute. If the parties  
11 cannot agree on who the mediator should be, the mediator  
12 shall be a person or persons selected by the Court  
13 pursuant to Local Rule 39.1(d)(1). Cost for the  
14 mediator shall be borne equally between the two  
15 governments.

16 d. Both parties shall pursue the mediation process in good  
17 faith until the dispute is resolved or until the  
18 mediator determines that the parties are not able to  
19 resolve the dispute. If the parties cannot agree upon  
20 a format for the mediation process, the format shall be  
21 that directed by the mediator. If the dispute is  
22 resolved, that resolution shall be memorialized by the  
23 mediator and shall bind the parties.

24 e. If either party terminates the process before  
25 completion, or if the mediator determines that the  
26 dispute can not be resolved in the mediation process, or

1 if the dispute is not resolved within 30 days of the  
2 date the mediator is selected, the other party may  
3 petition the Court for enforcement of the Consent Decree  
4 as to the disputed and unresolved issue or issues.

5 Framework For Taxation And Regulation

6 4.7. Subject to ¶ 4.13, the defendants shall collect state  
7 motor vehicle and special fuel taxes in accordance with chapter  
8 82.36 RCW and chapter 82.38 RCW, as they now exist or as they may  
9 hereafter be amended.

10 4.8. Except where the Tribes acquire motor vehicle fuel when  
11 acting as a distributor licensed under chapter 82.36 RCW, the  
12 Tribes shall purchase fuel under this Consent Decree only from  
13 persons who are properly licensed in Washington State to  
14 distribute fuel or act as a special fuel dealer or supplier in  
15 accordance with chapter 82.36 RCW and chapter 82.38 RCW,  
16 respectively. The Tribes shall require that Tribally-licensed  
17 filling stations shall purchase fuel only from persons who are  
18 properly licensed in Washington State to distribute fuel or act as  
19 a special fuel dealer or supplier in accordance with chapter 82.36  
20 RCW and chapter 82.38 RCW, respectively.

21 4.9. Upon compliance with the procedures described in  
22 ¶ 4.11, the Tribes shall be entitled to a refund from the State of  
23 Washington Motor Vehicle Fund of the amount of motor vehicle fuel  
24 tax and special fuel tax that any seller, distributor or dealer of  
25 such fuels has paid to the State and passed on to, or collected  
26 from, the Tribes, or a Colville business operating a tribally-



1 licensed filling station on the Reservation, measured by gallons  
2 of such fuel that:

3 a. (1) are delivered into and stored at the Tribes' own  
4 bulk fuel storage facilities on the Reservation; and  
5 (2) thereafter, are deposited only into the fuel tank of  
6 a Tribal vehicle; and (3) are used solely for the  
7 Tribes' essential governmental functions or Tribal  
8 businesses; or

9 b. are resold at the pump, by a Colville business operating  
10 a tribally-licensed filling station on the Reservation,  
11 (1) to Tribal members or Colville businesses by deposit  
12 directly into the fuel tank of a motor vehicle owned or  
13 leased by them, or (2) to the Tribes or Tribal  
14 businesses by deposit directly into the fuel tank of a  
15 Tribal vehicle.

16 4.10. The Tribes shall maintain its current "card key  
17 system" or a similar system that restricts access and the ability  
18 to withdraw fuel from the Tribes' motor vehicle fuel storage  
19 facilities to those persons authorized to withdraw fuel only for  
20 use in Tribal vehicles.

21 4.11. Refunds will be made quarterly upon application  
22 therefor by the Tribes. The refund process shall be that set out  
23 in RCW 82.36.270, RCW 82.36.310 and RCW 82.38.190. Unless the  
24 parties agree otherwise, applications shall be made upon the form  
25 attached to this Consent Decree, completed by an authorized  
26 representative of the Tribes. The application for refunds shall

1 be based upon records maintained by the Tribes under ¶ 4.16,  
2 records of Colville businesses operating Tribally-licensed filling  
3 stations upon the Reservation accurately maintained as required in  
4 ¶ 4.18 below, records of distributors, dealers, suppliers, or  
5 sellers of fuel, and upon other records that the parties may agree  
6 to consider.

7 4.12. The Tribes, Tribal members, or Colville businesses may  
8 also be eligible for refunds under the provisions of RCW  
9 82.36.280, RCW 82.36.285, RCW 82.36.290, RCW 82.36.300, RCW  
10 82.38.080, and RCW 82.38.082, and similar state fuel tax exemption  
11 statutes that may be later adopted, but only (1) to the extent  
12 such statutes apply to the Tribes, the Tribal member, or the  
13 Colville business, and to the particular use by them of motor  
14 vehicle and special fuels and (2) to the extent a refund is not  
15 available to the Tribes with respect to the same gallons of fuel  
16 under ¶ 4.9 of this Consent Decree.

17 4.13. If the Tribes qualify and become licensed under  
18 chapter 82.38 RCW as a special fuel user and comply with the  
19 requirements of that chapter for special fuel users, ¶ 4.7 shall  
20 not apply as to special fuel sold or delivered to the Tribes. In  
21 that event, the defendants may not collect the State's special  
22 fuel tax as to special fuel meeting all the criteria for refunds  
23 set out in ¶¶ 4.9.a or 4.12 above. However, the State may collect  
24 from the Tribes, and the Tribes shall pay to the State, the  
25 State's special fuel tax for all other gallons of special fuel  
26 obtained or used by the Tribes.

1 4.14. No refund of motor vehicle or special fuel taxes need  
2 be made by the State except as specifically set out in this  
3 Consent Decree. Except as specifically set out in this Consent  
4 Decree, the State may impose and collect, according to state law  
5 and regulation now existing or as may hereinafter be amended, the  
6 State's motor vehicle fuel and special fuel taxes with respect to  
7 any such fuel sold or distributed to, or used or possessed by, any  
8 person or entity on the Reservation, including Tribal members and  
9 Colville businesses who purchase bulk fuel.

10 4.15. Nothing herein shall preclude the Tribes from choosing  
11 to become a distributor or a special fuel dealer. Should the  
12 Tribes choose to become a distributor, the parties shall comply  
13 with the provisions of Chapter 82.36 RCW relating to distributors.  
14 Should the Tribes choose to become a special fuel dealer, the  
15 parties shall comply with the provisions of Chapter 82.38 RCW  
16 relating to special fuel dealers.

17 Tribal Records

18 4.16. The Tribes shall maintain records as set forth in this  
19 paragraph.

20 a. The Tribes shall maintain records indicating:

21 (i) the quantity of all motor vehicle fuel and all  
22 special fuel sold or distributed to, or otherwise  
23 obtained by, the Tribes;

24 (ii) the quantity of all motor vehicle fuel and all  
25 special fuel delivered into the Tribes' bulk storage  
26 facilities;

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(iii) the quantity of all motor vehicle fuel and all special fuel withdrawn from the Tribes' bulk storage facilities;

(iv) the identity of each vehicle for which motor vehicle fuel or special fuel is withdrawn from the Tribes' bulk storage facilities; and

(v) the Tribal programs or Tribal businesses for which all motor vehicle fuel and special fuel withdrawn from the Tribes' bulk storage facilities is used.

b. Records relating to the use of fuel for which the Tribes may claim an exemption under ¶ 4.12 of this Consent Decree shall conform to the requirements for such records established by chapters 82.36 RCW or 82.38 RCW, and implementing rules.

c. When the Tribes act as a distributor of motor vehicle fuel, the Tribes shall maintain records in accordance with chapter 82.36 RCW and implementing rules. When the Tribes act as a special fuel dealer, the Tribes shall maintain records in accordance with chapter 82.38 RCW and implementing rules.

4.17. The Tribes shall permit the State or its officers, agents, or designees to review the records described in ¶ 4.16 at the Tribes' regular business offices on the Colville Reservation during the Tribes' regular business hours. The Tribes shall maintain such records for a minimum of five years from the sale, distribution, withdrawal, or use to which the record relates.

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Tribal Laws

4.18. The Tribes shall establish and implement a procedure for regulation of fuel on the Reservation, including licensure by the Tribes of Colville businesses that operate filling stations on the Reservation. The Tribes' requirements shall be, at minimum:

- a. That Tribal licensure, and compliance with the Tribes' laws in connection therewith, shall be made conditions for the operation of a filling station by a Colville business on the Reservation;
- b. That any Colville business operating a filling station on the Reservation shall purchase fuel only from a distributor, or a special fuel dealer or supplier, licensed under chapters 82.36 RCW or 82.38 RCW as applicable, and that failure to comply with this provision shall result in enforcement action by the Tribes;
- c. That Colville businesses that operate filling stations on the Reservation shall collect at the pump an amount equal to the State's motor vehicle fuel tax or special fuel tax, as applicable, upon each gallon of such fuel sold or delivered by those filling stations;
- d. That Colville businesses operating filling stations shall require all Tribal members and Colville businesses who purchase fuel to display a tribal enrollment card or other document identifying the purchaser as a Tribal member, a Colville or Tribal business, or the Tribes;

- 1 e. That no Tribal member or Colville business that
- 2 purchases fuels from such filling stations shall resell
- 3 or transfer the fuel to any other person or entity;
- 4 f. That any Tribal member or Colville business that
- 5 acquires fuel in bulk shall comply with chapters 82.36
- 6 and 82.38 RCW in acquiring and using such fuel;
- 7 g. That Colville businesses operating filling stations on
- 8 the Reservation shall maintain records of all of their
- 9 purchases of motor vehicle fuel and special fuel
- 10 showing, for each transaction, (1) the identity of the
- 11 distributor, dealer, or supplier from whom the fuel was
- 12 purchased, (2) whether the fuel involved is motor
- 13 vehicle fuel or special fuel, (3) the number of gallons
- 14 involved, and (4) the price paid to the distributor or
- 15 special fuel dealer or supplier;
- 16 h. That Colville businesses operating filling stations on
- 17 the Reservation shall maintain records of all sales of
- 18 such fuels showing, for each transaction, (1) whether
- 19 the fuel involved is motor vehicle fuel or special fuel,
- 20 (2) the number of gallons involved, (3) the price,
- 21 (4) the tax status of the purchaser (Tribes, Tribal
- 22 business, Tribal member, Colville business, or other),
- 23 (5) whether the fuel was deposited directly into the
- 24 fuel tank of a motor vehicle, and (6) whether an amount
- 25 equal to the State's tax was collected;
- 26 i. That the records of the filling stations be made

1 available at any reasonable time for inspection or audit  
2 by the Tribes, and, pursuant to this Consent Decree, by  
3 the State or its employees or agents.

4 4.19. During each fiscal year (October 1 to September 30),  
5 the Tribes shall budget for the enforcement of traffic laws on  
6 highways, roads, or streets open to the public on the Reservation,  
7 or for the design, construction, or maintenance of such highways,  
8 roads, or streets, an amount of money equal to (a) the amount of  
9 motor vehicle fuel tax and special fuel tax refunded under ¶ 4.9  
10 of this Consent Decree, plus (b) any amount of special fuel tax  
11 not collected pursuant to ¶ 4.13 of this Consent Decree for which  
12 the Tribes would have been eligible for a refund under ¶ 4.9 had  
13 the tax been collected pursuant to ¶ 4.7. The Tribes shall  
14 furnish to the State or provide the State access to Tribal records  
15 demonstrating that the Tribes have complied with this paragraph.  
16 Access to such records shall be at the Tribes' business offices on  
17 the Reservation during the Tribes' regular business hours.

18 Implementation

19 4.20. The State and the Tribe, not less than one year after  
20 entry of this Consent Decree, shall confer, on a government-to-  
21 government basis, to evaluate the effectiveness of the Consent  
22 Decree and to attempt to mutually agree upon solutions to any  
23 problems that may have arisen.

24 4.21. Each party shall bear its respective costs and  
25 attorneys fees incurred in this case.

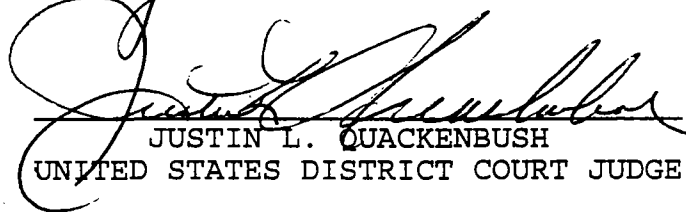
26 4.22. The Tribes shall ensure that all Tribal members and

1 Colville businesses comply with all of the Tribal laws  
2 implementing ¶ 4.18.

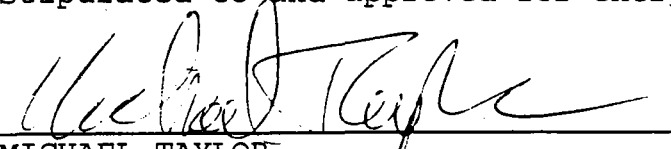
3 4.23. Should any third party, in an action brought against  
4 the State or against any of its agencies, officials, employees, or  
5 agents, allege that the Tribe lacks authority to enter into this  
6 Consent Decree or to adopt or enforce the laws described in  
7 ¶ 4.18, the Tribe shall appear in the action and defend its  
8 authority.

9 4.24. This order, and any order which may incorporate its  
10 terms, in whole or in part, shall not be construed as an admission  
11 or agreement by any party, whether plaintiff or defendant, as to  
12 the validity or legitimacy of any or all of any party's factual or  
13 legal contentions made in this case. This Consent Decree and  
14 order addresses only the taxation and regulation of motor vehicle  
15 fuel and special fuel and shall not be construed as affecting any  
16 other area of Tribal or State taxation or regulation.

17 DATED this 23<sup>rd</sup> day of August, 1994.

18  
19   
20 JUSTIN L. QUACKENBUSH  
UNITED STATES DISTRICT COURT JUDGE

21 Stipulated to and approved for entry:


22  
23   
24 MICHAEL TAYLOR  
25 Attorney for Confederated Tribes of  
the Colville Reservation  
26 WSBA No. 3664




1 Stipulated to and approved for entry:

2 CHRISTINE O. GREGOIRE  
3 Attorney General

4

5   
6 JEFFREY O.C. LANE  
Sr. Assistant Attorney General  
WSBA No. 3930

  
FRONDA WOODS  
Assistant Attorney General  
WSBA No. 18728

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OFFICE OF ATTORNEY GENERAL  
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EASTERN DISTRICT OF WASHINGTON

AUG 24 1994

JAMES R. LARSEN, Clerk  
Deputy

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JEFFREY O. C. LANE  
Senior Assistant Attorney General  
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(206) 753-2795

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

CONFEDERATED TRIBES OF THE	)	
COLVILLE RESERVATION,	)	NO. CY-92-248-JLQ
	)	
Plaintiffs,	)	STIPULATION OF PARTIES
	)	RE: CONSENT DECREE
v.	)	
	)	
WASHINGTON DEPARTMENT OF	)	
LICENSING, et al.,	)	
	)	
Defendants.	)	

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Upon entry of the Consent Decree agreed to by the parties,  
and transmitted to the court under cover letter dated June 28,  
1994, each of the parties to this case stipulate and agree as  
follows:

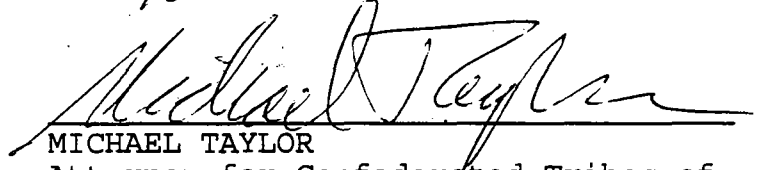
1. All parties intend that the Consent Decree entered in  
this case will apply prospectively and that its terms will be  
implemented beginning October 1, 1994; and

STIPULATION OF PARTIES  
RE: CONSENT DECREE

ATTORNEY GENERAL OF WASHINGTON  
905 Plum Street, Building 3  
P.O. Box 40100  
Olympia, WA 98504-0100  
(206) 753-6200

1           2.    The Confederated Tribes of the Colville Reservation by  
2 its Complaint in this case did not claim, and makes no claims now,  
3 for refunds of any past amounts paid for Washington State motor  
4 vehicle fuel excise tax or special fuel excise tax by the Tribes  
5 or its members. The Tribes hereby denies that it made any claims  
6 to any such refunds of past taxes paid; and  
7           3.    The Tribes shall make claims for refund of fuel taxes  
8 paid by the Tribe or its members in connection with fuel purchases  
9 on or after October 1, 1994, only as provided in the Consent  
10 Decree entered in this case. The State of Washington shall make  
11 such refunds as the Consent Decree provides.

12  
13                               Stipulated to and approved for entry  
                                  this 10 day of August, 1994:


14  
15                                 
16                               MICHAEL TAYLOR  
17                               Attorney for Confederated Tribes of  
                                  the Colville Reservation  
18                               WSBA No. 3664

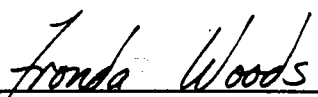
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Stipulated to and approved for entry  
this \_\_\_ day of August, 1994:

CHRISTINE O. GREGOIRE  
Attorney General

  
\_\_\_\_\_  
JEFFREY O.C. LANE  
Senior Assistant Attorney General  
WSBA No. 3930

  
\_\_\_\_\_  
FRONDA WOODS  
Assistant Attorney General  
WSBA No. 18728  
Attorneys for Defendants

*Approved: 8/23/94*  
  
District Judge Paul J. Jones