

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KLAMATH TRIBES OF OREGON,
MILLER ANDERSON, JOSEPH HOBBS,
CATHERINE WEISER-GONZALEZ,
ROBERT ANDERSON, JOSEPH KIRK,
ORIN KIRK, LEONARD NORRIS, JR.,
PHILIP TUPPER, ROBERT BOJORCAS,
and KLAMATH CLAIMS COMMITTEE,

Civ. No. 04-644-CO

ORDER

Plaintiffs,

v.

PACIFICORP, an Oregon
corporation,

Defendant.

AIKEN, Judge:

Plaintiffs filed suit alleging trespass and violations of their fishing rights under the Treaty between the United States of America and the Klamath and Moadoc Tribes and Yahooskin Bank of Snake Indians, Oct. 14, 1864 (Treaty of 1864), 16 Stat. 707.

Defendant moved for summary judgment, arguing that the termination of the Klamath Tribe rendered plaintiffs' claims subject to the Oregon statutes of limitations, and that the limitations period regarding plaintiffs' treaty and trespass claims against defendant or its predecessors expired prior to the restoration of the Tribe's status in 1986.

United States Magistrate Judge Cooney issued his Findings and Recommendation and recommended that defendant's motion for summary judgment be granted. Upon *de novo* review, I agreed that defendant's motion for summary judgment should be granted, finding that the Ninth Circuit's opinion in Skokomish Indian Tribe v. United States, 410 F.3d 506, 510, 514 (9th Cir. 2005) (en banc) foreclosed a suit for damages based on the interference with treaty fishing rights brought against third parties. See Opinion and Order dated July 13, 2005.

Plaintiffs now move to amend the judgment of the court, arguing that the Treaty of 1864 is distinguishable from the Treaty of Point No Point involved in Skokomish, and that the holding of Skokomish is not applicable here. Given that the court granted defendant's motion for summary judgment on grounds not raised by the parties, I will consider plaintiffs' motion.

Nevertheless, I do not find plaintiffs' argument persuasive. Plaintiffs argue that a cause of action against third parties for damages is implied under the Treaty of 1865, because its language

