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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION, a federally-recognized Indian tribal government and as *parens patriae* on behalf of the Enrolled members of the confederated Tribes and Bands of the Yakama Nation; FRIENDS OF THE COLUMBIA GORGE, and Oregon non-profit corporation; NORTHWEST ENVIRONMENTAL DEFENSE CENTER, an Oregon non-profit corporation; COLUMBIA RIVERKEEPER, a Washington non-profit corporation; DAWN STOVER, a Washington resident; DANIEL LICHTENWALD, a Washington resident;;

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE, UNITED STATES DEPARTMENT OF AGRICULTURE ANIMAL AND PLANT HEALTH INSPECTION SERVICE; TOM VILSACK, Secretary of the United States Department of Agriculture; CINDY SMITH, administrator of the United States Department of Agriculture Animal and Plant health Inspection Service,

Defendants.

NO. CV-10-3050-EFS

**AMENDED* ORDER GRANTING
TEMPORARY RESTRAINING
ORDER and SETTING
PRELIMINARY INJUNCTION
HEARING**

*The amended Order is entered to correct the case caption.

1 A telephonic hearing occurred in the above-captioned matter on July
2 29, 2010, on Plaintiffs Confederated Tribes and Bands of the Yakama
3 Nation's ("the Tribe") Motion for Temporary Restraining Order (Ct. Rec.
4 [3](#)) and Friends of Columbia Gorge, Northwest Environmental Defense Center,
5 Columbia Riverkeeper, Dawn Stover, and Daniel Lichtenwald's Motion for
6 Temporary Restraining Order and Preliminary Injunction (Ct. Rec. [24](#)).
7 Plaintiffs seek a temporary order preventing the United States Department
8 of Agriculture ("USDA") from authorizing shipments of Hawaiian garbage
9 into the mainland. Plaintiffs were represented by Michael Chappell, Tom
10 Buchele, Anthony Broadman, Gabriel Galanda, and Julio Carranza.

11 Defendants USDA, USDA Animal and Plant Health Inspection Service
12 (APHIS), USDA Secretary Tom Vilsack, and APHIS Administrator Cindy Smith
13 received notice of the lawsuit and the motions. They were represented
14 by James Booth, Ty Bair, Sara Costello, Pam DeRusha,¹ and Margaret
15 Burnes-Roth.

16 After reviewing the submitted material and relevant authority and
17 hearing from counsel, the Court is informed. As explained below, a
18 temporary restraining order is granted.

19 A temporary restraining order may be issued to maintain the status
20 quo if the plaintiffs establish that they are "likely to succeed on the
21 merits, that [they are] likely to suffer irreparable harm in the absence
22 of preliminary relief, that the balance of equities tips in [their]
23 favor, and that an injunction is in the public interest." *Winter v.*

24
25 ¹ Ms. DeRusha spoke on Defendants' behalf. She had an opportunity
26 to read the Complaint, but had not yet read all of the documents relating
to the motions for temporary restraining order.

1 NRDC, 129 S. Ct. 365, 374 (2008). The Ninth Circuit uses a "sliding
2 scale" under which the temporary restraining order may be issued if there
3 are serious questions going to the merits and the balance of hardships
4 tips sharply in the plaintiffs' favor, along with satisfaction of the two
5 other *Winter* factors. *Alliance for the Wild Rockies v. Cottrell*, no. 09-
6 35756 (9th Cir. July 28, 2010).

7 The Court finds this standard is met. First, there are serious
8 questions relating to whether the USDA adequately analyzed the
9 environmental impacts of shipment and receipt of Hawaiian waste into the
10 mainland, and in particular, receipt into a Washington or Oregon port
11 followed by transport and burial into the Roosevelt Landfill, which is
12 located on lands ceded by the Yakama Nation in Washington in close
13 proximity to the Columbia River. No environmental impact statement was
14 prepared, and the May 2010 Environmental Analysis, and related Finding
15 of No Significant Impact (FONSI), failed to engage in any specific
16 analysis of the impacts that the shipment of Hawaiian garbage may have
17 on the Northwest area affected by this shipment, including the ports,
18 routes of train or truck travel, and the Roosevelt Landfill. There also
19 was no analysis of alternatives, other than a no-action alternative. For
20 these reasons, the Court finds it likely that Plaintiffs will prevail on
21 their National Environmental Protection Act claims. 42 U.S.C. §§ 4321-
22 4370e (2000); 40 C.F.R. §§ 1501.1-1508.27 (2009). *Ctr. for Biological*
23 *Diversity v. National Highway Traffic Safety Admin.*, 538 F.3d 1172, 1220
24 (9th Cir. 2008). Further, there are also serious questions regarding
25 whether the USDA complied with the National Historic Preservation Act,
26 16 U.S.C. § 470 *et seq.*, because it has not consulted with Washington's

1 Historic Preservation Officer. There are also serious questions about
2 whether the USDA adequately consulted with the Tribe.

3 Second, Plaintiffs are likely to suffer irreparable harm in the
4 absence of a temporary injunction enjoining the shipment of Hawaiian
5 garbage. The Roosevelt Landfill is located in the area in which tribal
6 members exercise their "in common" hunting, gathering, and fishing rights
7 protected by the 1855 Treaty. The introduction of an invasive species
8 or contamination by the Hawaiian garbage would immeasurably harm the
9 resources and waterways enjoyed by the tribal members, the Plaintiff
10 organizations, and the two individual Plaintiffs, as well as the Tribe's
11 logging industry.

12 Third, the balance of equities tips sharply in Plaintiffs' favor.
13 The USDA has an interest in encouraging economic growth, and Hawaii has
14 an interest in having its garbage taken care off. However, the
15 Plaintiffs' interests of ensuring that the environmental impacts, and the
16 related economic consequences resulting from those environmental impacts,
17 are fully considered before Hawaiian garbage is shipped to the mainland,
18 trumps these interests. The prior USDA regulation barring the shipment
19 of Hawaiian waste to the mainland evidences this interest.

20 Fourth, a temporary restraining order is in the public interest.
21 Although garbage will remain on the ports in Hawaii longer than
22 anticipated,² the garbage has already sat there for over 200 days. There

23
24 ² It is presently unknown when the Hawaiian waste is to be barged
25 to the mainland because the USDA placed a temporary stay of such
26 shipments by Hawaiian Waste Systems, LLC (HWS) due to tears in the
plastic that wraps the bales of garbage.

1 was nothing before the Court indicating that a continued stay of the
2 garbage in Hawaii would be detrimental to the Hawaiian public. In
3 comparison, the introduction of an invasive species from Hawaii to the
4 mainland would be detrimental to those who enjoy these lands and their
5 wildlife and to the impacted industries, such as the logging and soft-
6 fruit industries.

7 Accordingly, the Court determines Plaintiffs have established that
8 a temporary restraining order is necessary. **IT IS HEREBY ORDERED:**

9 1. The Tribe's Motion for Temporary Restraining Order (**Ct. Rec.**
10 **3**) is **GRANTED**.

11 2. Friends of Columbia Gorge, Northwest Environmental Defense
12 Center, Columbia Riverkeeper, Dawn Stover, and Daniel Lichtenwald's
13 Motion for Temporary Restraining Order and Preliminary Injunction (**Ct.**
14 **Rec. 24**) is **GRANTED** (TRO) **and RESET** (the PI hearing) **IN PART**.

15 3. Until the Court rules on the Motion for Preliminary Injunction,
16 **Defendants are enjoined from:**

- 17 a. authorizing shipments, subject to USDA-APHIS permitting,
18 of Hawaiian garbage into the mainland, including those
19 shipments authorized under any compliance agreements
20 between Hawaiian Waste Systems, LLC ("HWS") and USDA-
21 APHIS, and
- 22 b. permitting, authorizing, allowing, or otherwise granting
23 permission to HWS or any other private trash hauling
24 enterprise to load, ship, transport, or otherwise export
25 Hawaiian garbage from Honolulu to the mainland.

1 3. Plaintiffs shall post a **\$100.00 bond** no later than July 30,
2 2010.

3 4. A Preliminary Injunction hearing on Plaintiffs' Motion for
4 Preliminary Injunction (**Ct. Rec. 24**) is **SET** for **August 30, 2010, at 9:00**
5 **a.m. in YAKIMA.**

6 **IT IS SO ORDERED.** The District Court Executive is directed to
7 file this Order and provide copies of this Order to counsel.

8 **DATED** this 30th day of July 2010

9
10 S/ Edward F. Shea
11 EDWARD F. SHEA
12 United States District Judge

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