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KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE #: 23-2-25215-2 SEA

Honorable Judge James Rogers  
Noted for December 12, 2025

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

SHOALWATER BAY INDIAN TRIBE,

Plaintiff,

v.

EXXON MOBIL CORPORATION,  
EXXONMOBIL OIL CORPORATION, BP  
P.L.C., BP AMERICA INC., CHEVRON  
CORPORATION, CHEVRON USA, INC.,  
SHELL PLC, SHELL OIL COMPANY,  
CONOCOPHILLIPS, CONOCOPHILLIPS  
COMPANY, PHILLIPS 66, and PHILLIPS 66  
COMPANY,

Defendants.

MAKAH INDIAN TRIBE,

Plaintiff,

v.

EXXON MOBIL CORPORATION,  
EXXONMOBIL OIL CORPORATION, BP  
P.L.C., BP AMERICA INC., CHEVRON  
CORPORATION, CHEVRON USA, INC.,  
SHELL PLC, SHELL OIL COMPANY,  
CONOCOPHILLIPS, CONOCOPHILLIPS  
COMPANY, PHILLIPS 66, and PHILLIPS 66  
COMPANY,

Defendants.

Case No. 23-2-25215-2 SEA

Case No. 23-2-25216-1 SEA

**[PROPOSED] ORDER DENYING  
DEFENDANTS' JOINT MOTIONS TO  
DISMISS FOR FAILURE TO STATE A  
CLAIM [12(b)(6)]**

**[PROPOSED] ORDER DENYING  
DEFENDANTS' JOINT MOTIONS TO  
DISMISS [12(b)(6)]**

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1 This matter came before the Court on Defendants’ Joint Motions to Dismiss for Failure to  
2 State a Claim 12(b)(6) (the “Motions”). The Court having been fully informed hereby finds that  
3 the Tribes’ have stated claims for which relief can be granted and denies Defendants’ motions.

4 The Makah Indian Tribe’s and Shoalwater Bay Indian Tribe’s state-law claims are not  
5 preempted or precluded by federal law. First, the federal Constitution does not invest the substance  
6 of a now-defunct body of federal common law with a lingering power to preempt state laws. And  
7 even if the former body of federal common law lingered in the form of a constitutional rule, it  
8 would not bar the Tribes’ deceptive-marketing claims because it only encompassed claims seeking  
9 remedies against emitters for wrongfully discharged pollutants that flowed or drifted across state  
10 boundaries. Second, the Clean Air Act does not preempt the Tribes’ claims because it, like the  
11 common-law standards it displaced, does not speak to deceptive marketing.

12 Nor do the Tribes’ claims pose any non-justiciable political questions. Determining  
13 whether Defendants are liable turns only on whether Defendants’ breached duties under  
14 Washington law to market their products truthfully and with adequate warnings—purely judicial  
15 questions that do not require a court to engage in any policy-making that might implicate  
16 separation-of-powers concerns.

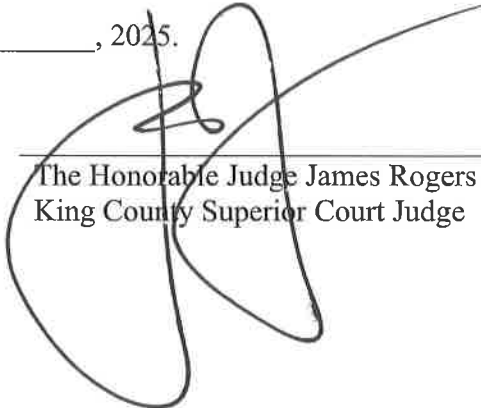
17 The Tribes’ claims are also timely as pleaded. Statutes of limitations do not apply to claims  
18 brought by sovereign Tribes under the doctrine of *nullum tempus*, nor to claims seeking to abate  
19 an ongoing public nuisance. In any event, the Tribes’ claims would still be timely under the  
20 discovery rule because the Tribes have sufficiently alleged that they would not have known all the  
21 elements of their causes of action prior to the limitations period. The claims would also be timely  
22 under the continuing tort doctrine, both because the Tribes’ lands are suffering ongoing harm from  
23 Defendants’ tortious conduct, and because Defendants’ tortious course of conduct remains  
24 ongoing.

25 Lastly, the Tribes have adequately stated claims for public nuisance and for violations of  
26 the Washington Products Liability Act (WPLA). Statutory public nuisance claims are not  
27 preempted by the WPLA, and nuisance liability in Washington encompasses nuisances caused by

1 deceptive marketing of a product. And in seeking to impose liability under the WPLA for failures  
2 to warn and intentional misrepresentations, the Tribes' claims are based on failures to warn fossil-  
3 fuel consumers—not the entire world—about risks that would not have been open and obvious to  
4 those consumers.

5 IT IS HEREBY ORDERED that Defendants' Joint Motions to Dismiss for Failure to State  
6 a Claim under CR 12(b)(6) are DENIED.

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8 Dated 20 day of April, 2025.

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12 The Honorable Judge James Rogers  
13 King County Superior Court Judge  
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1 Presented by:

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