

OCT 23 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PROTECT THE PENINSULA'S FUTURE;
COALITION TO PROTECT PUGET
SOUND HABITAT; BEYOND
PESTICIDES,

Plaintiffs - Appellees,

v.

DOUG BURGUM, in his official capacity
as Secretary of the United States
Department of the Interior; UNITED
STATES FISH & WILDLIFE SERVICE;
BRIAN NESVIK, in his official capacity as
Regional Director of United States Fish and
Wildlife Service; HUGH ROBERT
MORRISON, in his official capacity as
Regional Director of the Pacific Region of
the United States Fish and Wildlife Service;
JENNIFER BROWN SCOTT, in her
official capacity as the United States Fish
and Wildlife Service Project Leader for the
Washington Maritime National Wildlife
Refuge Complex,

Defendants - Appellees,

and

No. 25-4692

D.C. No.

3:23-cv-05737-BHS

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

JAMESTOWN S'KLALLAM TRIBE,

Intervenor-Defendant - Appellant.

Appeal from the District Court for the Western District of Washington
Hon. Benjamin H. Settle, Presiding Judge

Submitted October 21, 2026**
San Francisco, California

Before: S.R. THOMAS, KOH, and TUNG, Circuit Judges.

Jamestown S’Klallam Tribe (“S’Klallam”) appeals both the district court’s order denying its motion to dismiss as well as the subsequent order denying its motion for reconsideration. We lack jurisdiction over the appeal, and thus dismiss it. *See Alto v. Black*, 738 F.3d 1111, 1130 (9th Cir. 2013).

S’Klallam additionally requests we review its appeal as a petition for a writ of mandamus. We have jurisdiction over whether to issue a writ of mandamus, and we deny the petition. *See Hernandez v. Tanninen*, 604 F.3d 1095, 1099 (9th Cir. 2010). Because the parties are familiar with the history of the case, we need not recount it here.

I

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.

We lack appellate jurisdiction over the appeals from the district court’s order denying the motion to dismiss and the subsequent order denying the motion for reconsideration. Appellate review requires finality—a decision that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” *Van Cauwenberghe v. Biard*, 486 U.S. 517, 521 (1988) (citation omitted). The denial of a motion to dismiss does not “end[] the litigation on the merits,” thereby making the order non-appealable. *See Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 375 (1987) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)); *see also Morrison-Knudsen Co., Inc. v. CHG Int’l, Inc.*, 811 F.2d 1209, 1214 (9th Cir. 1987).

In its motion to dismiss and motion for reconsideration, S’Klallam argued that it is a required party under Federal Rule of Civil Procedure (“Rule”) 19 and, therefore, the district court must dismiss on grounds of tribal sovereign immunity under Rule 12(b)(7). In addition to our jurisprudence concerning non-final orders, we have held that “a Rule 19 determination is not immediately appealable, because it can be reviewed after a final judgment.” *Alto*, 738 F.3d at 1130 (citations omitted). *Alto* controls, so we lack jurisdiction to hear S’Klallam’s appeal of the non-final district court orders.

II

Contrary to S’Klallam’s argument, the collateral order doctrine provides no exception to this rule. “The collateral order doctrine . . . permits review as if they were final decisions of a ‘small class’ of orders that: ‘(1) conclusively determine the disputed question; (2) resolve an important issue completely separate from the merits of the action; and (3) would effectively be unreviewable on appeal from a final judgment.’” *Alto*, 738 F.3d at 1130 (quoting *Rodriguez v. Lockheed Martin Corp.*, 627 F.3d 1259, 1264 (9th Cir. 2010)). S’Klallam does not meet these requirements because its appeal would be properly before us following the entry of final judgment by the district court. *Id.* at 1130.

III

S’Klallam requests us to review its appeal as a petition for a writ of mandamus. “We may treat an appeal from an otherwise nonappealable order as a petition for a writ of mandamus. Whether we construe the appeal as a writ of mandamus depends on whether mandamus is itself justified.” *Hernandez*, 604 F.3d at 1099 (citations omitted). “Mandamus is a ‘drastic and extraordinary remedy reserved for really extraordinary causes,’ and ‘only exceptional circumstances amounting to a judicial usurpation of power, or a clear abuse of discretion, will justify the invocation of this extraordinary remedy.’” *Id.* (citing *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380 (2004)) (citation modified).

“Although we determine de novo whether the writ should issue, we must be firmly convinced that the district court has erred.” *Id.* (citing *Cohen v. U.S. Dist. Court*, 586 F.3d 703, 708 (9th Cir. 2009)).

We are guided by the familiar *Bauman* factors when deciding whether to issue a writ of mandamus, namely:

(1) whether the petitioner has no other means, such as a direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in any way not correctable on appeal; (3) whether the district court's order is clearly erroneous as a matter of law; (4) whether the district court's order is an oft repeated error or manifests a persistent disregard of the federal rules; and (5) whether the district court's order raises new and important problems or issues of first impression.

Perry v. Schwarzenegger, 591 F.3d 1147, 1156 (9th Cir. 2010) (citing *Bauman v. U.S. Dist. Ct.*, 557 F.2d 650, 654-55 (9th Cir. 1977)). None of the factors here are satisfied. S’Klallam can file a new appeal following the district court’s entry of final judgment; there is no error so clear as to require mandamus; there is no indication that there is an oft repeated error present in the appealed order; and, this is not an issue of first impression as other cases, such as *Alto*, have ruled on similar issues regarding joinder. *See* 738 F.3d at 1130. As such, this case is not one of the “really extraordinary causes” requiring mandamus.

APPEAL DISMISSED; PETITION DENIED.