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Docket Entry 86 - Filed ANSWER of Carl Crouse, etcetra

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FILED IN THE
UNITED STATES DISTRICT COURT
Western District of Washington

SEP 13 1971

By *[Signature]* CHARLES A. SCHAAF, Clerk
Deputy

12 UNITED STATES DISTRICT COURT
13 WESTERN DISTRICT OF WASHINGTON
14 AT TACOMA

15 UNITED STATES OF AMERICA, et al,)
16 Plaintiff,)
17 v.)
18 STATE OF WASHINGTON, et al,)
19 Defendant.)

NO. 9213

20 ANSWER OF DEFENDANT
21 CARL CROUSE, DIRECTOR, DEPARTMENT OF GAME
22 WASHINGTON STATE GAME COMMISSION
23
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86
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ANSWER

1 COMES NOW Carl Crouse, Director, Washington Department
2 of Game, and the Washington State Game Commission, being repre-
3 sented by Joseph L. Coniff, Assistant Attorney General, and
4 for an answer to the complaint of the United States Government
5 filed by the United States Attorney state:

I.

6 Answering Paragraph 1, deny the same.

II.

7 Answering Paragraph 2, state that they have no
8 information sufficient to form a belief as to the truth or
9 falsity of the matters therein alleged and therefore deny
10 the same.
11
12

III.

13 Answering Paragraph 3, admit the execution of the
14 Treaty of Medicine Creek, the Treaty of Point Elliott, the
15 Treaty of Point No Point, the Treaty with the Makahs, and
16 the Treaty of Olympia (page 2, lines 8-22).
17

18 Deny that each of said treaties contains a provision
19 securing to the Indians certain off-reservation fishing rights
20 (page 2, lines 23-24).

21 Admit that the partially quoted provision of the
22 Treaty of Medicine Creek is accurate and typical (page 2,
23 lines 24-31).

24 These treaties provide, in relevant part:

25 Treaty of Medicine Creek, 10 Stat. 1132, 2 Kappler
26 661, Article 3:

27 "The right of taking fish, at all usual and
28 accustomed grounds and stations, is further
29 secured to said Indians in common with all
30 citizens of the Territory, and of erecting
31 temporary houses for the purpose of curing,
32 together with the privilege of hunting,
33 gathering roots and berries, and pasturing
their horses on open and unclaimed lands:
Provided, however, That they shall not take
shellfish from any beds staked or cultivated
by citizens, and that they shall alter all
stallions not intended for breeding-horses,
and shall keep up and confine the latter."

1 Treaty with the Makahs, 12 Stat. 939, 2 Kappler 682,
2 Article 4:

3 "The right of taking fish and of whaling
4 or sealing at usual and accustomed grounds
5 and stations is further secured to said
6 Indians in common with all citizens of the
7 United States, and of erecting temporary
8 houses for the purpose of curing, together
9 with the privilege of hunting and gathering
10 roots and berries on open and unclaimed
11 lands: Provided, however, That they shall
12 not take shell-fish from any beds staked or
13 cultivated by citizens."

14 Treaty with the Quinaielt, 12 Stat. 971, 2 Kappler
15 719, Article 3:

16 "The right of taking fish at all usual and
17 accustomed grounds and stations is secured
18 to said Indians in common with all citizens
19 of the Territory, and of erecting temporary
20 houses for the purpose of curing the same;
21 together with the privilege of hunting,
22 gathering roots and berries, and pasturing their
23 horses on all open and unclaimed lands. Pro-
24 vided, however, That they shall not take
25 shell-fish from any beds staked or cultivated
26 by citizens; and provided, also, that they
27 shall alter all stallions not intended for
28 breeding, and keep up and confine the
29 stallions themselves."

30 Treaty with the S'Klallam, 12 Stat. 933, 2 Kappler
31 674, Article 4:

32 "The right of taking fish at usual and ac-
33 customed grounds and stations is further
secured to said Indians, in common with
all citizens of the United States; and
of erecting temporary houses for the
purpose of curing; together with the privi-
lege of hunting and gathering roots and berries
on open and unclaimed lands. Provided, how-
ever, That they shall not take shell-fish
from any beds staked or cultivated by
citizens."

34 Treaty of Point Elliott, 12 Stat. 927, 2 Kappler
35 669, Article 5:

36 "The right of taking fish at usual and ac-
37 customed grounds and stations is further
38 secured to said Indians in common with all
39 citizens of the Territory, and of erecting
40 temporary houses for the purpose of curing,
41 together with the privilege of hunting and
42 gathering roots and berries on open and
43 unclaimed lands. Provided, however, That
they shall not take shell-fish from any
beds staked or cultivated by citizens."

1 Allege that they have no information sufficient to
2 form a belief as to the truth or falsity of the allegation
3 set forth at page 3, lines 1-7.

4 Specifically deny that each of the tribes named has
5 rights secured by said treaty to take fish, including steelhead,
6 at usual and accustomed fishing places in violation of state
7 law (page 3, lines 7-10).

8 IV.

9 Answering Paragraph 4, allege that they have no
10 information sufficient to form a belief as to the truth or
11 falsity of the allegations contained therein and therefore
12 deny the same.

13 V.

14 Answering Paragraph 5, deny the same.

15 VI.

16 Answering Paragraph 6, deny that any Indian tribe
17 possesses, by virtue of any treaty, any privilege or immunity
18 from the application of valid state game conservation laws or
19 regulations. Therefore they admit that the Washington State
20 Game Commission and the Department of Game have refused to
21 deal with claimed off-reservation Indian treaty fishing
22 rights as a separate subject (page 4, lines 9-13); and admit
23 that their position is that the treaty grants no special
24 privileges or immunities to Indian citizens of the State of
25 Washington outside reservation boundaries (page 4, lines 13-17);
26 and admit that they are bound, under the constitution and the
27 laws of the United States and the State of Washington to
28 regulate off-reservation Indian fishing activities to the
29 same extent and in the same manner as all other classes of
30 citizens (page 4, lines 17-22).

31 Admit that they contend that they have no authority
32 to recognize or allow an exemption or immunity to Indian citizens
33 outside reservation boundaries from the application of valid

1 conservation laws and regulations (page 4, lines 22-26).

2 Admit that they have refused to establish special ,
3 "Indian only" fishing seasons at claimed usual, and accustomed
4 locations (page 4, lines 27-31; page 5, lines 1-3).

5 Deny that Indian citizens possess treaty rights or
6 that they have an obligation to limit non-Indian citizen
7 fisheries or venery to assure that fish or game are taken
8 in violation of state law by Indian citizens (page 5, lines
9 3-7).

10 Deny that they possess the legal authority to enact
11 statutes in the State of Washington (page 5, line 8).

12 Admit that the state game commission has established
13 and promulgated game fish, game animal, and game bird regulations
14 in order to conserve game species and that they enforce said
15 regulations upon all citizens on an equal basis without dis-
16 crimination as to bloodline or ancestry (page 5, lines 8-12).

17 Admit that statutes and regulations of the Department
18 of Game prohibit the use of commercial gear (i.e., nets)
19 for catching game fish, and deny that they have permitted
20 commercial net fishing elsewhere in the State of Washington
21 on runs of game fish (page 5, lines 13-16).

22 Admit that the game statutes and regulations pro-
23 hibit the use of commercial gear (i.e., nets) for the taking
24 of game fish; admit that all citizens regardless of bloodline
25 or ancestry possess an equal opportunity to fish for game
26 fish, under game department regulations with sport angling
27 gear; and deny that said regulations and statutes are in
28 derogation of claimed treaty rights of Indian tribes (page 5,
29 lines 17-23).

30 Any allegation not admitted is denied.

31 VII.

32 Answering paragraph 7, deny the same.

1 VIII.

2 Answering paragraph 8, admit that they have not
3 given recognition to claimed immunities from the application
4 of valid state game conservation laws and regulations because
5 the same do not exist (page 6, lines 1-9).

6 IX.

7 Answering paragraph 9, admit that they and their
8 officers and agents in their official capacities have en-
9 forced valid state conservation laws and regulations by
10 arresting those persons who violate said laws and regulations
11 by causing said cases to be filed in the appropriate judicial
12 forum.

13 Admit that they intend to continue to process
14 violations of state conservation laws and regulations in
15 this manner.

16 Deny that they or their officers and agents have
17 acted wrongfully or unlawfully in any manner or in derogation
18 of any claimed treaty rights (page 6, lines 10-29) in making
19 such arrests or confiscations.

20 X.

21 Answering paragraph 10, deny the same.

22 XI.

23 Answering paragraph 11, admit that an actual
24 controversy exists between certain Indian tribes and the
25 Department of Game as to the nature and extent of claimed
26 treaty fishing and hunting rights but deny that the United
27 States government has any interest in this controversy.

28 XII.

29 Answering paragraph 12, restates and realleges the
30 denials, allegations and admissions of paragraphs 1 through
31 11 of this answer.

32 XIII.

33 Answering paragraph 13, admit that the game statutes
ANSWER OF GAME - 5

1 set forth in said paragraph were duly enacted by the legislature
2 of the State of Washington (RCW 77.16.060; RCW 77.12.040;
3 RCW 77.16.020; RCW 77.16.030; RCW 77.16.040; RCW 77.12.100;
4 and RCW 77.12.130), and admit that said statutes are con-
5 stitutional exercises of the police power possessed by the
6 State of Washington.

7 Admit that they are charged with the enforcement
8 thereof and have enforced said game statutes upon all citizens,
9 including Indian citizens, on an equal basis.

10 Deny that Indian citizens possess, by virtue of
11 federal treaties, any special privilege or immunity from
12 the application of these valid conservation measures.

13 Allege that they do not have sufficient information
14 to form a belief as to the truth or falsity of the various
15 other allegations in paragraph 13 pertaining to regulation
16 of food fish by the Washington Department of Fisheries and
17 therefore deny the same (page 7, line 30 through page 9, line
18 26), and deny any other allegation not admitted.

19 XIV.

20 Answering paragraph 14, allege that they do not have
21 sufficient information to form a belief as to the truth or
22 falsity of the allegation contained therein and therefore
23 deny the same.

24 XV.

25 Answering paragraph 15, admit that RCW 77.16.060
26 is the law of the State of Washington and is enforced in
27 all areas outside duly constituted Indian reservations in
28 the State of Washington and admit that they have failed to
29 recognize the existence of claimed treaty fishing rights of
30 Indian tribes because, in fact, said claimed rights do not
31 exist.

32 Deny that there is any unlawful or unreasonable
33 discrimination in favor of or against any class of citizens

1 of the State of Washington because of their bloodline or
2 ancestry including Indian citizens.

3 Deny that the adoption, promulgation and enforce-
4 ment of game fish statutes and regulations cannot be justified
5 as necessary or related to the conservation of game fish.

6 Allege that they do not have sufficient information
7 to form a belief as to the truth or falsity of the allegations
8 in paragraph 15 as they apply to RCW 75.12.060 and therefore
9 deny the same.

10 XVI.

11 Answering paragraph 16, state that Game does not
12 regulate the taking of food fish and therefore deny the same.

13 XVII.

14 FIRST AFFIRMATIVE DEFENSE

15 As a first affirmative defense, defendants reallege
16 and incorporate by reference paragraphs 1 through 16 inclusive
17 of this answer and further allege:

18 XVIII.

19 That this court is without jurisdiction to entertain
20 the complaint of the plaintiff because Congress has vested
21 the sole, exclusive and original jurisdiction to entertain
22 off-reservation claims based upon Indian treaties or "aboriginal
23 title" in the Indian Claims Commission, 25 U.S.C. 70, and, in
24 fact, such claims are being adjudicated in that forum.

25 XIX.

26 SECOND AFFIRMATIVE DEFENSE

27 When the State of Washington was admitted into the
28 Union, it came in on an "equal footing" with all other states
29 and became possessed of that quantum of police power necessary
30 to protect its natural resources, including game fish, game
31 animals and game birds so that all citizens might share in
32 their enjoyment on an equal basis.

1 XX.

2 THIRD AFFIRMATIVE DEFENSE

3 Subsequent international treaties, agreements and
4 understandings with the nations of Canada, Japan, Russia and
5 South Korea pertaining to the taking of anadromous fish have
6 superseded or modified Indian treaties executed in the State
7 of Washington in 1855-56.

8 XXI.

9 COUNTERCLAIM

10 As a counterclaim defendants incorporate by
11 reference and reallege paragraphs 1 through 16 inclusive of
12 this answer and further allege:

13 XXII.

14 Officers, agents and representatives of the United
15 States of America have, at least since 1961, actively en-
16 couraged, aided and abetted Indian citizens of the State of
17 Washington to go outside duly constituted Indian reservations
18 and violate valid state conservation laws and regulations.
19 Said encouragement has impeded the State of Washington in
20 its ability to protect its invaluable game fish, game animal
21 and game bird resources for the benefit of all its citizens.
22 Said actions, if permitted to continue, will cause irreparable
23 harm and damage to game conservation and management programs
24 and will seriously jeopardize the investment of millions of
25 public dollars and the conservation, perpetuation and maintenance
26 of these invaluable natural resources. Said actions have
27 tended to cause and create conditions favorable to extensive
28 civil unrest in the State of Washington leading to serious
29 and critical conservation law enforcement problems and ir-
30 reparable harm to the game bird, game animal and game fish
31 resources of the State of Washington. Said activities constitute
32 wrongful and unlawful attempts on the part of the United States
33 Government to usurp the state of its jurisdiction and regulatory

y to manage fisheries in waters of the state outside
stituted and presently existing Indian reservations
and, further, constitute a wrongful and unlawful attempt to
oust the state of its regulatory authority over its natural
resources and arrogate this authority unto themselves.

XXIII.

ANSWER TO COMPLAINT OF CONFEDERATED TRIBES AND
BANDS OF THE YAKIMA INDIAN RESERVATION

Answering the complaint of the Confederated Tribes
and Bands of the Yakima Indian Reservation, generally deny
the same and incorporate and reallege paragraphs 1 through
22 of this answer.

XXIV.

ANSWER TO COMPLAINT OF THE QUINAULT TRIBE OF INDIANS

Answering the complaint of the Quinault Tribe of
Indians, generally deny the same and incorporate and reallege
paragraphs 1 through 22 of this answer.

XXV.

ANSWER TO COMPLAINT OF THE MUCKLESHOOT INDIAN TRIBE; SQUAXIN
ISLAND TRIBE OF INDIANS; SAUK-SUIATTLE INDIAN TRIBE;
SKOKOMISH INDIAN TRIBE; AND STILLAGUAMISH TRIBE

Answering the complaint of the Muckleshoot Indian
Tribe, Squaxin Island Tribe of Indians, Sauk-Suiattle Indian
Tribe, Skokomish Indian Tribe, and the Stillaguamish Tribe,
generally deny the allegations contained therein and reallege
paragraphs 1 through 22 of this answer and (a) specifically
deny that the Muckleshoot Tribe of Indians are entitled to
claim treaty rights; (b) specifically deny that the treaties
referred to grant to the named Indian tribes any right,
privilege, or immunity from the application of duly enacted
state laws or duly promulgated state regulations pertaining
to the taking of fish; (c) specifically deny that Indians
are discriminated against in any manner under the fishing
laws or regulations of the State of Washington because of

1 their religion, color or race; (d) specifically deny that
2 Indian tribes possess the authority to regulate fishing
3 activities of non-Indians; (e) specifically deny that Indian
4 tribes possess the authority to regulate fishing activities
5 of tribal members outside presently existing reservation
6 boundaries; (f) specifically deny that the state is under
7 any obligation to assure specific fish to Indian tribes to
8 maintain their lives, culture, or religion; (g) specifically
9 deny that enforcement activities undertaken on behalf of the
10 Department of Game have in any manner violated any federally
11 secured right to Indian tribes or members thereof; and (h)
12 on information and belief deny that the Sauk-Suiattle,
13 Stillaguamish and Squaxin Island Tribes of Indians continue
14 to exist as tribal entities successor in interest to
15 aboriginal entities signatory to and beneficiaries of
16 certain treaties with the United States Government.

17 XXVI.

18 ANSWER TO COMPLAINT OF THE HOH TRIBE OF INDIANS

19 Answering the complaint of the Hoh Tribe of Indians,
20 generally deny the same and reallege paragraphs 1 through
21 22 of this answer and specifically deny that the Hoh Tribe
22 of Indians are beneficiaries to any treaties with the United
23 States Government and further deny that they continue to
24 exist as a tribal entity.

25 XXVII.

26 ANSWER TO COMPLAINT OF THE MAKAH TRIBE OF INDIANS

27 Answering the complaint of the Makah Tribe of
28 Indians generally deny the same and reallege paragraphs
29 1 through 22 of this answer and (a) specifically deny that
30 the Makah Tribe of Indians are entitled to any special con-
31 sideration or fishery by the International Pacific Salmon
32 Commission in the Straits of Juan de Fuca and (b) specifically
33 deny that the Makah Tribe of Indians possesses the authority

1 to regulate off-reservation fishing activities by its members.

2 XXVIII.

3 ANSWER TO COMPLAINT OF THE LUMMI INDIAN TRIBE

4 Answering the complaint of the Lummi Indian Tribe,
5 generally deny the same and reallege paragraphs 1 through
6 22 of this answer and (a) specifically deny that the Lummi
7 Tribe of Indians has any treaty right to fish upon anadromous
8 fish originating from Canada and (b) specifically deny that
9 the Department of Game has authorized pollution of the Nooksack
10 River and (c) specifically deny that the Department of Game
11 has authorized diversion of water from the Nooksack River.

12 XXIX.

13 ANSWER TO COMPLAINT OF THE QUILEUTE TRIBE OF INDIANS

14 Answering the complaint of the Quileute Tribe of
15 Indians, generally deny the same and reallege paragraphs
16 1 through 22 of this answer.

17 XXX.

18 ANSWER TO COMPLAINT OF THE UPPER SKAGIT TRIBE OF INDIANS

19 Answering the complaint of the Upper Skagit Tribe
20 of Indians, generally deny the same and reallege paragraphs
21 1 through 22 of this answer and specifically deny that the
22 Upper Skagit Tribe of Indians are beneficiaries to any treaties
23 with the United States Government and deny that they exist
24 as a tribal entity.

25 WHEREFORE defendants pray:

26 (1) That plaintiff and intervenors' request for
27 declaratory relief and an injunction be denied entirely and
28 that their complaints be dismissed with prejudice.

29 (2) That this court declare that Washington game
30 statutes and regulations are valid and constitutional in
31 every respect; that there is no discrimination appearing on
32 the face of any game statute or regulation and that they
33 are applied to all citizens within the State of Washington

1 on an equal basis.

2 (3) That the court declare that the Indian treaties
3 of 1855-56 set forth in paragraph III herein do not grant to
4 any Indian tribes any special right, privilege or immunity
5 from the application of valid Washington game conservation
6 laws and regulations.

7 (4) That an injunction be issued prohibiting the
8 United States of America, acting through its officers, agents
9 and representatives from aiding, abetting or encouraging in
10 any manner Indian citizens of the State of Washington to go
11 outside their duly constituted reservation boundaries and
12 violate valid state conservation laws and regulations.

13 (5) Grant such other and further relief as to the
14 court seems proper under the circumstances.

15 (6) Award defendants the costs of defending this
16 suit.

17 (7) Retain jurisdiction of this cause for the
18 purpose of enforcing or supplementing the judgment of this
19 court should such action become necessary.

20 DATED this 13th day of September, 1971.

21 Respectfully submitted:

22 SLADE GORTON
23 Attorney General

24 *Joseph Lawrence Coniff Jr.*
25 JOSEPH L. CONIFF
26 Assistant Attorney General
27 Attorneys for Defendants
28 Carl Crouse, Director,
29 Department of Game, and
30 Washington State Game Commission