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Docket Entry 174 - Filed Memorandum of Amicus Curiae, Idaho Fish and Game Department in support of Defendant Washington Department of Game's Motion for Summary Judgement

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FILED

JAN 4 2 23 PM '73

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EDGAR GOODFIELD, CLERK
U.S. DISTRICT COURT
W.D. OF WASHINGTON
BY *lh* DEPUTY CLERK

Attorney for Amicus Curiae
Idaho Fish and Game Department

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT
TACOMA

UNITED STATES OF AMERICA, et al.,)
)
Plaintiffs,)
)
vs.)
)
STATE OF WASHINGTON, et al.,)
)
Defendants.)

Case No. 9213

MEMORANDUM OF AMICUS CURIAE,
IDAHO FISH AND GAME DEPARTMENT
IN SUPPORT OF DEFENDANT WASHING-
TON DEPARTMENT OF GAME'S MOTION
FOR SUMMARY JUDGMENT

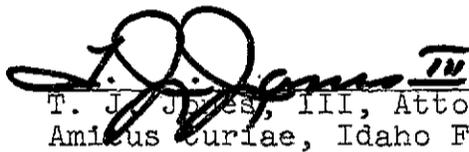
COMES NOW, Amicus Curiae, the Idaho Fish and Game Department, and hereby supports the Defendant Washington Department of Game's Motion for Summary Judgment and adopts that Defendant's Memorandum of Authorities in Support of Motion for Summary Judgment and in opposition of Motion to Strike Affirmative Defenses.

Because of grounds and for the reasons heretofore stated in the Petition of the Idaho Fish and Game Department for leave to participate as Amicus Curiae in this proceeding, this Amicus Curiae has been and is vitally concerned with the impact of Indian fishing, both commercial and noncommercial, on the anadromous fishery resources of the States of Washington, Oregon and Idaho; and the determination reached by this Court in this matter will effect the anadromous fishery resources of the State of Idaho and the right of that State to impose reasonable and necessary conservation regulations upon treaty Indians fishing off their reservations at usual and accustomed grounds and stations and elsewhere.

327 *(774)*

Wherefore, the State of Idaho Fish and Game Department, as amicus curiae, respectfully urges that this Honorable Court grant the Defendant, Washington Department of Game's Motion for Summary Judgment and in so granting the same follow and apply the rationale of the United States Supreme Court in Ward v. Racehorse, 163 U. S. 504 (1896); U. S. v. Winans, 198 U. S. 371 (1905); Tulee v. Washington, 315 U. S. 681 (1942); Kennedy v. Becker, 241 U. S. 556 (1916); Village of Kake v. Egan, 396 U. S. 60 (1962); and Puyallup Tribe v. Department of Game, 391 U. S. 392 (1968), which firmly establish that a State may regulate off-reservation hunting and fishing activities of treaty Indians "in common with" and on an equal, nondiscriminatory basis with all other non-Indian citizens.

Respectfully submitted:



T. J. Jones, III, Attorney for
Amicus curiae, Idaho Fish and
Game Department

MEMORANDUM OF AMICUS CURIAE,
IDAHO FISH AND GAME DEPARTMENT,
IN SUPPORT OF DEFENDANT WASHINGTON
DEPARTMENT OF GAME'S MOTION FOR
SUMMARY JUDGMENT - p. 2

AFFIDAVIT OF SERVICE BY MAIL

STATE OF IDAHO)
)ss.
COUNTY OF ADA)

T. J. JONES, III, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States, over eighteen years of age, and not a party to this case; my business address is 1611 West Jefferson, Boise, Idaho, 83701.

I served upon each of the following named persons one copy of the attached MEMORANDUM OF AMICUS CURIAE, IDAHO FISH AND GAME DEPARTMENT, IN SUPPORT OF DEFENDANT WASHINGTON DEPARTMENT OF GAME'S MOTION FOR SUMMARY JUDGMENT by placing them in envelopes addressed as follows:

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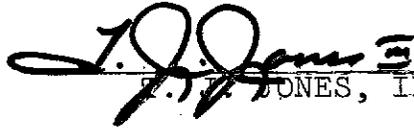
William N. Moloney
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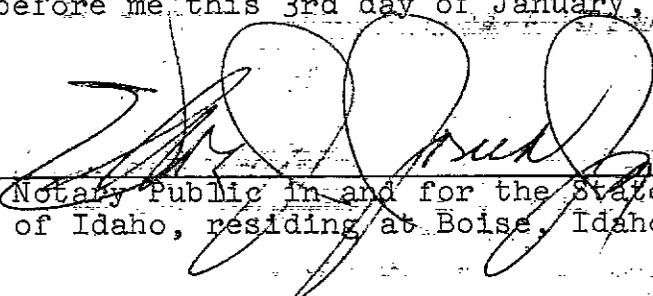
David E. Rhea
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Suite 220
Bellingham National Bank Bldg.
Bellingham, Washington 98225

Each envelope was then on January 3, 1973, sealed and deposited in the United States mail at Boise, Idaho, with first class postage fully prepaid.

Executed at Boise, Idaho, on January 3, 1973.


F. J. JONES, III

Subscribed and sworn to before me this 3rd day of January, 1973.


Notary Public in and for the State
of Idaho, residing at Boise, Idaho.