

1-13-1972

**Docket Entry 107 - Filed Appeal of Washington Reefneters Association to participate as a party, or alternate Motion for reconsideration**

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FILED IN THE  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

JAN 13 1972

CHARLES A. SCHAEF, CLERK  
By *[Signature]* Deputy

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT TACOMA

7	UNITED STATES OF AMERICA,	)	
8		)	CIVIL NO. 9213
9	Plaintiff,	)	
10	vs.	)	APPLICATION BY WASHINGTON
11		)	REEFNETTERS ASSOCIATION TO
12	STATE OF WASHINGTON, et. al,	)	PARTICIPATE AS A PARTY OR,
		)	ALTERNATIVELY, MOTION FOR
	Defendants.	)	RECONSIDERATION

13 COMES NOW the WASHINGTON REEFNETTERS ASSOCIATION, an  
14 unincorporated association, through DAVID E. RHEA, of its attorneys  
15 and herewith makes application to this Court for leave to parti-  
16 cipate henceforth herein as a party, rather than as Amicus  
17 Curiae, or, alternatively, for a reconsideration of the prior  
18 oral ruling of this Court made March 4, 1971, and the written  
19 Order based upon said oral ruling which was also signed on said  
20 date.

21 This Motion is based upon the contents of the Court file  
22 of this proceedings and particularly upon the Complaint of  
23 Intervenor, Lummi Indian Tribe, the proposed Answer of the  
24 Washington Reefnetters Association, and the aforesaid preliminary  
25 Order signed by the Honorable Judge H. Boldt herein above referred  
26 to.

27 It is also based upon the Affidavit of DAVID E. RHEA here-  
28 unto attached.

29 DATED this 30th day of December, 1971.

31 WASHINGTON REEFNETTERS ASSOCIATION  
32 BY: *David E. Rhea*  
DAVID E. RHEA, Its attorney

Application

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1 STATE OF WASHINGTON )  
2 COUNTY OF WHATCOM ) SS

3 DAVID E. RHEA, being first duly sworn, on oath says:

4 At all times during the pendency of this action he has  
5 been the attorney for the WASHINGTON REEFNETTERS ASSOCIATION.

6 The Preliminary Order signed and entered herein March 4,  
7 1971, by the Honorable George H. Boldt provided, in provision  
8 two thereof, that the organizations which had been petitioning to  
9 intervene as parties, or appear as Amicus Curiae, were given leave  
10 to appear as Amicus Curiae but not as parties; provided, that at  
11 a later time any such organization might make written application  
12 to participate as a party on a showing of specific need and  
13 necessity therefore.

14 Such a time has now arrived, as to this association, for  
15 the following reasons:

16 Affiant, as counsel for said association, has received no  
17 copies whatsoever of any proposed stipulations of fact/which are or for discovery  
18 either being negotiated, or which may have been entered into, by  
19 the counsel for the various tribes, groups, and governmental  
20 agencies, which have been admitted as parties herein, although, he  
21 is informed, draft stipulations and discussions relating to them,  
22 and other pre-trial procedures have been in progress for several  
23 months and may already have actually been placed in final and  
24 binding form.

25 The members of the association would be gravely affected  
26 thereby and in such event an industry which has been in existence  
27 since the turn of the century, and particularly since the mid-  
28 1930's, will have the rights which the Lummi Indian Tribes seek  
29 to have it excluded from passed upon by this Court without an  
30 opportunity to be heard on whether the Lummis have suffered any  
31 loss of treaty fishing rights, the practices of the industry, or  
32

1 their manner of operation.

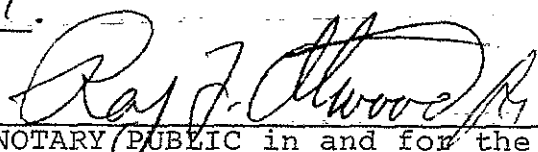
2 They also may, because of their inability to participate  
3 in such stipulations, and the various pre-trial/preparations,<sup>discovery</sup>  
4 be prevented, or greatly hampered, in their efforts to show this  
5 Court the extent of the waters which may fairly be deemed to be  
6 the waters referred to in the treaty entered into between the  
7 Indians of Puget Sound and the United States government on  
8 January 2, 1855, conferring the "right of taking fish at usual and  
9 accustomed grounds and stations," or from showing that in no wise  
10 were their activities, which were pursued under the authority of  
11 the Department of Fisheries of the State of Washington, done in  
12 a discriminatory fashion or in a manner which would exclude such  
13 tribe from pursuing precisely similar fishing activities.

14 With all due respect to the Department of Fisheries, and  
15 the Department of Game, it is genuinely believed that they cannot  
16 adequately set forth, for the assistance of the Court, the manner,  
17 extent, and nondiscriminatory nature of the historic and long—  
18 purused reefnetting operations.

19 The declaration of rights sought by the Lummi Island Tribe,  
20 in their Complaint in Intervention herein, would sweepingly and  
21 adversely affect the rights of the members of the association  
22 without there having been provided an opportunity to present their  
23 side in opposition thereto--in other words, without having had  
24 their "day in Court." Intervention should now be permitted this  
25 group for the foregoing reasons.

26   
27 DAVID E. RHEA

28 Subscribed and sworn to before me this 3rd day of  
29 December, 1971.

30   
31 NOTARY PUBLIC in and for the State of  
32 Washington, residing at Bellingham.