

1-19-1972

Docket Entry 110 - Filed Application for Temporary Restraining Order

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE
4

5 UNITED STATES OF AMERICA,)

6 Plaintiff,)

CIVIL NO. 9213

7 MUCKLESHOOT INDIAN TRIBE; SQUAXIN)
8 ISLAND TRIBE OF INDIANS; SAUK-SUIATTLE)
9 INDIAN TRIBE; SKOKOMISH INDIAN TRIBE;)
10 STILLAGUAMISH TRIBE; QUAINAULT TRIBE)
11 OF INDIANS on its own behalf and on)
12 behalf of the QUEETS BAND OF INDIANS;)
13 MAKAH INDIAN TRIBE; LUMMI INDIAN)
14 TRIBE; QUILEUTE INDIAN TRIBE; UPPER)
15 SKAGIT RIVER TRIBE; HOH TRIBE OF)
16 INDIANS; and CONFEDERATED TRIBES AND)
17 BANDS OF THE YAKIMA INDIAN NATION;)

APPLICATION
FOR
TEMPORARY
RESTRAINING
ORDER

18 Plaintiff-Intervenors,)

19 v.)

20 STATE OF WASHINGTON,)

21 Defendant,)

22 THOR C. TOLLEFSON, Director,)
23 Washington State Department of)
24 Fisheries; CARL CROUSE, Director,)
25 Washington Department of Game;)
26 and WASHINGTON STATE GAME)
27 COMMISSION,)

28 Defendant-Intervenors.)
29
30
31
32

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JAN 19 1972

CHARLES A. SCHAAF, CLERK

By _____ Deputy

1 Plaintiff UNITED STATES OF AMERICA applies to this
2 Court for a temporary restraining order in the terms
3 set forth below, upon the grounds set forth below and
4 as more specifically described in its supporting memorandum
5 attached herewith.

6
7 Plaintiff-intervenors MUCKLESHOOT INDIAN TRIBE,
8 SQUAXIN ISLAND TRIBE OF INDIANS, SAUK-SUIATTLA INDIAN
9 TRIBE, SKOKOMISH INDIAN TRIBE, STILLAGUAMISH TRIBE, QUINAULT
10 TRIBE OF INDIANS on its own behalf and on behalf of the
11 QUEETS BAND OF INDIANS, MAKAH INDIAN TRIBE, LUMMI INDIAN
12 TRIBE, QUILEUTE INDIAN TRIBE, UPPER SKAGIT RIVER TRIBE,
13 HOH TRIBE OF INDIANS, AND CONFEDERATED TRIBES AND BANDS
14 OF THE YAKIMA INDIAN NATION, join in this motion of the
15 UNITED STATES, on the grounds set forth below and as
16 more specifically discussed in their supporting memorandum
17 attached herewith.

18
19 Plaintiff United States and plaintiff-intervenor
20 Indian tribes apply for an order temporarily restraining
21 the defendant State of Washington, the defendant-intervenors
22 Carl Crouse, Director of the Washington Department of
23 Game, the Washington State Game Commission, its officers
24 and employees, the agents of each, and all persons acting
25 in concert or participation with them:

26
27 1. From seizing, taking, confiscating, or in any manner
28 interfering with the use, operation or ownership of fishing
29 equipment and gear on the Quillayute River by members
30 of the Quileute Indian Tribe, prior to a satisfactory
31

1 demonstration to this Court that such enforcement is
2 necessary for the conservation of fish, that is, that fish
3 conservation cannot be achieved by regulation of
4 non-Indian fishing and will not be achieved by Quileute
5 tribal regulation.

6
7 2. From failing to return all fishing gear seized
8 since December 1, 1971, on the Quillayute River system
9 to Quileute Indians who identify said gear as their
10 own within one week of the Court's order, unless the
11 defendants can demonstrate to the satisfaction of this
12 Court their need for retaining any such gear within five
13 (5) days of this Order.

14 3. From enforcing provisions of statutes, regulations,
15 or administrative orders by means of any criminal proceedings
16 against members of the Quileute Indian Tribe for their
17 fishing, or taking fish, on the Quillayute River, prior
18 to a satisfactory demonstration to this Court that such
19 enforcement is necessary for the conservation of fish,
20 that is, that fish conservation cannot be achieved by
21 regulation on non-Indian fishing and will not be achieved
22 by Quileute tribal regulation.

23
24 Plaintiff and plaintiff-intervenors request that
25 the order be effective for a period of ten (10) days and
26 for any subsequent periods for which it is extended, or
27 until plaintiff's and plaintiff-intervenors' motion for
28 a preliminary injunction is heard and determined by the
29 Court.

30
31 This motion of plaintiff United States and plaintiff-
32 intervenor tribes is made on the grounds that:

1 a. The provisions of the challenged statutes, regulations
2 and administrative orders of defendant State of Washington
3 and the named defendant-intervenors are repugnant to the
4 Constitution when applied to above Indians, as more
5 particularly alleged in the complaints filed by plaintiff
6 and the several plaintiff-intervenors;

7
8 b. The issue of the legality and the scope of the
9 enforcement powers of defendant State of Washington and
10 the named defendant-intervenors is presently before
11 the Court in this action;

12
13 c. The State of Washington, Carl Crouse, the
14 Washington State Game Commission, the officers, agents,
15 employees of each of them, and persons in active concert
16 or participation with them, have since December 1, 1971,
17 enforced, caused to be enforced, and threatened to enforce
18 the challenged statutes, regulations, and administrative
19 orders against members of the Quilleute tribe;

20
21 d. Members of plaintiff-intervenor Indian tribes have
22 been, and are, intimidated by State enforcement actions
23 which take the form of property seizures, arrests, or
24 criminal proceedings against Indians, and, as a result
25 of such intimidation, said members either have
26 substantially curtailed or have entirely refrained from
27 exercising their right to fish;

28
29 e. The enforcement of provisions of the statutes,
30 regulations and administrative orders described above
31 and in the affidavits filed together with this motion

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1 will cause immediate and irreparable injury, loss,
2 and damage to plaintiff United States as trustee and
3 guardian for the tribes named above, and this
4 enforcement has and will continue to interfere with the
5 execution of governmental functions, specifically
6 including the fulfillment of plaintiff's trust obligations
7 to the Quileute Indian Tribe.

8
9 f. The fulfillment of federal commitments to Indians,
10 derived from the Constitution, treaties and statutes,
11 has been thwarted by defendants' acts and is threatened
12 by the evident and high probability that such acts will
13 continue and increase;

14
15 g. Defendants' enforcement actions described above and
16 evidenced by attached affidavits will cause immediate
17 and irreparable injury, loss and damage to the Quileute
18 Tribe by interfering with its sovereignty, by
19 violating its treaty-guaranteed right to fish and by
20 impairing the ability of members of the Tribe to
21 subsist and earn a livelihood from fishing as
22 guaranteed by treaty;

23
24 h. Applicants have no adequate remedy at law;

25
26 i. This Court may enjoin acts and proceedings in aid
27 of its full and effective jurisdiction over the matters
28 before it in this case;

29
30 j. There is not sufficient time to afford notice and
31 hearing on a motion for preliminary injunction before

1 the court acts without risking a threat of immediate and
2 irreparable harm to the United States and to plaintiff-
3 intervenor tribes and their members.
4

5 This motion is based upon the complaints and answers of
6 file in this action, the affidavits filed together with the
7 motion, along with such other documents on file and
8 evidence offered or requested by the Court.

9 DATED this 18th day of January 1972.

10 STAN PITKIN
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31 Indians of its own behalf and on
32 behalf of the Queets Band of
Indians; Makah Indian Tribe;
Lummi Indian Tribe; and
Quileute Indian Tribe

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