

1-20-1972

## **Docket Entry 113 - Filed and Entered Order approving Stipulation regarding discovery agreements**

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### **Recommended Citation**

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FILED IN THE  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

JAN 20 1972

CHARLES A. SCHAAF, CLERK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA, et al, )  
Plaintiff, )  
vs. )  
STATE OF WASHINGTON, et al, )  
Defendant. )

CIVIL NO. 9 2 1 3

ORDER

The Stipulation Re Discovery Agreement, heretofore entered into by the parties to this action and filed by them (copies of signed stipulations being attached hereto and by this reference incorporated herein), is hereby approved, and the commencement of initial discovery is hereby authorized under its terms between those parties to the stipulation who shall have filed a notice with the court (and notified all counsel) of the names of those persons referred to on page 2, lines 22-26, as "designated contact men" and "persons who may seek discovery."

DATED this 20 day of January, 1972.

William W. Gooden  
UNITED STATES DISTRICT JUDGE

ORDER

(113)

1 STAN PITKIN  
United States Attorney  
2  
3 DOUGLAS D. McBROOM  
Assistant U. S. Attorney  
4 1012 U. S. Courthouse  
Seattle, Washington 98104  
5 (206) 442-7970  
6

7 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA  
8

9 UNITED STATES OF AMERICA,  
10 Plaintiff,  
11 v.  
12 STATE OF WASHINGTON,  
13 Defendant.

CIVIL NO. 9 2 1 3  
STIPULATION RE DISCOVERY  
AGREEMENT

14 IT IS HEREBY STIPULATED that the following agreement  
15 regarding discovery has been entered into by the parties  
16 hereto and the Court is hereby requested to authorize the  
17 parties to commence discovery pursuant to same.

18 PURPOSES:

19 The purposes of this agreement are:

20 (1) To avoid multiple discovery of the same documents  
21 and testimony;

22 (2) To provide a convenient and informal program for  
23 the discovery of much of the data;

24 (3) To assure active and good faith coordination of  
25 discovery by each side as a group;

26 (4) To provide an approach to discovery which will,  
27 by successive stages, refine the matters sought to be disco-  
28 vered and thereby save all parties time, money and unnecessary  
29 inconvenience. (For example, under this agreement, one would  
30 (a) seek first general scientific reports and data informally,  
31 (b) in light of this data propound written interrogatories  
32 and finally (c) seek through oral deposition deeper examina-  
tion of those answers to the interrogatories felt to be

1 unsatisfactory. Such an approach would assure that both  
2 deposer and deponent have not only reduced the area of in-  
3 quiry to the smallest possible but are both at the same time  
4 fully prepared to make the best use of that time to the mutual  
5 convenience and economy of all.)

6 INTERPRETATION:

7 The parties to this agreement will use the utmost  
8 good faith in fulfilling its letter and spirit as concerns  
9 facilitating discovery by procedures reflecting mutuality,  
10 fairness, convenience and economy of time and resources.

11 TERMS:

12 Informal request: A request for documents orally, or by  
13 letter.

14 Refusal: A refusal to produce a document upon informal re-  
15 quest under this agreed procedure will have no effect other  
16 than to designate that request as one for normal discovery.  
17 Fed. R. Civ. P. 37 will apply to any refusal to answer any  
18 question propounded upon oral examination.

19 Normal Discovery: Discovery according to procedures set  
20 forth in Fed. R. Civ. P.

21 PROCEDURES:

22 (1) Each party to the lawsuit will appoint one or  
23 more representatives as the designated contact men for each  
24 agency, tribe or other body which is or becomes the object  
25 of discovery. In addition, each party will designate those  
26 persons who may seek discovery of documents on its behalf.

27 (2) The plaintiffs as a group, and the defendants  
28 as a group, will each appoint one attorney to act as liaison  
29 counsel for discovery. On all matters of common concern,  
30 the parties on each side (or all such parties as have an  
31 interest in the object of the particular discovery), shall  
32 coordinate their discovery request through such liaison counsel.

1 Where any party requests a document or information which has  
2 already been furnished to the liaison counsel for his group  
3 of parties, the party or agency from whom the information is  
4 requested may advise the requestor of this fact in lieu of  
5 furnishing it again.

6 (3) Documentary discovery

7 (a) Each counsel will be responsible for  
8 instructing the various designated contactees in the agencies,  
9 tribes or other bodies under his representation, as to what  
10 may or may not be delivered upon informal request without  
11 further consultation with the responsible counsel as well as  
12 what informal requests must be referred to counsel for prior  
13 review. Informal requests referred to counsel for prior  
14 review will be treated by him in one of two ways: Returned  
15 to the contactee to be treated as set forth above, or refusal.

16 (b) No material need be provided by a designated  
17 contactee upon informal request if he has not had at least  
18 forty-eight hours notice, excluding holidays and weekends,  
19 so that he may have an opportunity to consult with counsel if  
20 necessary. In addition, any designated contactee of whom one  
21 or more documents are requested orally may, in instances in  
22 which he deems it appropriate, require that such requests be  
23 submitted or confirmed in writing.

24 (c) Informal requests which are submitted in  
25 writing shall be in duplicate or greater number if it is  
26 known that responses must be obtained from more than one  
27 branch or agency.

28 (d) If the designated contactee honors the in-  
29 formal request, he will cause a copy of the document or in-  
30 formation requested to be sent to the requesting party. He  
31 shall also inform his own counsel of such reply and may send  
32 one copy of the document or information to the discovery

1 liaison counsel for the person requesting it. The contactee  
2 will keep a record of all requests. If any party subsequently  
3 requests a document or information (whether informally or by  
4 normal discovery), that has already been furnished to the  
5 requestor's liaison counsel, the requestor may be referred to  
6 such counsel.

7 (4) Parties desiring to inspect or copy records  
8 appropriate for such inspection shall in the first instance  
9 direct their requests to their respective discovery liaison  
10 counsel. Liaison counsel will be responsible for coordinating  
11 such requests and for advising the parties for whom they are  
12 acting of the agreed upon date, time and place for such group  
13 inspections. Each party whose records are the object of such  
14 inspection shall endeavor to make arrangements to facilitate  
15 the centralization and accessibility of such of its records  
16 and other data under its control as is appropriate for inspec-  
17 tion or review.

18 (5) Discovery Depositions and Interrogatories

19 (a) Parties will endeavor to obtain information  
20 by written interrogatories prior to seeking oral depositions  
21 on the subject. As a part of this approach every effort will  
22 be made to propound written interrogatories of persons subject  
23 to oral deposition prior to taking such deposition, and to  
24 the extent feasible, counsel seeking oral deposition will note  
25 those areas of such interrogatories not answered to their  
26 satisfaction and thus requiring oral interrogation. It is  
27 the purpose of this requirement to limit to the extent pos-  
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29 matters on which discovery can be as effectively accomplished  
30 by written interrogatories.

31 (b) Plaintiffs and defendants will submit their  
32 proposed interrogatories to their respective liaison counsel

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4 the necessity of asking more than once the majority of ques-  
5 tions in the answers to which they have a common interest.

6 (c) Upon determination of the need for oral  
7 depositions, each side will, to the extent possible, coordinate  
8 their request so that all depositions of an individual can  
9 take place on the same day or days.

10 MODIFICATION:

11 It is understood that this agreement is designed to  
12 facilitate discovery in a multi-party lawsuit with maximum  
13 economy of effort and minimum overlap. However, it is also  
14 recognized that several of the parties to the suit have raised  
15 issues which are not common to issues raised by other parties  
16 on their side. If the development of such issues requires  
17 a modification of this agreement, the parties will endeavor  
18 to reach agreement prior to requesting court approval on any  
19 such modification.


20 LIABILITY:

21 It is understood that any designation of liaison  
22 counsel is solely for the convenience of the parties and no  
23 party shall be bound by any actions or inactions of any counsel  
24 other than its own, except to the extent necessary to carry  
25 out the purposes of this agreement.

26 DATED this \_\_\_\_\_ day of November 1971.

27  
28 

29 DOUGLAS D. McBROOM  
30 Assistant United States Attorney  
Attorney for Plaintiff

31 

32 EDWARD B. MACKIE  
Deputy Attorney General  
Attorney for Defendant

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JOSEPH L. CONIFF  
Assistant Attorney General  
Attorney for Carl Crouse, Director  
Washington Department of Game and the  
Washington State Game Commission

*William M. Gingery*  
WILLIAM M. GINGERY  
Assistant Attorney General  
Attorney for Thor C. Tollefson, Director  
Washington Department of Fisheries

---

JOHN SENNHAUSER  
Attorney for the Stillaguamish,  
Muckleshoot, Squaxin Island,  
Sauk-Suiattle and Skokomish  
Tribes of Indians (also represented  
by David Getches)

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CHARLES A. HOBBS  
Attorney for the Quinault Tribe  
of Indians

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JAMES B. HOVIS  
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and Bands of the Yakima Indian Nation

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WILLIAM A. STILES, JR.  
Attorney for the Upper Skagit River  
Tribe of Indians

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LESTER STRITMATTER  
Attorney for the Hoh Tribe of Indians

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ALVIN J. ZIONTZ  
Attorney for the Makah, Quileute  
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7 UNITED STATES DISTRICT COURT  
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25 out the purposes of this agreement.

26 DATED this 23 day of November 1971.

27  
28  
29 DOUGLAS D. McBROOM  
Assistant United States Attorney  
30 Attorney for Plaintiff

31  
32 EDWARD B. MACKIE  
Deputy Attorney General  
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DOUGLAS D. McBROOM  
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Attorney for Plaintiff

30  
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EDWARD B. MACKIE  
Deputy Attorney General  
Attorney for Defendant

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5 (206) 442-7970  
6

7 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 UNITED STATES OF AMERICA,  
10 Plaintiff,  
11 v.  
12 STATE OF WASHINGTON,  
13 Defendant.

CIVIL NO. 9 2 1 3

STIPULATION RE DISCOVERY  
AGREEMENT

14 IT IS HEREBY STIPULATED that the following agreement  
15 regarding discovery has been entered into by the parties  
16 hereto and the Court is hereby requested to authorize the  
17 parties to commence discovery pursuant to same.

18 PURPOSES:

19 The purposes of this agreement are:

- 20 (1) To avoid multiple discovery of the same documents  
21 and testimony;
- 22 (2) To provide a convenient and informal program for  
23 the discovery of much of the data;
- 24 (3) To assure active and good faith coordination of  
25 discovery by each side as a group;
- 26 (4) To provide an approach to discovery which will,  
27 by successive stages, refine the matters sought to be disco-  
28 vered and thereby save all parties time, money and unnecessary  
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30 (a) seek first general scientific reports and data informally,  
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7 The parties to this agreement will use the utmost  
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22 (1) Each party to the lawsuit will appoint one or  
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25 of discovery. In addition, each party will designate those  
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27 (2) The plaintiffs as a group, and the defendants  
28 as a group, will each appoint one attorney to act as liaison  
29 counsel for discovery. On all matters of common concern,  
30 the parties on each side (or all such parties as have an  
31 interest in the object of the particular discovery), shall  
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6 (3) Documentary discovery

7 (a) Each counsel will be responsible for  
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20 LIABILITY:

21 It is understood that any designation of liaison  
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25 out the purposes of this agreement.

26 DATED this 12<sup>th</sup> day of November 1971.

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Attorney for Plaintiff

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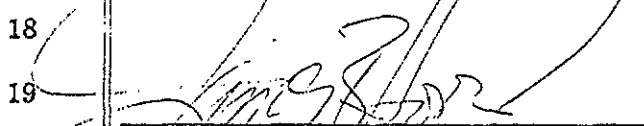
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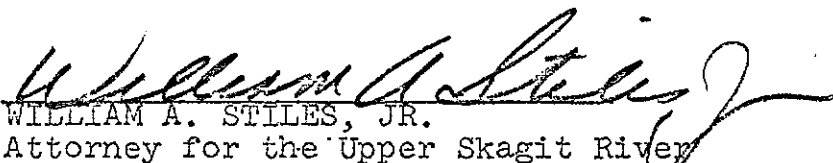
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29 DOUGLAS D. McBROOM  
Assistant United States Attorney  
30 Attorney for Plaintiff

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32 EDWARD B. MACKIE  
Deputy Attorney General  
Attorney for Defendant

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Assistant Attorney General  
Attorney for Carl Crouse, Director  
Washington Department of Game and the  
Washington State Game Commission

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WILLIAM M. GINGERY  
Assistant Attorney General  
Attorney for Thor C. Tollefson, Director  
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JOHN SENNHAUSER  
Attorney for the Stillaguamish,  
Muckleshoot, Squaxin Island,  
Sauk-Suiattle and Skokomish  
Tribes of Indians (also represented  
by David Getches)

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Attorney for the Quinault Tribe  
of Indians

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JAMES B. HOVIS  
Attorney for the Confederated Tribes  
and Bands of the Yakima Indian Nation

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WILLIAM A. STILES, JR.  
Attorney for the Upper Skagit River  
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*Lester Stritmatter*  
LESTER STRITMATTER  
Attorney for the Hoh Tribe of Indians

---

ALVIN J. ZIONTZ  
Attorney for the Makah, Quileute  
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ZIONTZ, PIRTLE & FULLE

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5 1012 U. S. Courthouse  
Seattle, Washington 98104  
6  
7 (206) 442-7970

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

9 UNITED STATES OF AMERICA,  
10  
11 Plaintiff,  
12  
13 v.  
14 STATE OF WASHINGTON,  
15  
16 Defendant.

CIVIL NO. 9 2 1 3

STIPULATION RE DISCOVERY  
AGREEMENT

17 IT IS HEREBY STIPULATED that the following agreement  
18 regarding discovery has been entered into by the parties  
19 hereto and the Court is hereby requested to authorize the  
20 parties to commence discovery pursuant to same.

21 PURPOSES:

22 The purposes of this agreement are:

23 (1) To avoid multiple discovery of the same documents  
24 and testimony;

25 (2) To provide a convenient and informal program for  
26 the discovery of much of the data;

27 (3) To assure active and good faith coordination of  
28 discovery by each side as a group;

29 (4) To provide an approach to discovery which will,  
30 by successive stages, refine the matters sought to be disco-  
31 vered and thereby save all parties time, money and unnecessary  
32 inconvenience. (For example, under this agreement, one would  
(a) seek first general scientific reports and data informally,  
(b) in light of this data propound written interrogatories  
and finally (c) seek through oral deposition deeper examina-  
tion of those answers to the interrogatories felt to be

1 unsatisfactory. Such an approach would assure that both  
2 deposer and deponent have not only reduced the area of in-  
3 quiry to the smallest possible but are both at the same time  
4 fully prepared to make the best use of that time to the mutual  
5 convenience and economy of all.)

6 INTERPRETATION:

7 The parties to this agreement will use the utmost  
8 good faith in fulfilling its letter and spirit as concerns  
9 facilitating discovery by procedures reflecting mutuality,  
10 fairness, convenience and economy of time and resources.

11 TERMS:

12 Informal request: A request for documents orally, or by  
13 letter.

14 Refusal: A refusal to produce a document upon informal re-  
15 quest under this agreed procedure will have no effect other  
16 than to designate that request as one for normal discovery.  
17 Fed. R. Civ. P. 37 will apply to any refusal to answer any  
18 question propounded upon oral examination.

19 Normal Discovery: Discovery according to procedures set  
20 forth in Fed. R. Civ. P.

21 PROCEDURES:

22 (1) Each party to the lawsuit will appoint one or  
23 more representatives as the designated contact men for each  
24 agency, tribe or other body which is or becomes the object  
25 of discovery. In addition, each party will designate those  
26 persons who may seek discovery of documents on its behalf.

27 (2) The plaintiffs as a group, and the defendants  
28 as a group, will each appoint one attorney to act as liaison  
29 counsel for discovery. On all matters of common concern,  
30 the parties on each side (or all such parties as have an  
31 interest in the object of the particular discovery), shall  
32 coordinate their discovery request through such liaison counsel.



1 Where any party requests a document or information which has  
2 already been furnished to the liaison counsel for his group  
3 of parties, the party or agency from whom the information is  
4 requested may advise the requestor of this fact in lieu of  
5 furnishing it again.

6 (3) Documentary discovery

7 (a) Each counsel will be responsible for  
8 instructing the various designated contactees in the agencies,  
9 tribes or other bodies under his representation, as to what  
10 may or may not be delivered upon informal request without  
11 further consultation with the responsible counsel as well as  
12 what informal requests must be referred to counsel for prior  
13 review. Informal requests referred to counsel for prior  
14 review will be treated by him in one of two ways: Returned  
15 to the contactee to be treated as set forth above, or refusal.

16 (b) No material need be provided by a designated  
17 contactee upon informal request if he has not had at least  
18 forty-eight hours notice, excluding holidays and weekends,  
19 so that he may have an opportunity to consult with counsel if  
20 necessary. In addition, any designated contactee of whom one  
21 or more documents are requested orally may, in instances in  
22 which he deems it appropriate, require that such requests be  
23 submitted or confirmed in writing.

24 (c) Informal requests which are submitted in  
25 writing shall be in duplicate or greater number if it is  
26 known that responses must be obtained from more than one  
27 branch or agency.

28 (d) If the designated contactee honors the in-  
29 formal request, he will cause a copy of the document or in-  
30 formation requested to be sent to the requesting party. He  
31 shall also inform his own counsel of such reply and may send  
32 one copy of the document or information to the discovery

1 liaison counsel for the person requesting it. The contactee  
2 will keep a record of all requests. If any party subsequently  
3 requests a document or information (whether informally or by  
4 normal discovery), that has already been furnished to the  
5 requestor's liaison counsel, the requestor may be referred to  
6 such counsel.

7 (4) Parties desiring to inspect or copy records  
8 appropriate for such inspection shall in the first instance  
9 direct their requests to their respective discovery liaison  
10 counsel. Liaison counsel will be responsible for coordinating  
11 such requests and for advising the parties for whom they are  
12 acting of the agreed upon date, time and place for such group  
13 inspections. Each party whose records are the object of such  
14 inspection shall endeavor to make arrangements to facilitate  
15 the centralization and accessibility of such of its records  
16 and other data under its control as is appropriate for inspec-  
17 tion or review.

18 (5) Discovery Depositions and Interrogatories

19 (a) Parties will endeavor to obtain information  
20 by written interrogatories prior to seeking oral depositions  
21 on the subject. As a part of this approach every effort will  
22 be made to propound written interrogatories of persons subject  
23 to oral deposition prior to taking such deposition, and to  
24 the extent feasible, counsel seeking oral deposition will note  
25 those areas of such interrogatories not answered to their  
26 satisfaction and thus requiring oral interrogation. It is  
27 the purpose of this requirement to limit to the extent pos-  
28 sible the time and expense of oral examinations regarding  
29 matters on which discovery can be as effectively accomplished  
30 by written interrogatories.

31 (b) Plaintiffs and defendants will submit their  
32 proposed interrogatories to their respective liaison counsel.

1 prior to submission to insure that the same or similar ques-  
2 tions are not unnecessarily duplicated. To the extent pos-  
3 sible, each side will prepare joint interrogatories to avoid  
4 the necessity of asking more than once the majority of ques-  
5 tions in the answers to which they have a common interest.

6 (c) Upon determination of the need for oral  
7 depositions, each side will, to the extent possible, coordinate  
8 their request so that all depositions of an individual can  
9 take place on the same day or days.

10 MODIFICATION:

11 It is understood that this agreement is designed to  
12 facilitate discovery in a multi-party lawsuit with maximum  
13 economy of effort and minimum overlap. However, it is also  
14 recognized that several of the parties to the suit have raised  
15 issues which are not common to issues raised by other parties  
16 on their side. If the development of such issues requires  
17 a modification of this agreement, the parties will endeavor  
18 to reach agreement prior to requesting court approval on any  
19 such modification.

20 LIABILITY:

21 It is understood that any designation of liaison  
22 counsel is solely for the convenience of the parties and no  
23 party shall be bound by any actions or inactions of any counsel  
24 other than its own, except to the extent necessary to carry  
25 out the purposes of this agreement.

26 DATED this 12<sup>th</sup> day of November 1971.

27  
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29 DOUGLAS D. McBROOM  
Assistant United States Attorney  
30 Attorney for Plaintiff

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32 EDWARD B. MACKIE  
Deputy Attorney General  
Attorney for Defendant

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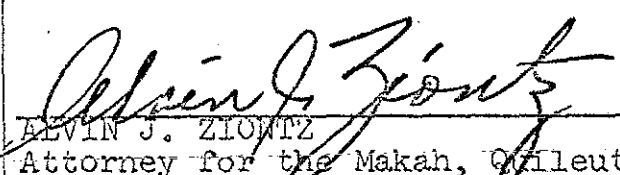
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and Lummi Tribes of Indians



OFFICE OF THE ATTORNEY GENERAL

SLADE GORTON ATTORNEY GENERAL  
TEMPLE OF JUSTICE OLYMPIA, WASHINGTON 98501

January 10, 1972

Honorable William N. Goodwin  
Judge, United States District Court  
316 U.S. Courthouse  
Tacoma, Washington

Re: U.S. v. Washington, Civil  
Cause No. 9213

Dear Judge Goodwin:

I am counsel for defendant Thor Tollefson, Director, Washington State Department of Fisheries, in the above case which has been designated complex under the rules for complex and multi-district litigation and over all aspects of which the court has previously assumed judicial control.

The parties have entered into a comprehensive Stipulation Re Discovery (previously filed with the court and a copy of which accompanies the enclosed proposed order. To expedite filing, four counsel signed the original and six signed individual copies attached thereto).

The parties seek (1) approval by the court of the terms of this stipulation, and (2) authority to proceed with initial discovery under its terms, as set forth in the proposed order.

Should the court approve the agreement and execute the order, I would very much appreciate the clerk's advising me of the date of filing. I will then insure that all counsel are notified.

Very truly yours,

William M. Gingery  
Assistant Attorney General

WMG:bmc  
enc.  
cc: All Counsel

RICHARD F. DEJEAN  
ATTORNEY AT LAW  
1112 MAIN STREET  
SUMNER, WASHINGTON 98390

AREA CODE 206  
UNIVERSITY 3-6047

*File*

January 14, 1972

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JAN 20 1972

Honorable William N. Goodwin  
United States Courthouse  
Room 304  
Tacoma, Washington

Office of Clerk  
U. S. District Court  
Tacoma, Washington

Re: United States of America v. State of  
Washington, et. al.  
No. 9213

Dear Judge Goodwin:

On behalf of the Committee to Save Our Fish I would like to join on the motion of the Washington Reefnetters Association. I previously filed such a motion and it was scheduled for hearing, but, because of Judge Boldt's appointment to the Pay Board, it was stricken.

I will not, however, be able to note this same motion at this time because I have a trial conflict on the date the motion of the Washington Reefnetters Association is set. However, I do think the supporting bases for the motion of Committee to Save Our Fish would be the same as those for the Washington Reefnetters Association and I would ask that you give this consideration at this time.

Sincerely,



Richard F. DeJean

RFD:lgh