

4-30-1973

**Docket Entry 192 - Filed Plaintiffs' Statement of issues
(Muckleshoot Indian, Squaxin Island Tribe, etcetra)**

Follow this and additional works at: <https://digitalcommons.law.uw.edu/us-v-wash-70-9213>

Recommended Citation

Docket Entry 192 - Filed Plaintiffs' Statement of issues (Muckleshoot Indian, Squaxin Island Tribe, etcetra) (1973), <https://digitalcommons.law.uw.edu/us-v-wash-70-9213/138>

This Other is brought to you for free and open access by the Federal District Court Filings at UW Law Digital Commons. It has been accepted for inclusion in 70-cv-9213, U.S. v. Washington by an authorized administrator of UW Law Digital Commons. For more information, please contact lawref@uw.edu.

APR 30 1973

EDGAR SCHEER, CLERK

[Signature]
Deputy

1 DAVID H. GETCHES
DOUGLAS R. NASH
2 NATIVE AMERICAN RIGHTS FUND
1506 Broadway
3 Boulder, Colorado 80302
Telephone (303) 447-8760

4 DAVID ALLEN
5 JOHN SENNHAUSER
MICHAEL TAYLOR
6 LEGAL SERVICES CENTER
104-1/2 Cherry Street
7 Seattle, Washington 98104
Telephone (206) 622-8125

8 Attorneys for Plaintiff-Intervenors

10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON

13 UNITED STATES OF AMERICA,
14 et al,

15 Plaintiffs,

16 vs.

17 STATE OF WASHINGTON,
18 et al,

19 Defendants.

CIV. NO. 9213

PLAINTIFFS' STATEMENT
OF ISSUES

21 Pursuant to Item 1 of the Stipulated Pretrial Schedule
22 dated April 24, 1973, plaintiffs Muckleshoot Indian Tribe,
23 Squaxin Island Tribe of Indians, Sauk-Suiattle Indian Tribe,
24 Skokomish Indian Tribe, and Stillaguamish Tribe of Indians
25 submit their statement of the issues in this case.

26 1. Were plaintiff tribes secured a right to fish
27 outside their reservations at their usual and accustomed
28 places by virtue of the treaties between the tribes and the
29 United States?

30 2. What is the nature and extent of the plaintiff tribes'
31 Indian fishing rights under the treaties?

32

- 1 a. Was it the intent of the parties to the
- 2 treaties (the United States and the
- 3 Indians) that the Indians reserve a right
- 4 to harvest sufficient fish to maintain a
- 5 livelihood and their culture at the time
- 6 of the treaty and in the future?
- 7
- 8 b. Is the Indian fishing right reserved by
- 9 the treaties impliedly limited to
- 10 harvesting an amount of fish which can
- 11 be used by the Indians beneficially (i.e.,
- 12 without waste) and the harvesting of
- 13 which will not destroy or seriously
- 14 threaten the continued existence of any
- 15 species of fish?
- 16
- 17 c. May the Indian tribes whose rights are
- 18 secured under the treaties authorize and
- 19 regulate Indians engaged in off-reserva-
- 20 tion fishing at the tribes' usual and
- 21 accustomed fishing places?
- 22
- 23 d. Is the State of Washington prohibited from
- 24 regulating Indians or otherwise exercising its
- 25 powers so as to limit or qualify fishing
- 26 rights reserved to the plaintiff tribes
- 27 by their treaties with the United States?
- 28
- 29 e. Does the reservation of the right "in common
- 30 with the citizens of the territory"
- 31 impliedly authorize the State of Washington
- 32 to permit non-Indians to fish at the Indian
- tribes' usual and accustomed off-reservation
- fishing places?
3. Does the "right of taking fish" as secured
- to plaintiff tribes in their treaties extend
- to all species of fish?
3. To what extent, if at all, may the State of Washington
- regulate Indians exercising off-reservation fishing rights secured
- to the plaintiff tribes by their treaties with the United States?
- a. May the state regulate the exercise of
- Indian off-reservation fishing rights
- secured to the plaintiff tribes by the
- treaties if the state can demonstrate
- that such regulation is necessary for
- the conservation of fish which conserva-
- tion cannot be achieved by regulation,
- restriction, or prohibition of non-
- Indian fishing and will not be achieved
- by tribal regulation?
- b. Must the state in promulgating or enforcing
- such permissible regulations concerning
- Indian off-reservation treaty fishing
- consider only the perpetuation and
- improvement of the size and reliability
- of the fish runs, based on current facts
- and data, seasonally obtained, in determin-
- ing the requirements of conservation?

- 1 c. Must the state in promulgating or enforcing
2 such regulations avoid violating the
3 purposes of the tribes' treaties with the
4 United States?
- 5 d. Must state fishing regulations and regulatory
6 schemes which affect Indian off-reservation
7 treaty fishing have as a purpose the fulfill-
8 ment of the purposes of the treaties?
- 9 4. Do State of Washington statutes, regulations, policies
10 or enforcement practices violate the rights of the plaintiff
11 Indian tribes and their members?
- 12 a. Do the state statutes and regulations
13 which purport to regulate the exercise
14 by Indians of off-reservation fishing
15 rights secured to the plaintiff tribes
16 by their treaties with the United States
17 fail to meet the standards and require-
18 ments for such regulation as indicated
19 by the determination of Issues 3a, b,
20 c, and d?
- 21 b. Do state statutes, regulations, policies
22 and enforcement practices as applied to
23 Indians exercising off-reservation
24 fishing rights secured to the plaintiff
25 tribes by the treaties violate the
26 Constitution?
- 27 c. Do the statutes and regulations of the
28 state fail to protect off-reservation
29 Indian treaty secured fishing rights by
30 permitting or failing to regulate adequate-
31 ly non-Indian fishing and other activities
32 and practices of non-Indians which inhibit
or prevent the full exercise of Indian
treaty fishing rights and the fulfillment
of the purposes of reserving such rights?
- d. Do the present state statutes, regulations,
policies or enforcement practices operate
so as to discriminate against Indians in
the exercise of their off-reservation treaty
secured fishing rights by inhibiting or
preventing the full exercise of Indian treaty
fishing rights and the fulfillment of the
purpose of reserving such rights?
- e. Are state statutes, regulations, policies,
and enforcement practices relating to fish or
gear confiscation unconstitutional or
otherwise unlawful?
- f. In promulgating state statutes and regulations
relating to fishing, has the state considered
the needs of user groups such as commercial
and sport fishermen, but failed to observe
the rights of Indians and Indian tribes with
treaty secured fishing rights?

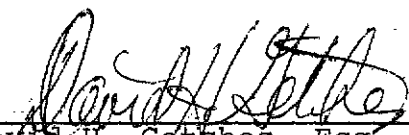
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

g. Has the state violated the rights of plaintiff tribes and their members by failing to afford them adequate notice of the state's consideration of statutes and regulations concerning fishing and an opportunity to be heard before they are enacted or promulgated.

Respectfully submitted,

DAVID H. GETCHES
DOUGLAS R. NASH
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, Colorado 80302
Telephone (303) 447-8760

DAVID ALLEN
JOHN SENNHAUSER
MICHAEL TAYLOR
LEGAL SERVICES CENTER
104 1/2 Cherry Street
Seattle, Washington 98104
Telephone (206) 622-8125

By 
David H. Getches, Esq.

Attorneys for Plaintiffs Muckleshoot Indian Tribe, Squaxin Island Tribe of Indians, Sauk-Suiattle Indian Tribe, Skokomish Indian Tribe and Stillaguamish Tribe of Indians

Dated: April 27, 1973

Director
John E. Echohawk

Attorneys
Joseph I. Brecher
Thomas W. Fredericks
David H. Getches
Roy S. Haber
Daniel H. Israel
Yvonne T. Knight
Scott E. Little
Douglas R. Nash
Robert S. Pelcyger
Thomas L. Smithson
Charles F. Wilkinson

Assistant to the Director
Joan L. Carpenter

Native American Rights Fund

1506 Broadway • Boulder, Colorado 80302 • (303) 447-8760

Of Counsel
Reid Peyton Chambers
Vine Deloria, Jr.
Thomas N. Tureen

Washington Office
1712 N Street, N.W.
Washington, D.C. 20036
(202) 785-4166

Staff Attorney
L. Graeme Bell III

27 April 1973

RECEIVED

APR 30 1973

Office of Clerk
U. S. District Court
Tacoma Washington

Mr. Charles Schaaf, Clerk
United States District Court
Western District of Washington
United States Courthouse
11th & A Streets
Tacoma, Washington 98402

Re: United States v. Washington
Civil No. 9213

Dear Mr. Schaaf:

Please find enclosed the original and one copy of Plaintiffs' Statement of Issues in the above named case. Please file the original and return the conformed copy to us in the enclosed envelope for our files.

Thank you very much.

Sincerely,

David H. Getches
mcp

David H. Getches

DHG/mcp

cc: Honorable George H. Boldt
United States District Judge

ALVIN J. ZIONTZ
ROBERT L. PIRTLE
MASON D. MORISSET
BARRY D. ERNSTOFF

ZIONTZ, PIRTLE & MORISSET
ATTORNEYS AT LAW
3101 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98104

AREA CODE 206
MAIN 3-1255

April 27, 1973

RECEIVED

APR 30 1973

Office of Clerk
U. S. District Court
Tacoma Washington

Mr. Edgar Scofield
Clerk, United States District Court
P. O. Box 1935
Tacoma WA 98401

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

Dear Mr. Scofield:

Enclosed for filing in the above entitled action is an original Statement of Ultimate Issues of Plaintiffs Makah, Lummi, Quileute and Quinault Tribes, a copy of Interrogatories of Intervenor Lummi Indian Tribe to Defendant Washington Reef Net Owners Association (the original of which has been served on Mr. David Rhea), and two original Affidavits of Service by Mailing for those documents.

Very truly yours,

ZIONTZ, PIRTLE & MORISSET

Barry D. Ernstoff
By: Barry D. Ernstoff

BDE/p

Encs.