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Docket Entry 207 - Filed Plaintiffs' list of witnesses

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FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MAY - 8 1973

EDGAR SCOFIELD, CLERK

By Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 UNITED STATES OF AMERICA, et al,)
11) Plaintiffs,)
12))
13) v.)
14 STATE OF WASHINGTON, et al,) Defendants.)
15 _____

CIVIL NO. 9213
PLAINTIFFS' LIST
OF WITNESSES

16 COME NOW the plaintiffs herein through their liaison counsel,
17 Stuart F. Pierson, pursuant to paragraph 5 of the order of
18 April 24, 1973, and herewith submit their list of the witnesses
19 whom they will present in their case in chief. This list includes
20 all persons who may be called; subsequent stipulations may, of
21 course, render the testimony of some of these witnesses unnecessary.
22 More detailed summaries than those given below for the Puyallup,
23 Nisqually, Quileute, Quinault, Makah and Lummi tribal witnesses
24 and for Dr. Robert Thomas are being forwarded by letter to defense
25 counsel on May 7, 1973.

26
27 1. For those plaintiff tribes whose treaty status or
28 standing is challenged by the defendants, and for the
29 United States:

- 30 a. D. Paul Weston, and
- 31 b. George Felshaw or Chester Higman.

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207

1 If no such agreement is reached, and in view of the indications
2 in the deposition of Walter Neubrech that defendants challenge
3 the treaty status of only three or four tribes, the live direct
4 testimony of all these men is expected to take no more than one
5 hour.

6
7 2. For all plaintiffs generally and specifically for
8 each of the fourteen plaintiff tribes except the Quinault,
9 Yakima and Upper Skagit:

10 Dr. Barbara Lane

11 Dr. Lane will testify concerning the matters contained in her
12 anthropological summary and her eleven specific tribal reports,
13 all of which have been furnished to the defendants. 1/ The
14 majority of Dr. Lane's direct testimony will be submitted in
15 writing in the form of her twelve anthropological reports,
16 with the addition of one hour of live direct testimony for the
17 purpose of explaining any questions which may arise between
18 the submission of her reports and the date of trial. This
19 live testimony time may be reduced by defendants' affirmative
20 response to plaintiffs' requests for admission on anthropological
21 issues. If defendants do not stipulate to the admission of Dr.
22 Lane's direct testimony in writing, the time for presenting her
23 live direct testimony is expected to take two trial days.

24
25 3. For all plaintiffs, the following adverse witnesses:

- 26 a. Thor Tollefson (Department of Fisheries),
27 b. Al Lasater (Department of Fisheries),
28 c. Henry Wendler (Department of Fisheries),
29

30 1/ Due to a labor dispute in the Vancouver, British Columbia
31 post office, Dr. Lane's final report will not be submitted until
32 May 10, 1973.

- 1 d. Carl Crouse (Department of Game),
- 2 e. Clifford Millenbach (Department of Game),
- 3 f. Jake Ayerst (Department of Game),
- 4 g. Walter Neubrech (Department of Game), and
- 5 h. Arthur Coffin (Game Commission).

6 These men will be called to testify concerning the regulatory,
7 management and enforcement policies and practices of the State
8 of Washington and its Departments of Game and Fisheries. The
9 testimony will be directed toward those policies and practices, as
10 they bear upon the biological and fisheries management issues
11 stated by plaintiffs in their statements of issues filed on
12 April 30, 1973. Most of the testimony of these men may be
13 submitted in writing, depending upon defendants' response to
14 plaintiffs' requests for admission and for agreed testimony.
15 There will be, however, in any event a total of two hours of
16 live testimony, with respect to any questions which may remain
17 or newly arise after defendants have answered plaintiffs' requests.
18 If no stipulations or admissions from defendants are obtained, the
19 plaintiffs' testimony from these men is expected to take two and
20 one-half trial days.

21
22 4. For all plaintiffs:

23 James L. Heckman

24 Mr. Heckman will testify concerning the biological and fisheries
25 management issues stated in plaintiffs' statement of issues filed
26 April 30, 1973. The testimony will be directed toward showing
27 that there exist feasible alternative regulatory, management and
28 enforcement schemes by which defendants can permit the plaintiff
29 tribes to take a greater portion of the anadromous fish runs
30 within their regulatory jurisdiction, while still preserving
31

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1 and enhancing the resource. The majority of Mr. Heckman's
2 direct testimony will be submitted in writing, with the addition
3 of one and one-half hours of live direct testimony regarding
4 any questions which may arise after defendants' answers to
5 plaintiffs' requests for admission and agreed testimony. If no
6 stipulations or agreed testimony can be obtained, it is expected
7 that Mr. Heckman's direct testimony will take two trial days.
8

9 5. For the Muckleshoot, Stillaguamish, Sauk-Suiattle,
10 Squaxin Island and Skokomish Tribes:

11 Dr. Gardner Brown

12 Dr. Brown will testify concerning the economic implications of
13 fishing. Because Dr. Brown's direct testimony is comprised of
14 his report, we do not plan on offering any live, direct testimony
15 and thus if he is called at trial, he would be called by the
16 defendants for cross-examination. Dr. Brown's testimony,
17 summarized briefly, is as follows:

18 a. The present commercial fishery in the State of
19 Washington is basically inefficient and does not produce a net
20 profit for the economy.

21 b. If exploited efficiently and properly regulated,
22 the fishery of the State of Washington could sustain most Indian
23 families.

24 c. An analysis of Indian fishing practices in the
25 past indicates that they are not inconsistent with conservation
26 goals.

27
28 6. For the Makah, Lummi, Quileute and Quinault Tribes:

29 Dr. Robert Thomas
30
31

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1 Dr. Thomas will testify on economic questions. His testimony
2 will be in the form of his report, submitted on May 7, 1973.
3 If no stipulations or agreed testimony can be obtained, it is
4 expected that Dr. Thomas' live direct testimony will take two
5 hours.

6
7 7. For the Puyallup Tribe:

8 a. Lena Cultee Hillaire
9 (P. O. Box 305,
10 Suguamish, WA 98392;
206/LY8-4549),

11 or

12 Alvina Buber
13 (c/o Puyallup Tribal Office,
2232 East 28th,
Tacoma, WA 98404;
206/572-6425),

14 b. Lena Napoleon
15 (1724 East 43rd,
16 Tacoma, WA 98404;
206/475-7949),

17 In the event of the unavailability of one of the
18 above, the third witness will be:

19 c. Reuben Wright
20 (c/o Puyallup Tribal Office,
2232 East 28th,
Tacoma, WA 98404).

21
22 8. For the Nisqually Tribe:

23 a. Willy Frank, Sr.
24 (Frank's Landing,
P. O. Box 3174,
25 Lacey, WA 98503;
206/456-1375),

26 or

27 Paul Leschi
28 (c/o Walter Beals,
P. O. Box 95,
29 Silvana, WA 98287;
30 206/652-8041), and
31

1 b. William Frank, Jr.
2 (Same address as Willy Frank, Sr.).

3 9. For the Quinault Tribe:

4 Joe DeLaCruz

5
6 10. For the Makah Tribe:

7 Charles Peterson

8
9 11. For the Lummi Tribe:

10 James Soloman

11
12 12. For the Hoh Tribe:

13 a. Vi Riebe, and

14 b. Herb Fisher.

15
16 13. For the Quileute Tribe:

17 a. Christian Penn, and

18 b. Earl Penn.

19
20 14. For the Upper Skagit Tribe:

21 a. Charles Boone, and

22 b. Dewey Mitchell.

23
24 Each of the witnesses listed in paragraphs 7-14 above, will
25 testify concerning those issues relating to current fishing
26 practices described in plaintiffs' statement of issues filed on
27 April 30, 1973. Each witness' testimony will be detailed in
28 plaintiffs' requests for admission and agreed testimony. Each
29 of the tribes involved will present their witnesses for a total
30

31
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1 direct testimony time of 45 minutes. Allotment between multiple
2 witnesses will be determined by the tribe.

3
4 15. For the Confederated Tribes and Bands of the Yakima
5 Indian Nation:

6 a. Louis Cloud
7 (Route 4, Box 4190,
8 Wapato, WA 98951;
9 509/865-2255),

10 and

11 Robert B. Jim
12 (P. O. Box 367,
13 Toppenish, WA 98948;
14 509/865-2255),

15 b. Johnson Meninick
16 (P. O. Box 569,
17 Toppenish, WA 98948;
18 509/865-2255),

19 or

20 Alex Saluskin
21 (Fort Road,
22 Toppenish, WA 98948;
23 509/865-3996).

24 These witnesses will testify live, and their testimony will be
25 supplemented by documentary evidence. The tribal attorney esti-
26 mates their testimony time to three hours per witness. Their
27 summarized testimony is as follows:

28 (1) Existence and location of aboriginal fourteen
29 tribes and bands merged into the Yakima Indian Nation by treaty
30 with the United States.

31 (2) Tribes lived on food gathering culture -
32 fish, game, roots and berries. Preparation of fish, variety
consumed, and description of tribal customs.

(3) Gear used in landing salmon and steelhead.

1 (4) Description of continual communication and
2 intermarriage with Indians in the Puget Sound area.

3 (5) Existence of pretreaty and treaty time
4 fishing by these Indians in common with Puget Sound Indians in
5 coastal rivers.

6 (6) Circumstances of treaty, including preparation
7 by Stevens for treaty counsel at Walla Walla.

8 (7) Description of treaty counsel, time involved,
9 discussions of Stevens and intent of treaty in regards to fishing,
10 hunting, root and berry gathering and grazing, including back-
11 ground materials.

12 (8) Use of post-treaty fisheries by these Indians.

13 (9) Inception of state regulation of fisheries
14 in Washington state; effective Washington state regulation and
15 growth of non-Indian fisheries on Yakima; use of usual and
16 accustomed fisheries in the Puget Sound.

17 (10) Present membership of tribe organization,
18 tribal budget, and fish management provisions and circumstances.

19 (11) Present economic and social circumstances
20 of Yakima members as compared with citizens of the state and
21 nation.

22 (12) Reliance of members of off-reservation
23 fishery for livelihood and need for expansion.

24
25 16. For the following tribes, the following witnesses:

- 26 a. Louis Starr (Muckleshoot)
27 b. Bernice White (Muckleshoot)
28 c. Cal Peters (Squaxin Island)
29 d. Florence Sigo (Squaxin Island)
30 e. Georgia Miller (Skokomish)

31
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- 1 f. Joseph Andrews (Skokomish)
- 2 g. Esther Ross (Stillaquamish)
- 3 h. Lena Smith (Stillaquamish)
- 4 i. Jesse Harvey (Sauk Suiattle)
- 5 j. James Enick (Sauk Suiattle)

6 All testimony will be given live in court. It is estimated that
7 the direct testimony of each witness will take fifteen to twenty-
8 five minutes (total per tribe of 45 minutes). Each of the five
9 tribes represented will offer the testimony of two witnesses.

10 It is conceivable that only one of the two witnesses named for
11 each tribe will actually testify, but in any event, the testimony
12 on behalf of each tribe will include the following matters:

13 (1) Role of fishing in the lives of tribal
14 members historically and at present. The economic conditions and
15 needs of the tribe and tribal members and the income derived
16 from fishing; cultural and religious importance of fishing;
17 approximate number of fishermen; means utilized to fish; and
18 fishing places.

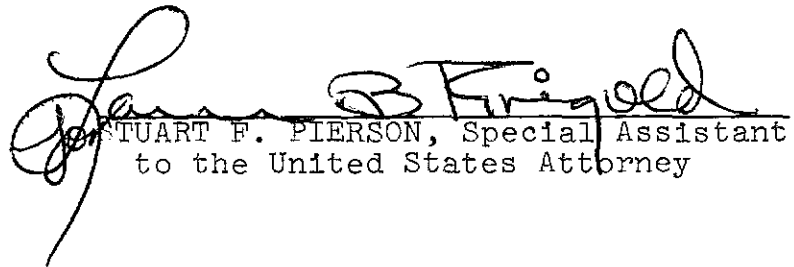
19 (2) Tribal regulation of fishing. Manner in
20 which the tribe exercises its authority to regulate; and specific
21 regulations of the tribe.

1 (3) Impact of state attempts to prohibit Indian
2 fishing at the tribes' off-reservation usual and accustomed off-
3 reservation fishing places. Specific incidents of enforcement
4 activity; extent of repression of Indian fishing - (1) economic
5 costs as loss of equipment and potential income, (2) social and
6 cultural impact, and (3) breakup of tribal life; reasons tribal
7 members continue to fish in spite of attempted state enforcement
8 activity; and approximate number of Indians who would fish if
9 the state did not prevent it.

10
11 DATED this 4th day of May, 1973.

12 Respectfully submitted,

13 STAN PITKIN
14 United States Attorney

15 
16 STUART F. PIERSON, Special Assistant
17 to the United States Attorney
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