

5-30-1973

Docket Entry 238 - Filed Plaintiffs' last Interrogatories to defendants and Department of Fisheries Answers thereto

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State of Washington)
County of Thurston SS

The undersigned, being first duly sworn, on oath states: That on this day a certain court in the State of Washington, to-wit: the District Court of the County of Thurston, Western District of Washington, has received a copy of a plaintiffs

copy of the subscribed
day of May 13, 1973
790

Julie D. Jones
Notary Public for the State of Washington
residing at Olympia

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MAY 30 1973

EDGAR SCHEFF, CLERK
Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, et al,
Plaintiffs,
v.
STATE OF WASHINGTON, et al,
Defendants.

CIVIL NO. 9213
PLAINTIFFS' LAST
INTERROGATORIES TO
DEFENDANTS, and DEPARTMENT
OF FISHERIES' ANSWERS THERETO

COME NOW the plaintiffs herein, by and through Stuart F. Pierson, plaintiffs' liaison counsel acting on behalf of all plaintiffs, and pursuant to Rule 33 of the Federal Rules of Civil Procedure and paragraph 2 of the pretrial order of April 24, 1973, herewith propound their last interrogatories, separately to each of the following defendants:

- 1. State of Washington,
- 2. Thor C. Tollefson,
- 3. Carl Crouse and the Washington State Game Commission, and
- 4. The Washington Reef Net Owners Association.

Plaintiffs request that each of the interrogated defendants answer these interrogatories separately pursuant to Rule 33 of the Federal Rules of Civil Procedure and paragraph 13 of the pretrial order of April 24, 1973.

238

1 261. Do the defendants contend that any agent or agency of the
2 Federal Government has within the past decade contributed to the
3 decline of, destruction of, or adverse effects upon any anadromous
4 fish runs subject to regulation by the defendants.

5 ANSWER: It is the Department of Fisheries' position that pollu-
6 tion and environmental damage to the water sheds within the area of
7 this lawsuit is not an issue in the lawsuit, irrespective of whether
8 the same has occurred under the auspices or by the acts of any agents
9 of either plaintiffs or defendants. To the extent that any of the
10 plaintiffs contend that the defendants, or any of them, have contri-
11 buted to the decline of, destruction of, or adversely effected any
12 anadromous fish run, the question is answered in the affirmative.

13 262. If the answer to Interrogatory 261 is affirmative,

- 14 a. Who is contended to have so contributed,
15 b. What runs were involved,
16 c. Where did the contended contributory action take place,
17 and
18 d. In what manner did the action contribute to such
19 decline, destruction or adverse effects.

20 ANSWER: With the same qualification contained in question 261, the
21 following answer is submitted:

- 22 a. (1) Federal Power Commission
23 (2) Corps of Engineers
24 (3) U. S. Forest Service
25 (4) Bureau of Indian Affairs
26 (5) Soil Conservation Service
27 (6) Department of the Army
28

29 (The balance of Interrogatory 262, b, c, and d, is answered on the
30 following pages.)
31
32
33

<u>Project</u>	<u>River</u>	<u>Salmon species affected</u>
Yelm ^{2/}	Nisqually	chinook, coho, chum, and pinks
Cushman #2	Skokomish	chinook, coho, and chum
Cushman #1	Skokomish	chinook, coho, and chum
Glines	Elwha	chinook, coho, chum, and pinks
Elwha ^{3/}	Elwha	chinook, coho, chum, and pinks

^{1/} Question whether or not this dam is licensed.

^{2/} Not presently licensed.

^{3/} In the process of being licensed.

Of the projects listed, only the two Baker dams and the White River dam have adult fish passage facilities. The Snoqualmie Falls and the Cedar Falls projects are above natural or man-made migration barriers. All other structures are barriers to upstream adult migration.

All of the projects listed, except the Nooksack, Newhalem, and Snoqualmie Falls structures, will affect the salmon resource through the creation of adverse flow and temperature patterns in the river downstream from the project. Depending upon the size of the dam, the volume of discharge, and the location of the dam, the degree to which each dam affects salmon production will vary.

(2.) Corps of Engineers

A. Mud Mountain Dam (old project - continuing effect)

Puyallup-White River - spring chinook, coho (above dam), chinook, pink and coho (below dam)

White River - King County - east of Enumclaw

Juvenile migration delays in reservoir - streambed siltation below project; physical losses from passage facilities (when adverse conditions prevail in reservoir for juveniles, and at the ladder where adults are poached)

B. Ballard Locks

Lake Washington system - chinook, coho, sockeye

Lake Washington ship canal - Seattle

Migration delays - intensified predation - some physical loss - altered habitat mainly from salt-water intrusion into Lake Union

C. River channel dredging - various rivers

Stillaguamish, Skagit, Snohomish, Green, Puyallup - all species affected

Periodic maintenance of shipping channels - usually in lower few miles near mouth lowered water quality - siltation (particularly harmful during upstream and downstream migration periods)

D. Howard Hanson Dam (old project - continuing effect)

Green-Duwamish Rivers - primarily chinook and coho

Green River - King County - northeast of Enumclaw

Occasional severe flow control

(3.) U.S. Forest Service

A. Defoliation and pest control spraying

Nooksack, Skagit, Stillaguamish (possibly Snohomish) principally over coho-type streams and some spring chinook streams on the Skagit River

Some decline from direct effect of chemical spray - altered habitat - lowered productivity

B. Road construction, culvert installation, logging operations

Nooksack, Skagit, Stillaguamish, Snohomish - mainly coho streams - some pink and chinook - Hood Canal (west side drainages) - mainly coho, chum, and some pink streams

Various operations occurring in Mt. Baker-Snoqualmie, and Olympia National Forests. Generally - altered habitat - occasional siltation problems - reduced productivity in a number of streams

(4.) Bureau of Indian Affairs

Logging and all logging-associated activity

Quinault River, Moclips River, and possibly Klickitat River drainages -

affected spring chinook, fall chinook, chum, and coho spawning and rearing areas.

Generally - altered habitat - upstream migration blockage due to felled trees in stream - siltation problems - reduced production.

(5.) Soil Conservation Service

A. French Creek Flood Control Project

Snohomish River - coho runs to French Creek

Snohomish River (just east of Town of Snohomish)

Altered rearing habitat - migration delay - physical loss at passage
facility

B. Black River Flood Control Project

Duwamish-Green Rivers - primarily coho from Black River - Springbrook
Creek

Duwamish River - King County - near town of Renton

Altered rearing habitat - migration delays - physical loss at passage
facility

(6.) Department of the Army

Muck Creek drainage - effects from Army operations on Fort Lewis

Nisqually River - Muck Creek - mainly chum and coho

Fort Lewis - Yelm-Roy vicinity

Disturbance of natural production habitat (shelling - equipment in stream)

Chambers Lake dam and ladder - poor passage conditions

1 263. If the answer to Interrogatory 261 is affirmative, in
2 defendant's opinion has the defendant or any of its agents contri-
3 buted to the decline of, destruction of, or adverse effects upon the
4 runs involved.

5 ANSWER: See qualification to answer contained in question 261.
6 It is defendant's opinion that the Department of Fisheries has not
7 contributed to the decline of, destruction of or adversely affected
8 anadromous fish runs. Indeed, all of this defendant's activity is
9 devoted to preserving and enhancing such runs.

10 264. If the answer to Interrogatory 263 is affirmative,

- 11 a. Who so contributed,
- 12 b. What runs were involved,
- 13 c. Where did the contributory action take place, and
- 14 d. In what manner did the action contribute to such
15 decline, destruction, or adverse effects.

16 ANSWER: Not applicable.

17 265. Do the defendants contend that any of the tribes represented
18 in this case, or their members, has within the past decade contri-
19 buted to the decline, destruction of, or adverse effects upon any
20 anadromous fish runs subject to regulation by the defendants.

21 ANSWER: Yes.

22 266. If the answer to Interrogatory 265 is affirmative,

- 23 a. Who is contended to have so contributed,
- 24 b. What runs were involved,
- 25 c. Where did the contended contributory action take place,
26 and
- 27 d. In what manner did the action contribute to such decline,
28 destruction or adverse effects.

29 ANSWER:

- 30 a. (1) Quinault
- 31 (2) Makah
- 32 (3) Upper Skagit
- 33 (4) Puyallup

1 ANSWER (cont.): b, c and d:

2 (1) Quinault. In the past decade, overfishing by
3 Quinault Tribal fishermen has resulted in a Lake Quinault sockeye run
4 of a lesser size than was once obtained from the Quinault River sys-
5 tem. Washington Department of Fisheries' catch statistics are avail-
6 able from 1935 to present, in published form through 1969. The
7 average (1935-1969) catch is 84,451 sockeye. In the last decade, an
8 above-average catch has only occurred once (1963). During 1950-1959,
9 three above-average catches occurred. In the remaining years of
10 catch statistics prior to 1934 (15 years), seven above-average
11 catches occurred. In the early forties and fifties, several catches
12 of over 100,000 sockeye occurred. A catch of over 100,000 fish has
13 not occurred since 1956.

14 (2) Makah. Although extensive watershed alterations have
15 occurred in the Waatch, Suez, and Hoko Rivers, there is evidence that
16 overfishing has occurred with the result that very small catches and
17 spawning escapements are occurring today. Since 1967, catches have
18 been consistently at a lower level than they were prior to that year.

19 Extensive watershed alteration has not occurred in
20 the Ozette River drainage. The chinook and chum runs have decreased
21 to such an extent that measurable runs do not exist today. Coho and
22 sockeye runs have progressed through three levels of production using
23 catch levels as an indication of run size. In the early fifties and
24 late forties, several catches of over 15,000 sockeye occurred. These
25 catches were followed by 12 years of catches of the 500-3,000 level.
26 A catch of over 500 sockeye has not occurred since 1963.

27 (3) Upper Skagit. Upper Skagit Tribal members remove
28 adult chinook and possibly coho salmon from pool holding areas and the
29 spawning riffles. This practice is detrimental to the salmon resource.

30 (4) Puyallup. Despite record releases of migrant juve-
31 nile salmon from the Puyallup Hatchery, the total production of this
32 stream has not, as yet, reached the level of production which it was
33 achieving prior to 1961. Several extremely large catches of chinook,

1 pinks, and coho during the early 1960's resulted in very low spawning
2 escapements. Neither hatchery egg requirements nor desired minimum
3 natural spawning escapement levels have been reached consistently
4 since 1961.

5 267. If the answer to Interrogatory 265 is affirmative, in
6 defendant's opinion has defendant or any of its agents contributed to
7 the decline of, destruction of, or adverse effects upon the runs
8 involved.

9 ANSWER: See answer to Question 263.

10 268. If the answer to Interrogatory 267 is affirmative,

- 11 a. Who so contributed,
12 b. What runs were involved,
13 c. Where did the contributory action take place, and
14 d. In what manner did the action contribute to such
15 decline, destruction or adverse effects.

16 ANSWER: See answer to Question 264.

17 269. Do the defendants contend that any agency, or agent of the
18 Federal Government has within the past decade exercised regulatory or
19 management authority over any anadromous fish runs subject to regu-
20 lation by the defendants.

21 ANSWER: Yes.

22 270. If the answer to Interrogatory 269 is affirmative,

- 23 a. Who is contended to have exercised such authority,
24 b. When was the authority exercised,
25 c. Where was the authority exercised,
26 d. What runs were involved, and in what manner was the
27 authority exercised.

28 ANSWER: a. International Pacific Salmon Commission, Secretary of
29 the Interior and/or the Commissioner of Indian Affairs.

30 b, c and d. The International Pacific Salmon Commission, of
31 which the United States Government is a party, issues annual regulations
32 governing Northern Puget Sound, the Strait of Juan de Fuca and part of
33 the Pacific Ocean. Although the Commission's main concerns are the

1 Fraiser River sockeye and pink salmon runs, its regulations affect
2 the chinook, coho, and chum salmon runs destined for the Southern
3 Puget Sound.

4 The Secretary of the Interior and/or the Commissioner of
5 Indian Affairs approves tribal regulations. See answers dated
6 October 11, 1972 to Discovery Questions submitted by William M.
7 Gingery for the Washington Department of Fisheries dated March 2,
8 1972, and letter dated March 15, 1972 from Donald R. Johnson,
9 Regional Director for the National Marine Fisheries Service to
10 George D. Dysart in response to Mr. Gingery's Discovery Questions.

11 271. In determining what management techniques, activities or
12 regulations you will utilize, have you relied within the past
13 decade upon any persons or agencies outside your own.

14 ANSWER: Yes.

15 272. If the answer to Interrogatory 271 is affirmative, what
16 persons or agencies have been relied upon and generally, what
17 assistance has been given from each such person or agency.

18 ANSWER: The Department of Fisheries utilizes information from
19 numerous scientific and management agencies, state, federal and
20 international, as well as from Indian tribes.

21 273. [As to those defendants who have permitted fishing in
22 marine areas:] Is it accurate to say that a restriction on the
23 amounts of fish harvested within the run is passing through northern
24 Puget Sound (i.e. areas 1 and 2) will usually cause an increase in the
25 volume of fish in that run when it enters southern Puget Sound waters.

26 ANSWER: Restrictions upon fisheries at any place prior to a
27 selected destination will increase the number of salmon at the
28 destination. This approach must be used in such a manner as to avoid
29 over escapement and waste of the resource in areas other than the
30 ultimate destination of a particular run of fish.

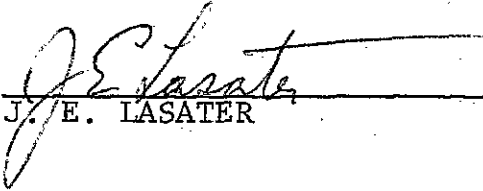
31 DATED this 29th day of May 1973.

32


33

1 STATE OF WASHINGTON)
2 County of Thurston) ss.

3 J. E. Lasater, being first duly sworn on oath, deposes and says:
4 That he is the Assistant Director, Operations, Department of
5 Fisheries, that he is the person answering the within interrogatories
6 and that he has read the above and foregoing answers to interroga-
7 tories, knows the contents thereof, and believes the same to be true.

8
9
10 
11 J. E. LASATER

12 SUBSCRIBED AND SWORN TO before me this 29th day of May 1973.

13
14 
15 EARL R. MCGIMPSEY, Notary Public in
16 and for the State of Washington,
17 residing at Olympia.

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OFFICE OF THE ATTORNEY GENERAL

SLADE GORTON ATTORNEY GENERAL
TEMPLE OF JUSTICE OLYMPIA, WASHINGTON 98504

May 29, 1973

RECEIVED

MAY 30 1973

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

Clerk of the U. S. District Court
United States Courthouse
P. O. Box 1935
Tacoma, WA 98401

Re: Civil 9213
U. S. v. Washington

Dear Sir:

Please file the enclosed Plaintiffs' Last Interrogatories to Defendants, and Department of Fisheries' Answers Thereto in the referenced action.

Thank you for your cooperation in this matter.

Sincerely,

FOR THE ATTORNEY GENERAL

Earl R. McGimpsey
EARL R. MCGIMPSEY
Assistant Attorney General

SG
ERM:j
encs.