

6-4-1973

Docket Entry 243 - Filed Response of Muckleshoot Indian Tribe to Interrogatories propounded by Defendant Washington State Department of Fisheries and affidavit of mailing

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1 1. Please identify the governing body of your tribe, stating the
2 names, addresses and telephone numbers of its members and iden-
tify its officers, indicating the respective offices they hold.

3 ANSWER: MUCKLESHOOT INDIAN TRIBAL COUNCIL

- 4 Florence Harnden-Chairman-Rt.1 Box 431-Auburn, Wa. 98002-TE3-4825
5 Charollett Williams-Treasurer-Enumclaw Rd.- 37030 - TE3-4271
6 Marie Starr-Councilwoman--Rt.1 Box 461-Auburn, Wa. 98002-939-0265
7 Cecil Moses-Councilman-4421 Enumclaw Hwy.-Auburn Wa. 98002-TE3-2340
8 Pete Jerry-Councilman-4931 Enumclaw Hwy.-Auburn, Wa. 98002 TE3-2428
9 Bernice White-Councilwoman-Rt.1 Box 471-Auburn, Wa. 98002 No phone
10 Leo LaClair-Council Member-Rt.1 Box 478M, Auburn, Wa. 98002 TE5-4076
11 Mrs. Norman Eyle-Councilwoman-P.O. Box 501-Enumclaw, Wa. 98022 No phone
12 Stanley Moses-Councilman-Rt.2 Box 431-Enumclaw, Wa. 98022 No phone

13 2. Has your tribe adopted tribal fishing regulations? If yes,
14 please indicate:

- 15 (a) Whether such regulations are permanent, annual
16 or temporary
17 (b) The dates all such regulations were adopted
18 (c) Whether such regulations were approved by the
Bureau of Indian Affairs and the date of its
approval.

19 Please attach copies of all such regulations. (Note: It is
20 not necessary that copies of the following regulations approved
21 by the B.I.A. on the date indicated be furnished.)

Nisqually	10/30/68
Quinault	3/29/69
Squaxin	10/27/67
Makah	7/6/70
Muckleshoot	3/6/71
Quilleute	10/11/41
Skokomish	1/21/64
Puyallup	4/17/73
Yakima	3/23/66
Lummi	4/9/64

22 ANSWER:

23 YES

- 24 (a) Permanent; reviewed annually or as needed.
25 (b) March 6, 1971. See BIA records for dates of previous regulations
26 adopted by tribe, but not now in force.
27 (c) See BIA records. No tribal record.

1 3. If your tribe has not adopted tribal fishing regulations, does
2 your tribe regulate tribal fishing in any other manner? If yes,
describe the manner of regulation.

3 ANSWER:

4 Non-Applicable
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11 4. Please identify the committee or governing body responsible for
12 adopting tribal fishing regulations, stating the names, addresses,
13 telephone numbers, occupations, and terms of office of its mem-
bers and identify its officers, indicating the respective offices
they hold.

14 ANSWER:

15 The Muckleshoot Fish Commission recommends to the Muckleshoot
16 Tribal Council fishing regulations for enactment. Refer to Inter
rogatory No. 1 for the names of the governing body. See Answer to
Interrogatory 6(c) for term of office. Occupations:

17 Florence Harnden-----works for the tribe.
18 Charollett Williams--works for the school district.
19 Marie Starr-----works for the tribe.
20 Cecil Moses-----fisherman.
21 Pete Jerry-----works for the Auburn school district.
22 Bernice White-----works for the tribe.
23 Leo LaClair-----works for Legal Services.
24 Mrs. Norman Eyle----housewife.
25 Stanley Moses-----logger

26 5. Are any members of the committee or governing body described in
27 Interrogatory No. 4 actively engaged as fishermen, fishermen's
28 helpers, or fish buyers? If yes, please identify them and their
29 respective activity.

30 ANSWER:

31 The majority of the governing body and fish commission do fish
32 when the commercial and subsistence fishing seasons are open.

33 Cecil Moses
Pete Jerry
Leo LaClair
Florence Harnden
Stanley Moses

are fishermen.

1 6. Are the members of the committee or governing body identified in
Interrogatory No. 4 appointed or elected?

- 2 (a) If appointed, by whom are they appointed?
3 (b) If elected, by whom are they elected?
4 (c) What is the length of their term of office?

5 ANSWER:

6 ELECTED

- 7 (a) Non-Applicable
8 (b) General Council
9 (c) Three year staggered terms

10 7. Please identify the committee or governing body responsible for
formulating tribal fishing regulations. If different from the
committee or body responsible for adopting the regulations,
please provide as to the formulating committee or body the in-
formation requested in Interrogatories Nos. 4, 5 and 6.

11 ANSWER: Muckleshoot Fish Commission formulates tribal fishing re-
12 gulations. Enrolled members of the tribe can be fish commission
13 members. The names of enrolled members can be secured from the
14 BIA records at the Everett Office.

15
16
17 8. Please describe the process by which tribal fishing regulations
18 are enacted.

19 ANSWER: The Muckleshoot Fish Commission formulates the fishing
20 regulations following consultation and review by the U.S. Fish &
21 Wildlife Service and Washington State Department of Fisheries, and
22 the Muckleshoot tribal council adopts the regulations by re-
23 solution and ordinance.

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28 9. Are public hearings held on the tribal fishing regulations prior
29 to their enactment? If yes, please state:

- 30 (a) Who is eligible to attend and speak at such hearings
31 (b) The dates during the past five years on which such
hearings have been held.

32 ANSWER: YES

33 (a) The Muckleshoot Fish Commission has meetings to formulate
fishing regulations and anyone who attends the meetings is allowed
to speak.

(b) We have no records of the dates of these meetings.

Interrogatories

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6 10. In the past 5 years has your tribe or anyone acting on its behalf
7 received information, assistance or advice in formulating and/or
adopting tribal fishing regulations. If yes, please state:

- 8 (a) The person(s) or agency(s) providing such information,
assistance or advice
9 (b) The date such information, assistance or advice was
provided
10 (c) A brief summary of the information, assistance or
advice provided
11 (d) In what manner such information, assistance or
12 advice was relied upon by the committee or bodies
which formulated and adopted the regulations.

13 ANSWER:

- 14 (a) U.S. Fish & Wildlife Service - (James Heckman, Curtis Burley)
BIA - (Joe Dywer)
15 Washington Dept. of Fisheries - (Dick Laramie, Art Watkins)
STOWW - (Jim Fraser)
16 Tribal Members with expertise.
17 (b) You will have to refer to above named agencies for exact dates.
No record is kept by the tribe.
18 (c) Management and regulatory information. Data on run size, effect
19 of other fisheries and potential impact of tribal fishing and con-
sideration of other fish harvesting stocks before they arrive at
20 tribal fishing grounds.
21 (d) The significant information was considered in formulating and
adopting the tribal fishing regulations.
22

23 11. Does the tribal governing body, or the committee or body which
24 adopts tribal fishing regulations if not the governing body,
25 have authority to make emergency fishing regulations? If yes,
please state:

- 26 (a) The source of such authority
27 (b) Whether emergency fishing regulations have ever been
enacted, indicating:
28 (1) The date of such regulations
29 (2) The source and type of information relied
upon in making such regulations
30 (3) Whether such regulations were designed to
increase or restrict the number of fish taken
31 (4) The substance of change.

31 ANSWER: YES.

- 32 (a) Inherent tribal sovereignty; Treaty of Point Elliott; and
33 Constitution and Bylaws for the Muckleshoot Indian Tribe of
the Muckleshoot Reservation, Washington, as amended Article
VI, Sec. 1(k).
(b) YES---(1) July, 1973
(2) Dept. of Fisheries information and consultation
with U.S. Fish & Wildlife Service

1 (3) Restrict

2 (4) Closed the Sockeye fishery in Lake Washington

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12. Are tribal regulations enacted for both on-reservation and off-reservation fishing at usual and accustomed stations? If not, for which are regulations enacted?

ANSWER:

YES--All inclusive

13. Do tribal regulations for reservation fishing differ from tribal regulations for off-reservation fishing? If yes, please explain the difference.

ANSWER:

NO, they do not differ at the present time.

14. Does the committee or body responsible for formulating tribal fishing regulations consider Washington State Department of Fisheries regulations? If yes, what consideration is given state regulations and in what manner do state regulations affect tribal regulations?

ANSWER:

YES - the tribe needs to know how the state divides up fish. The state has not generally regulated other fisheries sufficiently to allow enough salmon for the tribal fishery or spawning escapement.

1 15. In formulating tribal fishing regulations, are estimates of
2 predicted run size utilized? If yes, please state:

- 3 (a) The source of such information
4 (b) The data relied upon
5 (c) When such estimates have been utilized.

6 ANSWER: YES

- 7 (a) Washington State Dept. of Fisheries, tribal test fishery,
8 and interpretations of the data by U.S. Fish & Wildlife
9 Service.
10 (b) Information from all sources in part (a).
11 (c) During consideration of all fisheries and fishery regulations
12 in recent years.

13 16. Has your tribe or anyone acting on its behalf ever requested
14 information from the Washington State Department of Fisheries
15 and had such request denied? If yes, please state:

- 16 (a) The name of the person making such request
17 (b) The date of such request
18 (c) The person denying such request, if known
19 (d) The reason given for such denial
20 (e) Whether such denial was brought to the attention
21 of the Director of the Department of Fisheries by
22 the tribe.

23 ANSWER: YES. Bernice White sent a letter to Stu Delaney but did not
24 receive a response. Stu indicated he did not get her letter until
25 he ran across it by accident. We have no record of other specific
26 written requests for information which were ignored. However,
27 verbal requests during meetings with the Department concerning
28 expected Chinook returns to Green River Hatchery were answered
29 with misleading responses in 1971 and 1972.

30 Records of other incidents are not available, but should be
31 in department files.

32 17. Who has responsibilities for enforcing your tribal fishing
33 regulations?

- (a) On the reservation
(b) Off the reservation.

34 ANSWER:

- 35 (a) Conservation designatee - hired by tribe.
36 (b) Conservation designatee - hired by tribe.

37 18. Does your tribe employ, appoint, or in any way designate enforce-
38 ment officers to enforce tribal fishing regulations? If yes,
39 please state for each person who has held such position for the
40 last two years:

- 41 (a) His name
42 (b) His address
43 (c) His telephone number
44 (d) The period(s) he has been so employed
45 (e) The scope of his enforcement authority
46 (f) The geographical area of his enforcement activity
47 (g) The number of arrests made or citations issued for
48 violation of tribal fishing regulations

1 (h) Whether such arrests were made for violations on or off
2 the reservation.

3 ANSWER:

4 (a) Gilbert King George (a) Delbert Starr
5 (b) 824 "B" St., S.E., Auburn, Wa. (b) Rt.1, Box 459, Auburn, Wa.
6 (c) 939-0703 (c) none
7 (d) 1971 (d) 1972 - present
8 (e) applies all tribal fishing (e) applies all tribal fishing
9 regulations to members regulations to members
10 (f) all usual and accustomed (f) all usual and accustomed
11 fishing places on and off fishing places on and off
12 reservation reservation
13 (g) two warnings given (g) none
14 (h) Non-Applicable (h) Non-Applicable

15 19. If an illegal fishing activity is observed by an enforcement
16 officer, what procedure is followed by the officer?

17 ANSWER:

18 A warning is given. Further problems are referred to tribal council.

19 20. Who or what tribal entity sits in judgment of:

- 20 (a) An alleged Indian violator
21 (b) An alleged non-Indian violator.

22 ANSWER:

- 23 (a) tribal council
24 (b) state authorities and courts

25 21. With regard to the person or entity described in Interrogatory
26 No. 20, please state:

- 27 (a) The name, address and telephone number of each person
28 holding such position for the past five years
29 (b) The manner of his appointment
30 (c) The term of his office
31 (d) Whether such position is a full time or part time
32 responsibility
33 (e) Whether such person(s) actively engaged in the tribal
fishery as a fisherman, fisherman's helper or fish buyer.

ANSWER:

- (a), (b), (c), & (e) Tribal Council - see Answers to Nos. 2, 5, & 6.
(d) part-time

22. What are the penalties for violation of tribal fishing regula-
tions?

ANSWER:

See question No. 19 and regulations adopted 3/6/71

1 23. Please list each incident within the last two years when such
2 penalties have been imposed, stating:

- 3 (a) The name of the person penalized
4 (b) The date the penalty was imposed
5 (c) The penalty imposed.

6 ANSWER:

7 There have been incidents but no written records of the
8 person(s) involved have been kept by the tribe.
9
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11

12 24. Are tribal fishermen required to register with tribal authorities
13 or obtain a tribal license to fish in the reservation fishery?
14 If yes, please state:

- 15 (a) The number of registrations or licenses issued during
16 the last five years
17 (b) Whether a fee is charged.

18 ANSWER:

- 19 (a) The BIA has this record.
20 (b) No.

21 25. Are tribal fishermen required to register with tribal authorities
22 or obtain a tribal license to fish in usual and accustomed sta-
23 tions off the reservation? If yes, please state:

- 24 (a) The number of registrations or licenses issued
25 during the last five years
26 (b) Whether a fee is charged.

27 ANSWER: YES

- 28 (a) See BIA records. No tribally kept records.
29 (b) Not for the BIA cards.

30 26. Are tribal fishermen required to pay a tax on fish caught in the
31 tribal fishery?

32 ANSWER: Tribal fish tax has been charged in the past, but not now.

33 27. Upon what basis does your tribe determine whether a particular
individual is qualified to fish in:

- (a) Your reservation Indian fishery
(b) In any areas off your reservation for which your tribe
has enacted fishing regulations.

ANSWER:

- (a) Tribal membership. See fish regulations adopted 3/6/64.
(b) Tribal membership. Fish regulations adopted 3/6/64.

1 28. Is a non-Indian fishery allowed on your tribe's reservation?
2 If yes, please state:

- 3 (a) Whether such fishery is commercial or sport
4 (b) Any catch statistics you have of catches in such fishery
5 (c) For which of the last five years has such fishery been
6 in operation
7 (d) To the extent that regulations of such fishery are
8 different from any provided above, please include
9 copies of all regulations enacted for such fishery
10 (e) Whether non-Indians participating in such fishery
11 are required to register with the tribe or obtain
12 a tribal license
13 (f) Whether a fee is charged to fish in such fishery.

14 ANSWER:

15 NO
16
17
18

19 29. Please identify all Washington statutes and State Department
20 of Fisheries' Regulations which regulate Indian fishing which
21 you believe are not reasonable and necessary for purposes of
22 conservation, stating for each regulation so identified the
23 reasons why such regulation is not necessary for conservation.

24 ANSWER: The Muckleshoot Tribe takes the position that all statutes
25 and regulations of the State of Washington which purport to regulate,
26 control, restrict or prohibit in any way, fishing by tribal members
27 at their usual and accustomed off reservation fishing places are
28 in violation of their treaty rights in that none of the current
29 statutes or regulations have been determined by a federal court to
30 be "necessary" to prevent destruction of the fishery resource which
31 destruction could not be prevented by regulation, restriction
32 or prohibition of non-Indian fishing and would not be prevented by
33 tribal regulation.

1 30. Please identify, giving geographical descriptions, all off-
2 reservation usual and accustomed fishing stations guaranteed
your tribe by treaty with the United States government.

3 ANSWER:

4 It is impossible to identify specifically all "stations" at this
5 time. Indians of our tribe fished at various places throughout
6 the Puget Sound drainage, and thus, we claim treaty rights to
7 fish at such places today.

8
9
10 31. Do any other Indian tribes occupy the same usual and accustomed
11 fishing stations identified in Interrogatory No. 30? If yes,
please state:

- 12 (a) The stations
13 (b) The names of all tribes whose usual and accustomed
14 fishing station they are
15 (c) Whether any agreements have ever been entered into
16 between your tribe and any other tribe regarding such
stations
(d) The nature and terms or conditions of such agreements
(e) When such agreements were entered into.

17 ANSWER: YES

- 18
19 (a) See Answer to No. 30.
20 (b) All treaty tribes of Western Washington.
21 (c) None that we are presently aware of.
22 (d) Non-Applicable
23 (e) Non-Applicable

24
25 32. Does your tribe claim legal jurisdiction to enforce tribal
26 fishing regulations at your usual and accustomed stations off
your reservation? If yes, please state:

- 27 (a) The source of such authority
28 (b) The persons over whom such authority is claimed.

29 ANSWER: YES

- 30 (a) Inherent sovereignty of the tribe; Treaty of Point Elliott;
31 Constitution and Bylaws for the Muckleshoot Indian Tribe of
the Muckleshoot Reservation, Washington, as amended.
32 (b) All persons.
33

1 33. Has your tribe developed a fisheries resource management program?
2 If yes, please describe in detail this program.

3 ANSWER: YES.

4 The tribe's program consists of:

- 5 1) Habitat Protection. The tribe attempts to limit and control
6 flood control, polluting sources, and power development and
7 operation activities affecting its fisheries. This is done
8 in cooperation with federal agencies, through litigation and
9 administrative appeals, and direct negotiation with private
10 industries and state, federal, and local governing entities.
11 2) Improvement of Existing Fisheries. Tribe has a representative
12 on the White River Fish Improvement Committee. There has been
13 cooperation with the Department of Fisheries in test fisheries.
14 See also answer to No. 34.
15 3) Tribal Regulation and Control. See Fish Regulations adopted
16 3/6/71 and answers to Nos. 2,7,8,9,10,11,14,15,17,18,24, and
17 25.

18 34. Has your tribe developed a fisheries resource enhancement pro-
19 gram? If yes, please describe in detail this program.

20 ANSWER: YES. The fisheries resource management program described in
21 the answer to No. 33 is designed to enhance the tribe's fish-
22 eries. In addition, the following program has been developed:

- 23 1) Stocking. Reservation waters have been stocked with catch-
24 able trout and migrant size salmon since 1965 by the tribe
25 in cooperation with the U.S. Fish & Wildlife Service and
26 Washington State Department of Fisheries.
27 2) Hatchery Study. A study to determine the feasibility of a
28 fish hatchery on the reservation has been undertaken by the
29 U.S. Fish & Wildlife Service in cooperation with the tribe.
30 The study began in 1972.
31 3) Study of Fishery Enhancement Possibilities. The tribe
32 commissioned a study of the possibility of enhancing
33 tribal fisheries. A preliminary study only has been pre-
34 pared by Dr. Ernest Salo.

35 35. If your tribe has received information, assistance or advice in
developing either of these programs from any source, please
state:

- (a) The person, agency or entity providing such information,
assistance or advice
(b) The dates when the same was provided
(c) The type of information, assistance or advice provided.

<u>ANSWER:</u>	(a)	(b)	(c)
1.	U.S. Fish & Wildlife Service	1965 to present	Assistance in fish stocking program. See Answers to Nos. 33 and 34.
2.	Washington State Dept. of Fisheries	1971 to present	See Answers to Nos. 33 and 34.
3.	Dr. Ernest Salo	1971 to present	Study of Fisheries Enhancement, see Answers to Nos. 33 and 34.
4.	White River Fish Improvement Committee	1966 to present	See Answers to Nos. 33 and 34.

Interrogatories

1 36. Please provide all records and data maintained by your tribe with
2 regard to its fishery resource management or enhancement programs
with respect to the following:

- 3 (a) Spawning ground escapement counts
4 (b) Catch statistics
5 (c) Hatchery plantings
6 (e) Juvenile out-migration counts
7 (f) Stream environment conditions
8 (g) Type of gear fished
9 (h) Units of gear fished
10 (i) Locations of gear fished including site registration
11 (j) Efficiency of gear fished
12 (k) Estimates of total fish populations
13 (l) Any evaluations or studies made for the tribe with
regard to the above requested information and data.

14 If attaching copies of such information or data would be burden-
15 some, please indicate where and when a representative of the
16 Department of Fisheries could examine such data. If such infor-
17 mation or data is in the possession of the United States govern-
18 ment, please indicate what agency has possession and give your
19 consent to have a representative of the Department of Fisheries
20 examine such data.

21 ANSWER: No such records are maintained by the tribe. However, the
22 following records will provide some fo the information requested:

- 23 (1) U.S. Fish & Wildlife Service records provided as an exhibit
24 to deposition of James Heckman, April 25-26, 1973.
25 (2) Records of U.S. Fish & Wildlife Service and Washington Dept.
26 of Fisheries relating to plantings, catch, and evaluations
27 and studies.
28 (3) Dr. Ernest Salo's Study (preliminary only)

29 37. Please state the number of families in your tribe that rely on
30 your tribal fishery to provide them with salmon for their per-
31 sonal consumption.

32 ANSWER:

33 Virtually, all enrolled members of the tribe utilize some fish
from the tribal fishery for personal diet.

34 38. Please state, for each family, the average number of pounds of
35 salmon (or average number of salmon) caught in your tribal
36 fishery and used for their personal consumption for each of the
37 last five years.

38 ANSWER:

39 Do not have records to answer question.

40 Interrogatories

1 39. Please state the species of salmon taken in your tribal fishery
2 for the personal consumption of tribal members and the percentage
3 that each species contributes to the total number of fish caught
4 for personal consumption of tribal members.

4 ANSWER:

4 All varieties of salmon, including steelhead; no records available
5 as to percentage of each.

6 40. Please identify all tribal ceremonies in which salmon are used,
7 stating:

- 8 (a) Name of the ceremony
- 8 (b) Date of the ceremony
- 9 (c) Role of salmon in the ceremony
- 9 (d) The average number of pounds of salmon (or average number
10 of salmon) needed for the ceremony
- 10 (e) The average number of pounds of salmon (or average number
11 of salmon) caught in the tribal fishery for each such
12 ceremony for the last five years, specifying what percent-
13 age of the fish were caught on the reservation and what
percentage off the reservation
- 13 (f) The approximate average attendance at each such ceremony
for the last five years.

14 ANSWER: Traditional Indian ceremonies are rarely practiced anymore.
15 This is due in part to the repression of much of the tribe's efforts
16 to fish during the last century which has resulted in fewer avail-
17 able fish and some breakdown of tribal life which is traditionally
18 centered around fishing. Much of the reason for such ceremonies
19 (such as the first salmon ceremony celebrating the beginning of the
salmon harvest) has consequently been diluted. The tribe considers
it inappropriate to disclose complete details of such traditional
ceremonies. Revival of traditional ceremonies will probably de-
pend on the ability of tribal members to exercise their fishing
rights in the future.

20 At the present time, salmon is served, when available, at
weddings, funerals, cultural activities, feasts, and other activi-
ties and celebrations in amounts sufficient to feed those attending.

21 41. What is the number of tribal members who rely exclusively on fish-
22 ing to provide their annual income?

23 ANSWER: None. The reduced size and unreliability of runs today due to
24 increased non-Indian harvest and man-made activities and projects
coupled with repressive regulation of off reservation treaty fish-
ing makes this impossible.

25 42. What is the number of tribal members who do not rely exclusively
26 on fishing to provide their annual income but for whom fishing
27 provides more than 50% of their annual income?

28 ANSWER: None. See answer to No. 41

29 43. What is the total number of tribal fishermen?

30 ANSWER: Nearly all members consider themselves "fishermen". The BIA
has records of those holding permits.

31 44. What is the total number of enrolled members of your tribe?

32 ANSWER: See BIA enrollment records.
33

Interrogatories

1 45. What is the average annual income of the tribal members
2 accounted for in Interrogatories 38 and 39 respectively?

3 ANSWER: Per capita income for all tribal members is approximately
4 \$557.00. BIA has this on record. No other records are
5 available.

6 DATED this 30 day of May, 1973.

7
8 Florence Harnden
9 Florence Harnden, Chairman
10 Tribal Council of the Muckleshoot
Indian Tribe

11 STATE OF WASHINGTON)
12) SS.
13 COUNTY OF)

14 Florence Harnden, being first duly sworn, says: That she is
15 the Chairman of the Muckleshoot Indian Tribal Council and as such
16 is authorized to answer the foregoing Interrogatories on behalf
17 of the plaintiff Muckleshoot Tribe, that she has read and
18 made answer to the foregoing Interrogatories, and that she knows
19 the contents and believes the answers to them to be true.

20
21 Florence Harnden
22 Florence Harnden

23 Subscribed and sworn before me
24 this 30 day of May, 1973.

25
26 Joan [Signature]
NOTARY PUBLIC

27 #36
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