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Docket Entry 251 - Filed deposition of Forest L. Kinley

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

| | | |
|---------------------------|---|--------------------------|
| UNITED STATES OF AMERICA, |) | No.: Civ. No. 9213 |
| et al., |) | |
| |) | PRETRIAL ORAL DEPOSITION |
| Plaintiffs, |) | OF |
| |) | <u>FORREST L. KINLEY</u> |
| vs. |) | |
| |) | 220 Bellingham National |
| STATE OF WASHINGTON, et |) | Bank Building |
| al., |) | Bellingham, Washington |
| |) | |
| Defendants. |) | May 17, 1973. |

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JUN 14 1973

EDGAR SCOFFIELD, CLERK

By Deputy

(Original)

BASIL D. RASMUSSEN
GENERAL COURT REPORTER
2700 ELDRIDGE AVENUE
BELLINGHAM, WASHINGTON 98225
TELEPHONE 733-8074

251

CORRECTION SHEET

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CORRECTION

9 13

Add: "at low tide," after word
"canoes."

Forrest L. Kinley
FORREST L. KINLEY

Subscribed and sworn to before me this 24th day of
May 1973.

Daniel P. Hansen
Notary Public in and for the
State of Washington, residing at
Bellingham.

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4
5

6 UNITED STATES OF AMERICA,) No. Civ. No. 9213
7 et al.,) PRETRIAL ORAL DEPOSITION
8 Plaintiffs,) OF
9) FORREST L. KINLEY
10 vs.)
11 STATE OF WASHINGTON, et al.,) 220 Bellingham National
12 Defendants.) Bank Building
13) Bellingham, Washington
14)
15) May 17, 1973.

16 APPEARANCES:

17 ALVIN J. ZIONTZ, of Messrs. Ziontz, Pirtle
18 & Morisset, 3101 Seattle-First National Bank
19 Building, Seattle, Washington (98154),

20 For the Plaintiff Intervenor.
Lummi Indian Tribe.

21 DAVID E. RHEA, of Messrs. Asmundson, Rhea &
22 Atwood, 220 Bellingham National Bank Building,
23 Bellingham, Washington (98225),

24 For the Defendant Intervenor
25 Washington Reef Net Owners
Association.

1 Deposition of FORREST L. KINLEY, a witness of
2 lawful age, taken in the above-entitled cause, wherein
3 UNITED STATES OF AMERICA, et al., are plaintiffs and
4 STATE OF WASHINGTON, et al., are defendants, pending in
5 the United States District Court for the Western District
6 of Washington, pursuant to oral stipulation between
7 counsel, at the instance of Defendant Intervenor Wash-
8 ington Reef Net Owners Association, before Basil D.
9 Rasmussen, a notary public in and for the State of
10 Washington, County of Whatcom, residing at Bellingham,
11 at 220 Bellingham National Bank Building, Bellingham,
12 Washington, on the 17th day of May, 1973, commencing
13 at the hour of 1:55 o'clock p.m..

14
15 MR. RHEA: This is taken on oral stipulation
16 between Mr. Ziontz and myself, and I gave notice
17 to the defendants' liaison counsel and the counsel
18 for the Department of Game -- oral notice to
19 them.

20 MR. ZIONTZ: I also gave notice to counsel for
21 the United States and they have indicated they
22 have no plan to attend.

23
24 FORREST L. KINLEY,
25 a witness of lawful age, and being first

1 duly sworn in the above cause, testified
2 on his oath, as follows:
3
4 BY MR. RHEA:
5 Q Would you give us your name, please?
6 A Forrest L. Kinley.
7 Q And your address?
8 A Marietta, Washington.
9 Q You can put your hand down. You might as well make
10 yourself comfortable.
11 What is your occupation, Mr. Kinley?
12 A I suppose I'm a farmer right now. I'm sort of nothing.
13 Q How old are you?
14 A Fifty-nine.
15 Q How long have you resided in Whatcom County?
16 A All my life but for -- I was in the service.
17 Q Are you a member of the Lummi Tribe?
18 A Yes.
19 Q And are you carried on the rolls as such?
20 A Yes.
21 Q Have you ever pursued any form of commerical fishing?
22 A Yes.
23 Q What type and commencing when?
24 A When I was about twelve years old I started gillnetting
25 in the Nooksack River, and then when I was about

1 twenty-four years I went reefnetting, and I
2 commercially fished purse seine. I owned my own vessel.
3 Q Do you have your own vessel now?
4 A No. I haven't fished for five years, five or six years.
5 Q Where did you commence your reefnetting at the age of
6 twenty-four?
7 A Lummi Island, Legoe Bay.
8 Q On whose gear, or did you have your own gear?
9 A John Curry.
10 Q How long did you reefnet?
11 A I'm not sure whether I fished just one or two years.
12 Q Did you do any reefnetting after that?
13 A No.
14 Q Did you reefnet for the full season?
15 A Yes.
16 Q And you think it was one or two seasons?
17 A It's either one or two. I don't think it was over two.
18 Let's put it that way.
19 Q Have you ever attempted to reefnet since?
20 A No.
21 Q Have you ever owned any reefnet gear or equipment?
22 A No.
23 Q Have any close members of your family owned any reef-
24 net gear or equipment?
25 A You mean in my lifetime or --

1 Q Yes.

2 A My dad did.

3 Q Tell me about that, please.

4 A Well, that was at Point Roberts, you know. He was one
5 of the original when they had the kelp and stuff
6 there, George Kinley, and he fished up there.

7 Q Did you ever assist your dad in that form of fishing?

8 A Too young.

9 Q Are you familiar with the history of the reefnetting
10 by the Lummis?

11 A Fairly well.

12 Q About how far back does your information go? By that
13 question I mean you would know of Indian reefnet
14 fishing practices commencing as of approximately
15 when?

16 A By my personal contact?

17 Q Yes; what you have heard, you see.

18 What I'm getting at, and I admit it's a little
19 difficult to phrase this correctly; it's my fault I'm
20 not saying the question right, - you have heard dis-
21 cussed among other Lummis earlier reefnetting practices
22 of the tribe; right?

23 A Yes.

24 Q All right.

25 Going back how far did these discussions or

1 remembrances go?

2 A Well, actually we have a, you know, a diary that was in
3 our family, in North James's family, the wife's family,
4 that showed, you know, the various times that different
5 individuals left to go to Lummie Island to pick up,
6 pick up fish, you know, for smoking and things like
7 like this when they were reefnetting. They'd name various
8 places where they were going that day to pick up fish,
9 so actually we have it back, you know, in our family
10 back to when the early settlers first came here, you
11 know, when my grandfather first came here, you see,
12 and I just don't recall, you know.

13 Q What was your grandfather's name?

14 A John Plaster. He was a white man. Don't tell anybody.

15 Q Have you read that diary?

16 A Yes.

17 Q And do you recall what year it begins with?

18 A Gee, I could get that for you, I suppose, but I
19 just -- I can't.

20 Q Would you make that available to your attorney for me
21 to read sometime?

22 MR. ZIONTZ: We'll make it available for
23 inspection.

24 MR. RHEA: Thank you.

25 MR. ZIONTZ: If it's available to us, it will

1 available to you.

2 MR. RHEA: Thank you.

3 BY MR. RHEA:

4 Q Now, was your grandfather, Mr. Plaster, a reefnetter
5 himself?

6 A No.

7 Q Or did he deal with the reefnetters?

8 A He was married to my grandmother, you know, and what
9 he did was to get fish to put away and like this.

10 Q And what was the family that your grandmother was from
11 that he married?

12 A Lummi.

13 Q Did her family own a reef net?

14 A I don't know.

15 Q What does this diary have to report as to reefnetting?
16 Does it describe how it was done and where it was
17 done?

18 A No, it just states kind of a daily log that says
19 that I went here, I went there, and today I went over to
20 Lummi Island to pick up salmon and it's just a daily
21 log. It tells about the weather and things.

22 Q When he would go to Lummi to get these fish you were
23 speaking of, would he purchase them then from Lummis
24 who were operating reef nets?

25 A (Witness nods head.)

1 Q Do you know the names of any Lummi who were operating
2 reef nets then?

3 A Well, Johnny Alexis, Solomons, Balch, Jamison, and
4 these type of people.

5 Q Do you have any knowledge yourself of how the Lummi
6 reefnetted either at the time the white settlers came
7 or in the years immediately afterward?

8 A Yes.

9 Q Describe it for me, if you would, please.

10 A Well, first we had these big traveling canoes. I
11 don't think anybody, you know, other than our age has
12 seen them, but they must have been at least forty feet
13 long and maybe eight or ten feet wide. They were
14 regular big traveling canoes.

15 Q Of what were they made, by the way?

16 A Cedar log, from a cedar log, and they had that high
17 bow stem, you know, and there was a little nitch out
18 in front that you see on the race canoes today.

19 Well, that nitch was to hold a reefnet gear
20 from sliding, you know, where they tied it. The same
21 type of gear that we use today. And actually before
22 they had man-made material, we made our own, you know,
23 say at Birch Bay. They went up there.

24 Q Did you ever see that done?

25 A No, but we tried to do it --

1 Q That was before your time?

2 A Yeah, before my time. But they used nettles and

3 this type of stuff to make their nets out of.

4 Q Now, you were saying that they had these large travel-

5 ing canoes. Were those the ones that they would then use

6 for their form of reefnetting?

7 A Yeah.

8 Q Tell us how they would use them then, please.

9 A Two of them just anchored the way the present day is.

10 That they would take these big canoes and go onto the

11 beach, and at high water, they go up on the beach at

12 high water. Then they'd pick up their heavy anchors

13 and lash them between two canoes, and then when the

14 tide came up it floated up this big rock and then

15 they took out -- set out their anchors the same way they

16 do today for their leads. Then they used tules and

17 other type of grass.

18 Q What did they do with the tules and the grass?

19 A Use it for leads. I don't know what type of leads

20 they use now.

21 Q By leads do you mean they sort of formed a channel --

22 A A tunnel.

23 Q -- (continuing) or walls of a channel that guided the

24 fish to the net?

25 A Uh-huh, into the net.

1 Q Did they use a lookout on the vessels -- on the
2 vessel?
3 A One forward and one aft.
4 Q How many would there be in a crew?
5 A Four. Sometimes six. It just depended.
6 Q Would that include the lookout?
7 A Yes.
8 Q What were these anchors made of?
9 A Rock.
10 Q How would they secure their ropes or ties or twine to
11 them?
12 A Usually they would chase -- chape them around so
13 they just had a big heavy rope, or the rope that they
14 built was right around that rock and this was -- led
15 up to it.
16 Q At what depth would they fish?
17 A Well, I suppose them first reef nets was about -- well,
18 it was in Legoe Bay, the one in Lummi Island, and then
19 they had some in San Juan Island that they fished, and
20 then in Point Roberts.
21 Q Wasn't the bulk of the reefnetting done at Point
22 Roberts by the Lummis?
23 A No.
24 Q At treaty times?
25 A No, there was various family locations. I think that

1 Herman Olsen will be able to give you some information
2 on the names of the families, you know, that had
3 locations throughout the --

4 Q How far offshore would these reef nets operate or would
5 you know?

6 A I wouldn't know.

7 Q You wouldn't have any way of knowing, really?

8 A No, because when I first came into being, you know,
9 there was only -- what? -- two or three rows out
10 there.

11 Q Were there any Lummi fishing in there then?

12 A Yes.

13 Q What were their names?

14 A Well, I can give you Bill James, Ted Plaster, Herman
15 Olsen. I think that John Lewis fished out there then.

16 Q By "out there," we mean off Lummi?

17 A Off Lummi.

18 Q What equipment were they using?

19 A Now, I think that Bill James had his own. Now, I
20 just think, and maybe Ted Plaster, but I don't know
21 about the rest of them, whether they were fishing
22 someone else's gear or --

23 Q Were there whites fishing there at the same time?

24 A Yes.

25 Q Were there more whites than Lummi fishing there when

1 you first knew of it?

2 A I think it was -- I don't think so. There was, when

3 I first went out there, I think there was only two

4 rows.

5 Q What created the rows, so to speak? You spoke of

6 rows, and how did it happen that they were set out in

7 rows, Mr. Kinley?

8 A Well, to begin with these were more or less there was

9 two rows that were -- where the fish passed through,

10 you know, it was the shallows and the least amount of

11 current so that it wasn't too much of an anchor

12 problem.

13 Q Were the rows also created because there was a

14 certain amount of room needed between the different

15 gears?

16 A Oh, yes, to make adequate, you know, --

17 Q Clearance.

18 A -- (continuing) so that everybody would have a fair

19 chance to catch fish.

20 Q That is essential to reefnetting, isn't it, that there

21 be certain spaces between the gears?

22 A Well, I don't know whether it's essential to reef-

23 netting but it's essential to our culture, you know, that --

24 Q Enlarge on that for me, please.

25 A The thing is that when you go out there and fish in

1 Puget Sound with a non-Indian that dog eats dog, but
2 you come inside the Reservation and you wouldn't dare
3 set in front of another Indian because this is strictly
4 against our principles, and that you respect the right
5 of everybody to catch a fish, but when I fished out there
6 commercially I had to turn my back on my best friends
7 and just say, well, that fish is mine, you know, and
8 that isn't the way the Indians fish.

9 Q Was that when you were gillnetting?

10 A When I was purse seining.

11 Q Oh, purse seining.

12 A But this is, you know, this is the difference in our
13 culture.

14 That's why I'm not fishing today because I just
15 couldn't stand it. I just felt that I wasn't brought
16 up this way and I just couldn't fish this way.

17 Q When did the, when do you last recall there being any
18 Lummi members reefnetting anywhere?

19 A We still have, I think, Littles out on the, on the
20 San Juan -- it is still owned gear -- that are Lummi
21 Indians.

22 Q Which vicinity or which point or Bay or what out of
23 San Juan Island is that?

24 A I would like if Herman would give you this.

25 Q All right.

1 A He knows that country and he knows where all of them
2 locations are.

3 Q And they're still fishing?

4 A Uh-huh.

5 Q How long has it been since there were several different
6 Lummis owning reef net gear and fishing them?

7 A I would have to say approximately 1940 or something
8 like that. Maybe before.

9 Q Were any of them close friends or acquaintances or
10 family relatives of yours -- those who were fishing up
11 to 1940?

12 A Well, yes, Ted Plaster was a first cousin.

13 Q What type of gear did he fish with?

14 A With two reefnet boats. It was before they had the
15 mechanical, you know, they pulled them up by hand,
16 but now they have electric, and then for a while they
17 had an old crank.

18 Q That's pretty much the next question I was going to
19 ask.

20 Will you tell me the difference between the reef
21 net gear that your cousin and the other Lummis were
22 using up to, say, 1940 and the gear that's now being
23 used by the reefnetters out there.

24 A Well, I suppose, you know, we've changed from cotton
25 to nylon and from manual power to electric power --

1 most of them, I suppose, that they have electric
2 winches where we used to pull them up by hand. We were
3 men then.

4 Q Do you have any opinion of why the Lummis at that time
5 ceased then to own and operate reefnet gear?

6 A Well, there was --- I feel that this Johnny Alexi's'
7 case had some effect on it, because the State had
8 arrested him for fishing out there at Lummi Island
9 without a license and we lost this case, so I think
10 this was one of the things that sort of harassed the
11 Indians from fishing out there.

12 The other thing was that the reefnetters formed an
13 association and actually they controlled the site.
14 That if you wanted a site out there, that they'll
15 sell you your gear, their gear, you know, for a
16 fabulous price -- I don't know what they're worth --
17 but I think that a site up at Point Roberts was sold
18 to Mel Jensen back in, say, 1950 or somewhere around
19 there, for between forty and sixty or eighty thousand
20 dollars, but he just was supposedly bought the gear but
21 he bought the location too, so I think this is one
22 practice that has hindered our people from going out
23 there.

24 And the other thing is at the height of this
25 takeover of our fishing grounds that there was a little

1 bit of shooting out there. Not amongst between the
2 whites and the Indians but between the reefnetters
3 themselves on, you know, locations and stuff like
4 this, so that --

5 Q About when would that have been?

6 A It would have to be between 1940 and 1950.

7 Q And when was the Johnny Alexis' -- did I get the name
8 right? --

9 A Yes.

10 Q -- (continuing) when was the Johnny Alexis' case as you
11 called it?

12 A Let's see.

13 Q Your best recollection.

14 A It must have been thirty, forty years ago, but we
15 can find that.

16 Q All right. Sometime I would like to know the date of
17 that, but right now you think it would be thirty or
18 forty years ago, is that right?

19 A Uh-huh.

20 Q -- (continuing) which would mean that it would be
21 somewhere there between the early '30's and the early
22 '40's?

23 A No, it would have to be -- yes, somewhere between the
24 early, between the '30's and the '40's.

25 Q That's what I meant.

1 A Yeah.

2 Q Now, was Johnny Alexis a Lummi?

3 A Yes.

4 Q All right.

5 Tell me what -- well, do you know the facts of the

6 case or what occurred?

7 A No, I've read it, let's put it that way, but I was

8 too small, or maybe I was -- I was too small to have any

9 interest in it.

10 Q Well, could you tell me what occurred so far as you

11 do know?

12 A Well, the State went out there and arrested these

13 Indians for fishing without a license. I think this

14 is the whole --

15 Q And where were they fishing?

16 A Lummi Island, and Legoe Bay.

17 Q Okay.

18 A I think this is the whole -- as I recall it, you know.

19 Q And then the case was heard, I suppose, in some court

20 here in Bellingham?

21 A I think it must have been right here in Bellingham.

22 Q And he was convicted of fishing without a license in

23 Legoe Bay?

24 A Yes.

25 Q Do you know any other reason why the Lummis, starting

1 roughly around '40 or whenever you wish to say it was,
2 ceased reefnetting?

3 A Well, in say between 1946 and 1955 I attempted at that
4 time to get the Bureau of Indian Affairs and the
5 Federal Government to give us some assistance of try-
6 ing to get some of our people back out there on the
7 grounds, and Newton Edwards, who was the Assistant
8 Secretary of the Interior, came out here and looked
9 at it and at that time we were financially unable to
10 have a lawyer or to go to court, and we depended
11 wholly upon the United States Government to protect
12 our treaty rights, and up until this point that we
13 have never been able to get them to move in to give us
14 this type of protection. I think that they have
15 shirked some of their trust -- this is personal, you
16 know -- trust responsibility.

17 And there were other people with Newton Edwards
18 but I just recall him because he was the Assistant
19 Secretary.

20 Q He was Assistant Secretary of the Interior did you
21 say?

22 A Uh-huh.

23 Q Do you know what report he made or anything of that
24 nature?

25 A No.

1 Q You have never personally endeavored to obtain reef-
2 netting gear and operate it yourself, have you?

3 A No. I think that we would have if, you know, we
4 didn't -- we just couldn't see going out there to die
5 for something that wasn't that worthwhile, you know.
6 It would have just caused hard feelings and we couldn't
7 get it into court.

8 Q Do you think you would have died?

9 A Could have. There have been shootings out there, and
10 there was pretty, pretty hard feelings out there at
11 times.

12 Q Of course the purse seiners at times have had hard
13 feelings?

14 A Yes.

15 Q And the gillnetters both among themselves and others,
16 haven't they?

17 A Uh-huh.

18 Q You don't have to answer this question if your counsel
19 tells you not to.

20 Do you think that the Lummis are the only ones
21 entitled to fish there?

22 MR. ZIONTZ: You may answer that. You can
23 go ahead.

24 A Well, --

25 MR. ZIONTZ: With the understanding the

1 record should show that he's expressing his
2 personal opinion, which is not necessarily the
3 law or the opinion of a lawyer.

4 Q Correct. Correct.

5 A What I would like to quote is our Court of Claims,
6 you know, the way --

7 Q Go ahead.

8 A -- (continuing) it was filed.

9 We fished from up to, say, Cherry Point. This
10 was considered Lummi grounds. And from Cherry Point
11 on north into Canada was in common with other tribes.

12 Q From Cherry Point north into Canada; did I hear you
13 correctly?

14 A Yes. And up into Canada. You know, my dad used to
15 fish in the Fraser River.

16 Q But not reefnetting?

17 A No, gillnetting.

18 Q But to go back to my question, do you feel that only
19 Lummi should be permitted to reefnet off the Lummi
20 Island or off San Juan or off Point Roberts, or off
21 any of these other locations?

22 A Well, I think in the light of our Court of Claims
23 that Point Roberts should be in common with other
24 tribes. This is what we say.

25 Q I see.

1 A And Lummi Island, I still feel that, just like anybody
2 else, that this is our right; that it would have to
3 be permission from the tribe itself.

4 Q All right.

5 Now fill me in on something you've referred to
6 that I know nothing about. Tell me about this Court of
7 Claims case that you have reference to. Summarize
8 your recollection of what happened. What were the
9 issues and the result and so forth?

10 A Well, I think the main issue was that we didn't get
11 the fulfillment of the treaty; that there was no
12 payment.

13 Q Would this possibly be the Indian Treaty Rights
14 Commission, or whatever its name is, Al (to Mr.
15 Zientz)? Isn't it something like the Indian Treaty
16 Rights Commission?

17 MR. ZIENTZ: Indian Claims Commission.

18 Q Indian Claims Commission. That's what I was groping
19 for.

20 Is that what you mean?

21 A Yes.

22 Q Because to us attorneys the Court of Claims is a
23 different agency. It's where anybody sues the United
24 States for some claim they feel they have, but this
25 was the Indians Claims Commission, wasn't it?

1 A Yes.

2 Q All right.

3 So before it, then, some representative of the
4 Lummis appeared, seeking further reimbursement for
5 what you felt were loss of treaty rights for
6 fishing in this area, including Lummi Island and
7 Point Roberts and San Juan; is that it?

8 A No, it was for loss of, you know, land and not
9 fulfillment of the treaties, you know. There was a lot
10 of other things.

11 Q Did you participate in that case?

12 A No, I never.

13 Q Who were the representatives of the Lummis in that,
14 please?

15 A I don't know.

16 Q It's quite all right. We don't all know everything,
17 believe me.

18 A I should know.

19 Q Approximately when did that occur?

20 A I think the last filing must have been in about
21 1955, or somewhere around in there. It was the last
22 date, the year that we could file for Court Claims.
23 It's still, they're still being tried yet.

24 Q And did you get, did the Lummis get any reimbursement
25 from the Indian Claims Commission?

1 A We never accepted it.

2 Q I see.

3 Do you know the amount that was offered the

4 Lummis?

5 A The first amount that I knew of was only fifty

6 thousand.

7 Q Do you know what it was intended to cover?

8 A No.

9 Q And you say it has never been accepted?

10 A Not to my knowledge at this time. This was at least

11 two years ago that it hadn't.

12 Q Do you know whether any claimed loss of fishery rights

13 was included in your --

14 A No, they wouldn't --

15 Q -- assertion before the Court of Claims?

16 A -- (continuing) this wasn't part of the, this wasn't

17 part of it.

18 Q It related then to land, didn't it?

19 A Land.

20 Q Were there any other efforts made by the Lummis to

21 enforce what they believed to be their treaty fishing

22 rights other than this operating through the Bureau of

23 Indian Affairs that led to Newton Edwards, the Assist-

24 ant Secretary of the Interior, coming out here?

25 A We've exercised this right ever since I have fished in

1 Bellingham Bay, you know, from the cement plant back
2 to Treaty Rock. We've always fished in this and used
3 it as our accustomed grounds and the State has agreed
4 to this. We haven't ---

5 Q I was just going to ask. Has the State ever hampered
6 you in this?

7 A No, not on this one area. And I purse seined without
8 a license.

9 Q Do you know of any Lummi who have attempted to reef-
10 net without a license?

11 Do you know of any Lummi who have attempted to
12 reefnet without a license?

13 A No.

14 Q Do you know of any Lummi who have attempted to get a
15 license to reefnet and been denied one?

16 A No.

17 Q Once again. I will ask you, do you feel that only
18 the Lummi have the right to fish for salmon in the
19 area where the reef nets now operate?

20 A We maintain that we have the right to regulate our
21 people on our accustomed grounds, and so at the
22 present time that a non-Indian is not allowed --
23 excuse me -- a non-Lummi Indian is not allowed to
24 fish within the bounds of the Lummi Reservation without
25 first getting authorization from the Tribal Government.

1 Q And you say that's true of non-Lummi Indians and non-
2 Indians?
3 A Yes.
4 Q And do you feel that that applies then also to these
5 waters that are off Lummi, at Legoe Bay and wherever
6 else they may be reefnetting?
7 A Yes, we maintain that we have the right to regulate
8 our people on off-reservation fisheries.
9 Q And also others who aren't your people, though, didn't
10 you say?
11 A Yes. Yeah, we could exclude them from exercising our
12 tribal right. We couldn't exclude them from
13 operating with a license on our accustomed grounds.
14 Q You could not, you say?
15 A No, but we could exclude them from special privileges, --
16 Q All right.
17 A -- (continuing) which we are seeking.
18 Q Explain what you mean by the special privileges.
19 A Well, our regulations don't coincide with the State's.
20 Q Where do they differ?
21 A Beings that, you know, we're the last ones to get to
22 fish, so usually we fish twelve days -- twelve hours
23 longer than the State, or maybe twenty-four hours.
24 Q That fishing that you're now referring to would be in
25 that area where the State hasn't bothered you; is that

1 correct?

2 A Yes.

3 MR. RHEA: I believe I have nothing further
4 of Mr. Kinley.

5 MR. ZIONTZ: I have one or two questions.

6

7 BY MR. ZIONTZ:

8 Q Mr. Kinley, I don't believe you have had a chance to
9 see the anthropological report prepared by Dr.
10 Barbara Lane, but I want to show you a drawing which
11 she has prepared showing the kinds of vessels used by
12 Lummi reefnetters prior to 1855, and I'm referring to a
13 drawing which is contained in the answers to
14 interrogatories which were provided by the Lummi Tribe
15 to the Reefnet Association.

16 Showing you this drawing with dimensions,
17 approximate dimensions marked on there, I will ask you
18 whether that is substantially different than the
19 vessels that you have seen used in the reef net
20 fishery?

21 A No, they're just about the same. You know, this here
22 should have the prow up (indicating on drawing),
23 you know. They had the high prow up. I rode in them
24 when I was young.

25 Q Okay.

1 Now, this indicates that the canoe is about
2 thirty and three-eighth feet long. Would that be
3 about the correct size?

4 A Yes, I think I said -- what? -- forty.

5 Q Right.

6 MR. ZIONTZ: I have nothing further.

7 MR. RHEA: I haven't either.

8
9 (Deposition concluded at 2:30 o'clock p.m.,
10 May 17, 1973.)
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STATE OF WASHINGTON)
COUNTY OF WHATCOM)

ss.

C E R T I F I C A T E

I, FORREST L. KINLEY, the witness in the foregoing deposition, do hereby certify that I have read the foregoing deposition, being pages 1 to 27 inclusive, and that the answers as given by me therein, are true and accurate save and except for corrections, if any, as indicated by me on the correction flyleaf sheet attached hereto.

Forrest L. Kinley
FORREST L. KINLEY

Subscribed and sworn to before me this 24th day
of May 1973.

Paul O. Harrison
Notary Public in and for the State
of Washington, residing at
Bellingham

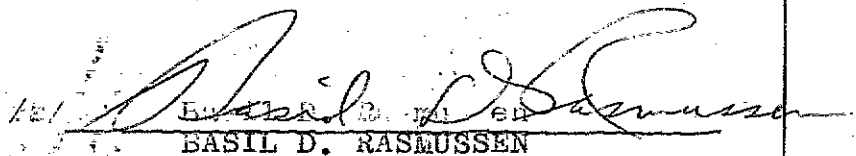
1 STATE OF WASHINGTON)
2 COUNTY OF WHATCOM) ss. C E R T I F I C A T E

3
4 I, BASIL D. RASMUSSEN, a notary public
5 duly commissioned and qualified in and for the State
6 of Washington, County of Whatcom, residing at
7 Bellingham, do hereby certify that, pursuant to oral
8 stipulation of counsel, there came before me on the
9 17th day of May, 1973, at 1:55 o'clock p.m., at 220
10 Bellingham National Bank Building, Bellingham, Wash-
11 ington, the following named person, to-wit: FORREST
12 L. KINLEY, who was by me duly sworn to testify to the
13 truth and nothing but the truth of his knowledge
14 touching and concerning the matters in controversy
15 in this cause; that he was thereupon carefully examined
16 upon his oath and his examination reduced to writing
17 by me; that the deposition is a true record of the
18 testimony given by the witness; and that the said
19 witness read the same and subscribed his name thereto
20 before me.

21 I further certify that I am neither attorney
22 or counsel for, nor related to or employed by, any of
23 the parties to the action in which this deposition is
24 taken, and further that I am not a relative or
25 employee of any attorney or counsel employed by the

1 parties hereto or financially interested in the
2 action.

3 In witness whereof I have hereunto set my
4 hand and affixed my notarial seal this 9th day
5 of June, 1973.
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10 BASIL D. RASMUSSEN
11 Notary Public in and for the State
12 of Washington, residing at
13 Bellingham.
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