

6-28-1973

Docket Entry 262 - Filed response of Sauk-Suiattle Indian Tribe to Interrogatories propounded by Defendant Washington State Department of Fisheries

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

Recommended Citation

Docket Entry 262 - Filed response of Sauk-Suiattle Indian Tribe to Interrogatories propounded by Defendant Washington State Department of Fisheries (1973), <https://digitalcommons.law.uw.edu/us-v-wash-70-9213/188>

This Discovery Documents 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.

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JUN 28 1973

EDGAR SCOFIELD, CLERK

By Deputy

1 David H. Getches
2 Douglas R. Nash
3 Native American Rights Fund
4 1506 Broadway
5 Boulder, Colorado 80302
6 Telephone (303) 447-8760

7 David Allen
8 John Sennhauser
9 Michael Taylor
10 Legal Services Center
11 104 1/2 Cherry Street
12 Seattle, Washington 98104
13 Telephone (206) 622-8125

14 Attorneys for Plaintiffs

15 UNITED STATES DISTRICT COURT
16 WESTERN DISTRICT OF WASHINGTON

17 UNITED STATES OF AMERICA,
18 et al,

19 Plaintiffs,

20 vs.

21 STATE OF WASHINGTON,
22 et al,

23 Defendants.

CIV. NO. 9213

24 RESPONSE OF SAUK-SUIATTLE
25 INDIAN TRIBE TO INTERROGATORIES
26 PROPOUNDED BY DEFENDANT
27 WASHINGTON STATE DEPARTMENT OF
28 FISHERIES

29 Plaintiff Sauk-Suiattle Indian Tribe, pursuant to the
30 Federal Rules of Civil Procedure makes the following responses and
31 answers to Interrogatories propounded to it by Defendant
32 Washington State Department of Fisheries.
33 Interrogatories

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

ANSWER:

Tribal Council of the Sauk-Suiattle Indian Tribe

Chairman Paul Harvey - Rt. #2 - Box 732, Marysville - no phone.
Assistant Gerald Enick - 3824-139th St., N.W. - Marysville - no phone.
Secretary Edith Burdell - Darrington, Washington, no phone
Treasurer Jeannet Sportsman - 812 Lynden - Everett, Washington. - no phone

Council members and body:

Simon George, 826 Lynden St., Everett, WA., no phone.
William Price, Star Route, Marysville, WA., phone 659-2985
Clarence Moses, Jr., Box 276, Marysville, WA., no phone
Gerald Harvey, 3824, 139th Street, N.W., Marysville, WA., no phone.
James Price, 812 Lynden, Everett, WA., no phone.

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

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

Please attach copies of all such regulations. (Note: It is not necessary that copies of the following regulations approved 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

ANSWER:

The Sauk-Suiattle Tribe has no reservation and no land since 1917. Since that time any attempt to fish or hunt as we did historically has met repressive action. We have no regulations because our people are kept from fishing by state action. If the treaty rights that are ours were protected and we could fish without fear, we would consider regulations.

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 No. See Answer to No. 2.
5
6
7
8
9
10

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 general council has the power as does the Tribal
16 Council (See Constitution and By-Laws of the Sauk-Suiattle
17 Indian Tribe, Article V, Sec. A.4.); but see Answer to No. 2.
18
19
20
21

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

25 ANSWER:

26 Not Applicable.
27
28
29
30
31
32
33

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

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

6 ANSWER:

7 Not Applicable.

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

13 ANSWER:

14 Not Applicable.

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

17 ANSWER:

18 Not Applicable.

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

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

24 ANSWER:

25 Not Applicable.

1
2
3
4
5
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
15 Not Applicable.
16
17
18
19
20
21
22

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

32 ANSWER:

33 Not Applicable.

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
33

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:

Not Applicable.

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

ANSWER:

Not Applicable.

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:

Not Applicable.

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:

7 Not Applicable.
8
9

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

- 12 (a) The name of the person making such request
13 (b) The date of such request
14 (c) The person denying such request, if known
15 (d) The reason given for such denial
16 (e) Whether such denial was brought to the attention
of the Director of the Department of Fisheries by
the tribe.

17 ANSWER:

18 No. None has been requested.
19
20
21

22 17. Who has responsibilities for enforcing your tribal fishing
23 regulations?

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

25 ANSWER:

26 Not Applicable.
27

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

- 31 (a) His name
32 (b) His address
33 (c) His telephone number
(d) The period(s) he has been so employed
(e) The scope of his enforcement authority
(f) The geographical area of his enforcement activity
(g) The number of arrests made or citations issued for
violation of tribal fishing regulations

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
(c) The penalty imposed.

5 ANSWER:

6 Not Applicable.
7
8
9
10
11

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

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

16 ANSWER:

17 No.
18

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

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

24 ANSWER:

25 No.
26

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

29 ANSWER:

30 No

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

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

ANSWER:

- (a) Not Applicable - no reservation.
(b) Tribal membership.

Interrogatories

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 Not Applicable - No reservation.
16
17
18
19
20
21
22

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

28 ANSWER:

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

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

ANSWER:

It is impossible to identify specifically all "stations" at this time. Indians of our tribe fished at various places throughout the Puget Sound drainage.

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

- (a) The stations
- (b) The names of all tribes whose usual and accustomed fishing station they are
- (c) Whether any agreements have ever been entered into 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.

ANSWER:

- (a) See answer to No. 30
- (b) All treaty tribes of western Washington.
- (c) No.
- (d) Not applicable.
- (e) Not applicable.

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

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

ANSWER:

Yes.

- (a) Inherent sovereignty of the tribe; Treaty of Point Elliott; Constitution & By-Laws of the Sauk-Suiattle Indian Tribe (Article V, Sec. A.4.); Articles of Incorporation of the Sauk-Suiattle Indian Tribe.
- (b) All members of the Tribe.

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

3 ANSWER:

4 No. See Answer to No. 2.
5
6
7
8
9
10
11
12

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

15 ANSWER:

16 No. See Answer to No. 2.
17
18
19
20
21
22
23
24

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

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

30 ANSWER:

31 Not Applicable.
32
33

Interrogatories

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

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

If attaching copies of such information or data would be burdensome, please indicate where and when a representative of the Department of Fisheries could examine such data. If such information or data is in the possession of the United States government, please indicate what agency has possession and give your consent to have a representative of the Department of Fisheries examine such data.

ANSWER:

None maintained by the Tribe.

37. Please state the number of families in your tribe that rely on your tribal fishery to provide them with salmon for their personal consumption.

ANSWER: Nearly all use some fish for consumption, however a tribal fishery under the Treaty has been totally suppressed by unlawful enforcement of Whashington State Fisheries and Game laws.

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

ANSWER:

No information available.

Interrogatories

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

ANSWER: We have taken in the past, and to a limited extent at the present time, all varieties of salmon, including steelhead. But see Answer to No. 38.

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

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

ANSWER:

Very seldom are traditional Indian ceremonies using salmon still practiced. This is partly due to the deterioration of tribal life that has followed loss of land and state repression of treaty fishing which were the basis of these ceremonies.

We still enjoy having salmon served at festive, social and religious occasions. The old ceremonies might be revived if we were able to fish and otherwise practice our traditional ways of which fishing is such an important part.

41. What is the number of tribal members who rely exclusively on fishing to provide their annual income?

ANSWER: None. It would be impossible under current circumstances. See Answer to No. 38.

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

ANSWER:

None. See Answer to No. 41.

43. What is the total number of tribal fishermen?

ANSWER: Nearly all tribal members would like to do some fishing but are prevented from it by the state. See Answer to No. 38.

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

ANSWER:

No formal current enrollment. Approximately 250 members.

Interrogatories

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

3 ANSWER:

4 No information available.

5
6 DATED this 20 day of ^{JUNE}~~May~~, 1973.

7
8 Paul Harvey
9 Paul Harvey, Chairman
10 Sauk-Suiattle Indian Tribal Council

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

16 Paul Harvey, being first duly sworn, says: That he is
17 the Chairman of the Sauk-Suiattle Indian Tribal Council and as
18 such is authorized to answer the foregoing Interrogatories on
19 behalf of the plaintiff Sauk-Suiattle; and that he has read
20 and made answer to the foregoing interrogatories; knows the
21 contents and believes the answers to them to be true.

22 Paul Harvey
23 Paul Harvey, Chairman

24 Subscribed and sworn before me
25 this 20th day of ^{JUNE}~~May~~, 1973.

26
27 Shirley J. Martin
28 NOTARY PUBLIC in and for the State
29 of Washington residing at Lynnwood.

30
31
32

JUN 28 1973

AFFIDAVIT OF SERVICE

EDGAR SCOFIELD, CLERK

By Deputy

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

I, Elva E. Arquero, certify that on this date I placed
in the United States Mail, envelopes with postage prepaid
containing one copy each of:

RESPONSE OF SAUK-SUIATTLE INDIAN TRIBE TO
INTERROGATORIES PROPOUNDED BY DEFENDANT
WASHINGTON STATE DEPARTMENT OF FISHERIES

addressed to each of the following:

Mr. George D. Dysart
Assistant Regional Solicitor
U.S. Department of Interior
P.O. Box 3621
Portland, Oregon 97208

Mr. Thomas P. Giere
Assistant U.S. Attorney
1012 U.S. Courthouse
Seattle, Washington 98104

Mr. Charles A. Hobbs
Wilkinson, Cragun & Barker
Attorneys at Law
National Grange Building
1616 "H" Street, N.W.
Washington, D. C. 20006

Mr. James B. Hovis
Hovis, Cockrill & Roy
Attorneys at Law
P.O. Box 437
Yakima, Washington 98901

Mason D. Morisset, Esq.
Ziontz, Pirtle & Fulle
Attorneys at Law
3101 Seattle-First National
Bank Building
Seattle, Washington 98104

Mr. Stuart F. Pierson
Special Asst. U.S. Attorney
c/o Verner, Liitsert, Bernhard
and McPherson
1660 "L" Street, N.W.
Washington, D. C. 20036

Stan Pitkin
U.S. Attorney
1012 U.S. Courthouse
Seattle, Washington 98104

1 Mr. William A. Stiles, Jr.
2 Attorney at Law
3 311 State Street
4 Sedro Woolley, Washington 98284
5
6 Mr. Lester Stritmatter
7 Stritmatter & Stritmatter
8 Attorneys at Law
9 210 Masonic Building
10 Hoquiam, Washington 98550
11
12 Michael Taylor
13 Seattle Legal Services
14 104 1/2 Cherry Street
15 Seattle, Washington 98104
16
17 Mr. Alvin J. Ziontz
18 Ziontz, Pirtle & Fulle
19 Attorneys at Law
20 3101 Seattle-First National
21 Bank Building
22 Seattle, Washington 98104
23
24 Mr. Harwood Bannister
25 Bannister, Bruhn & Luvera
26 Attorneys at Law
27 618 South Second Street
28 Mount Vernon, Washington 98273
29
30 Mr. Joseph L. Coniff
31 Assistant Attorney General
32 Department of Game
33 600 N. Capitol Way
34 Olympia, Washington 98501
35
36 Mr. Richard F. DeJean
37 Attorney at Law
38 1112 Main Street
39 Sumner, Washington 98390
40
41 Mr. William N. Moloney
42 Davis, Wright, Todd, Riese & Jones
43 Attorneys at Law
44 4200 Seattle First National
45 Bank Building
46 Seattle, Washington 98104
47
48 Mr. David E. Rhea
49 Asmundson, Rhea & Atwood
50 Attorneys at Law
51 Suite 220 Bellingham National
52 Bank Building
53 Bellingham, Washington 98225
54
55 Mr. Lawrence Cary Smith
56 Smith, Smith & Smith
57 Attorneys at Law
58 615 Spokane and Eastern Building
59 Spokane, Washington 99201
60
61
62


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

Mr. T. J. Jones, III
Jones & Jones
Attorneys at Law
1611 W. Jefferson
P.O. Box 1003
Boise, Idaho 83701

Mr. Edward B. Mackie
Deputy Attorney General
Temple of Justice
Olympia, Washington 98504

Mr. Earl McGimpsey
Assistant Attorney General
Highways-Licenses Building
5th Floor
Olympia, Washington 98504

DATED: June 25, 1973


Elva E. Arquero

Subscribed and sworn before me
this 25th day of June, 1973.


NOTARY PUBLIC

Director
John E. Echolaw

Native American Rights Fund
1506 Broadway • Boulder, Colorado 80302 • (303) 447-8760

Attorneys
Joseph J. Brecher
Thomas W. Fredericks
David H. Catches
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

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

June 25, 1973

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

RE: U.S. v. Washington
Civ. No. 9213

Dear Mr. Schaaf:

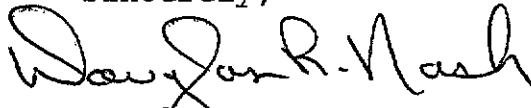
Please find enclosed the original and one copy of

RESPONSE OF SAUK-SUIATTLE INDIAN TRIBE TO
INTERROGATORIES PROPOUNDED BY DEFENDANT
WASHINGTON STATE DEPARTMENT OF FISHERIES

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.

Sincerely,


Douglas R. Nash

DRN:ea

enclosures

RECEIVED
JUN 28 1973
Office of Clerk
U. S. District Court
Tacoma, Wash.