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Docket Entry 266 - Filed Answers of defendants to Plaintiffs 3rd request for admission (Anthropology)

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FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JUL 6 1973

EDGAR SCOFIELD, CLERK
By Deputy

12 UNITED STATES DISTRICT COURT
13 WESTERN DISTRICT OF WASHINGTON
14 AT TACOMA

15 UNITED STATES OF AMERICA, et al.,)
16 Plaintiffs,)
17 v.)
18 STATE OF WASHINGTON, et al.,)
19 Defendants.)

NO. 9 2 1 3

ANSWERS TO PLAINTIFFS' THIRD
REQUESTS FOR ADMISSIONS
(Anthropology) BY
DEFENDANTS

21 COMES now the defendants and answer Plaintiffs' Third Request
22 for Admissions (Anthropology) as follows:

23
24 3.001 Deny that the population density was higher than almost
25 anywhere else in native North America north of Mexico. (Riley)
26 Admit the other matter contained therein. .

27
28 3.002 Admitted.

29
30 3.003 Deny that all groups utilized or relied on saltwater
31 and fresh water resources equally and further deny any inference
32 therein that land or plants and animals were unimportant to the
33 groups of Indians and admit the other matter contained therein.

266

1 3.004 Admitted.

2
3 3.005 Admitted.

4
5 3.006 Admitted.

6
7 3.007 Admitted.

8
9 3.008 Deny any inference that at the time of the treaty the
10 land resources were unimportant to the Indians and admit the
11 other matter contained therein.

12
13 3.009 Admitted.

14
15 3.010 Admitted.

16
17 3.011 Deny that the right to use resource areas was "clear
18 cut" and admit the other material contained therein. (Riley)

19
20 3.012 Deny for the reason that the statement implies a
21 rigid, formulated society with well established patterns of
22 law. (Riley)

23
24 3.013 Deny that there was a dense Indian population involved
25 in 1854-55; admit the other parts therein as representing the
26 aboriginal situation but deny that the statements are necessarily
27 applicable to the situation at the time of the treaties. (Riley)

28
29 3.016 Admit the same except deny that the fish were the
30 sole or exclusive source of these dietary ingredients.

31
32 3.017 Admitted.

33
ANSWERS - THIRD REQUESTS FOR ADMISSIONS - 2

1 3.018 Admitted

2
3 3.019 Deny that at the time of the treaty there was any
4 significant export of fish or that the Indians at that time
5 significantly contributed to any export. Admit the other matters
6 contained therein. (Summary of Doctor Barbara Lane, pp. 12 and
7 13 and Riley)

8
9 3.020 Deny for the reason that the evidence is inconclusive
10 to support such a conclusion and for the further reason stated in
11 answer to 3.019.

12
13 3.014 Admitted with the understanding that this paragraph
14 refers to aboriginal ritual or symbolic activities.

15
16 3.015 Admitted.

17
18 3.021 Admitted.

19
20 3.022 Admit that the importance of the role of fishing in
21 native livelihood was more clearly recognized by the treaty
22 commissioners. Deny the balance thereof. The reason is Lane's
23 Summary 7 does not support this and further, if the statement
24 is taken from page 15, as it appears, no foundation is given for
25 the expressed opinion.

26
27 3.023 Deny for the reason that these allegations are un-
28 substantiated by the reference to the Lane Summary, p. 7, and
29 on p. 15 thereof where the statements appears to come from.
30 (Also see: Riley)

31
32 3.024 Deny (Riley)

33
ANSWERS - THIRD REQUESTS FOR ADMISSIONS - 3

1 3.025 Admit only that various weir uses were in operation
2 varying from time to time and from place to place. No foundation
3 is given for the expressed opinion in Lane's Summary.
4

5 3.026 Admit with the understanding that the word "exclusive"
6 be interpreted in the sense meant by Riley in plaintiffs' exhibit
7 No. USA-65, section 3, page 11.
8

9 3.027 Admit the same but deny any inference therein that
10 regulatory controls were considered necessary at that time for
11 either Indians or non-Indians. (Riley)
12

13 3.028 Admitted with the understanding that certain areas
14 in the rivers as stated in the treaties as usual and accustomed
15 fishing grounds were more productive than other areas in the
16 river and were utilized to a greater extent by the Indians.
17 (Riley)
18

19 3.029 Admitted except for the last sentence which is denied
20 because it implies that entire water systems had in fact over
21 their entire courses a high degree of value whereas in the records
22 of the time and in the wording of the treaties documents there
23 clearly were important places, accustomed grounds, for fishing.
24 (Riley)
25

26 3.030 Admit the same.
27

28 3.031 Admit the same.
29

30 3.032 Deny that the Indians contemplated future mutual
31 agreements as being too generalized; there being no supportive
32 evidence cited for such a conclusion; and otherwise admit the
33 balance of the matters stated in 3.032.

1 3.033 Admitted.

2
3 3.034 Admitted.

4
5 3.035 Deny there is no record of the Chinook jargon in
6 relation to the Treaty of Point Elliott and otherwise admit
7 the same.

8
9 3.036 Admit the first sentence and deny the balance thereof
10 for the reason that neither the Indians nor the United States
11 could have foreseen the subsequent situation and, further, the
12 treaty on its face showed the intent of the United States that
13 these people become farmers and be ultimately integrated into
14 the United State's society. (Riley)

15
16 3.037 Deny the same for the reason that it is beyond any
17 expertise of Doctor Barbara Lane or within the field of anthropology,
18 that it relates to an issue of law and to the ultimate issue
19 before the Court, further, the United States was not treating
20 with the Indians with reference to sovereign power or the
21 sovereign power of future states. There is a record of the
22 Chinook jargon translation used at the Treaty of Point Elliott.

23
24 3.038 Deny the same for the reason that the subject matter
25 thereof was beyond the expertise of Doctor Lane, beyond the
26 expertise of anthropology, deals with an issue of law and inter-
27 pretation of a treaty phrase which in turn is taken out of
28 context of the treaty in which it relates to the right of taking
29 fish at all usual and accustomed grounds and stations.

30
31 3.039 Deny the same for the reason that it is speculative
32 with no factual foundation for the assertion and relates to an
33 ultimate issue of law in this suit.

1 3.040 Admitted.

2
3 3.041 Deny any inference therein that the Indians did not
4 understand English or did not understand the Chinook jargon as
5 translated to them. (Riley)
6

7 3.042 Admitted.

8
9 3.043 Deny the same on the grounds that it is too vague and
10 general to lend itself to rational admission or denial. The
11 statement is argumentative, and no foundation is offered.
12

13 3.044 Admit that the trade in fish was a component of
14 aboriginal life in Western Washington. Deny the remainder thereof
15 on the ground that it is argumentative and no foundation is offered
16 for the conclusion, and deny that there was any discrimination
17 when in fact the Indians have been treated as other citizens since
18 statehood.
19

20 3.045 Admit the same with the understanding that fish is
21 important to other persons.
22

23 3.046 Admitted.

24
25 3.047 Admitted.
26

27 3.048 Admit the same but deny any inference that the Indians
28 fished off of the reservation without being subject to state
29 regulation, equally as other citizens.
30

31 3.049 Admit the same but deny any inference that such
32 communities, tribes, or bands are of any legal significance
33 insofar as treaty rights are concerned unless they are recognized.

1 3.050 Admitted. (Riley)

2
3 3.051 Deny the same for the reason that it is based on
4 assumed facts which have not been established, deals with
5 questions of law, is argumentative, and is beyond the expertise
6 of the witness.

7
8 3.052 Admit that it was clear that there was no intention
9 of creating a class society with Indians on the bottom economic
10 rung and that the treaty commission clearly undertook to provide
11 the Indians with the means of participating and prospering in
12 the economy of the Territory, with the understanding that they
13 were to prosper as farmers and to be ultimately integrated into
14 the community. Deny the remainder thereof, the statements being
15 inconsistent with the assertions at 3.041, 3.042, and with the
16 treaty provision which permitted the Indians to leave the reser-
17 vation to secure fish at their usual and accustomed grounds and
18 stations only in common with other citizens and, further, that
19 the treaty on its face permitted the President of the United
20 States to remove the Indians from the reservation to different
21 areas of the Territory.

22
23 3.053 Admit that at the time of the treaty, the resource
24 was so abundant and the population so sparse and the likelihood
25 of foreseeing the future tremendous growth of this area and
26 resulting fishing pressure a necessity for conservation was not
27 contemplated or foreseen by the parties to the treaty. Deny
28 the remainder thereof as being a matter of law and beyond the
29 expertise of the witness, going to the ultimate legal questions
30 before the Court, and ignoring the basic purpose for which the
31 United States was treating with the Indians, i.e., to extinguish
32 aboriginal title.

33
ANSWERS - THIRD REQUESTS FOR ADMISSIONS - 7

1 3.054 Admit that the United States intended to integrate
2 Indians into the level of our society by peaceful means and by
3 the treaties intended to and did extinguish Indian title and
4 deny the remainder thereof for the reason that said statements
5 are in direct conflict with the treaty provision, are beyond
6 the expertise of the witness, deal with a question of law which
7 is before the Court, and are argumentative.
8

9 3.055 Deny the same as dealing with a matter of law, a
10 question of interpretation of a treaty of the United States,
11 a question before the Court, beyond the expertise of Doctor
12 Lane.
13

14 3.100 Admitted.
15

16 3.101 Admitted.
17

18 3.102 Admitted, but state that these sources have varying
19 degrees of reliability and deny that they are the only sources
20 of information on this subject.
21

22 3.103 Admitted, but state that these sources have varying
23 degrees of reliability and deny that they are the only sources
24 of information on this subject.
25

26 3.104 Admitted.
27

28 3.105 Admitted.
29

30 3.106 Admit the same but deny any particular meaning when
31 taken out of context.
32

33
ANSWERS - THIRD REQUESTS FOR ADMISSIONS - 8

1 3.107 Admitted.

3 3.108 Admitted.

5 3.109 Admitted.

7 3.110 Admitted.

9 3.111 Admitted.

11 3.112 Admitted.

13 3.113 Admitted.

15 3.114 Admitted.

17 3.115 Denied. The treaty and its minutes speak for them-
18 selves. The conclusion stated is not warranted from the record.
19 (Riley)

21 3.116 Admit the same with the understanding that land
22 was set aside for them and not reserved by them and the President,
23 by treaty, had the power under the treaty to move the groups of
24 Indians to another location.

26 3.117 Admit the same except deny that salmon and steelhead
27 was "the principal food" of the Puyallups although conceding
28 it was a significant resource to them.

30 3.118 Admitted.

32 3.119 Deny that the Puyallup Indian Reservation exists.
33 Deny any inference that the Puyallup Indians are not presently

1 totally integrated into the non-Indian community. Admit that these
2 resources are important to these persons as they are to others.
3

4 3.120 Deny the same as apparently repetitious of 3.117.
5 Also see testimony of Riley.
6

7 3.121 Admitted.
8

9 3.122 Admit the same with the reservation that we have not
10 seen the report of Doctor George Suckley and therefore are unable
11 to admit that he noted net fishing for the specific species termed
12 "steelhead" in rivers of Puget Sound and therefore deny that
13 statement.
14

15 3.123 Admit the same with the reservation as to the meaning
16 of ownership in aboriginal terminology as contrasted to our
17 present day usage. (Riley)
18

19 3.124, 3.125, 3.126, 3.127 Admit that Mrs. Lena Hillaire
20 has made or will make such statements and without admitting the
21 truth thereof hereby reserve the right of cross-examination
22 thereon.
23

24 3.150 Admitted.
25

26 3.151 Admitted.
27

28 3.152 Admitted.
29

30 3.153 Admitted.
31

32 3.154 Admitted.
33

ANSWERS - THIRD REQUESTS FOR ADMISSIONS - 10

1 3.155 Admit the same but deny that Doctor Suckley correctly
2 identified 16 species of salmon and salmon trout.

3
4 3.156 Admitted.

5
6 3.157 Admitted.

7
8 3.158 Admitted.

9
10 3.159 Admitted.

11
12 3.160 Admitted.

13
14 3.161 Admitted.

15
16 3.162 Admitted.

17
18 3.163 Deny the same for the reason that the statement contained
19 therein has no bearing on the treaty and is unfairly taken out of
20 context. Attention is invited to Senate Executive Document
21 Second Session, 35th Congress, Volume 1, pp. 594-595 for a
22 complete explication of what was said.

23
24 3.164 Admitted.

25
26 3.165 Admitted.

27
28 3.166 Admitted.

29
30 3.167 Admitted.

31
32 3.168 Admit the same but deny the significance when taken out
33 of context. Attention is invited to the quoted portion of the

1 Nisqually Report, Doctor Barbara Lane, p. 24, which shows that
2 requests of the Nisquallys were flatly refused by the treaty
3 negotiators.
4

5 3.169 Admit that the Nisqually Indians probably fished
6 during treaty times in the various waters stated, but deny any
7 inference that all of these waters constituted usual and accustomed
8 fishing places within the meaning of the Treaty.
9

10 3.170 Admit the same with the understanding that these fish
11 continue to be important to everyone.
12

13 3.201 Admitted.
14

15 3.202 Admitted.
16

17 3.203 Admitted that these sources have varying degrees of
18 reliability but deny that they are an exclusive list of sources
19 and submit that a distinction in reliability should be made
20 between "on the spot" and modern sources. (Riley)
21

22 3.204 Assume that the reference on Line 8 to "SAUK-
23 SUIATTLE Reservation" is a mis-statement and that the intended
24 meaning is SQUAXIN Island Reservation. Admit the same but deny
25 any inference that this fishing was the exclusive "subsistence"
26 or source of income for the Squaxin Indians.
27

28 3.205 Admitted subject to aboriginal understanding of
29 concepts of "ownership." (Riley)
30

31 3.206 Admitted.
32

33 3.207 Admitted.

1 3.208 Admitted but deny relevancy.

2
3 3.209 Admitted.

4
5 3.210 Admitted.

6
7 3.250 Admitted.

8
9 3.251 Admitted.

10
11 3.252 Denied on the ground that other foods were important
12 to the Twana during treaty times. (Riley)

13
14 3.253 Admit the same with the understanding that terms
15 such as "vast food surpluses" must be understood and interpreted
16 in light of the very small populations involved.

17
18 3.254 Admitted.

19
20 3.255 Admit that sections of weir were removed to permit
21 upstream escapement or to prevent high water from destroying
22 the weirs or because they had caught all the fish they needed,
23 and deny the remainder thereof, for the reason that the requested
24 admission is in the alternative and further is based upon a
25 recent ethnological work which, regardless of the skill involved
26 by the field worker, may possibly reflect uses that have developed
27 over the past century. (Riley)

28
29 3.256 Admitted.

30
31 3.257 Deny the same for the reason that it is improbable
32 that all of the water courses of Hood Canal and Hood Canal itself
33 would be principal fisheries for such small Indian populations.

1 3.258 Admitted.

2
3 3.259 Admitted.

4
5 3.260 Admitted.

6
7 3.261 Admitted but deny its relevancy to any issue in the
8 lawsuit.

9
10 3.262 Admitted but deny its relevancy to any issue in the
11 lawsuit.

12
13 3.263 Admitted but state that these sources have varying
14 degrees of reliability and deny that they are the only sources
15 of information on this subject.

16
17 3.264 Deny the same as it is argumentative and goes to the
18 ultimate issue before the Court. Further, the treaty extinguished
19 aboriginal rights by purchase so that the "right" was sold and
20 not given away. The Indians were by their treaty permitted
21 to fish at their usual and accustomed sites "in common" with
22 citizens as stated in the treaty.

23
24 3.300 Admitted but state that the sources have varying
25 degrees of reliability and deny that they are the only sources
26 of information on this subject.

27
28 3.301 Deny that Muckleshoot Indians or persons claiming to
29 be Muckleshoot Indians are reliable sources of information as
30 they are parties to litigation and have been parties in the
31 recent past to other litigation concerning fishing. Admit the
32 other sources listed have varying degrees of reliability but
33 deny they are the only sources of information on this subject.

ANSWERS - THIRD REQUESTS FOR ADMISSIONS - 14

1 3.302 Admit that part of the Indians that resettled on the
2 Muckleshoot Reservation inhabited the upper portions of the
3 Duwamish River and Puyallup River drainages and deny that
4 these were exclusive areas. (Riley) (Lane, Muckleshoot Abstract,
5 Page VI, Section IV, Conclusion, B.)
6

7 3.303 Admitted.
8

9 3.304 Admitted.
10

11 3.305 Admitted.
12

13 3.306 Deny the same for the reason that the supporting infor-
14 mation set forth therein cannot be found in the records submitted
15 to us, namely, Lane - Muckleshoot, 14.
16

17 3.307 Deny for the same reason as 3.306. Further, said
18 request has no relevancy to the issue of treaty interpretation.
19

20 3.308 Admit that the weir sites may have been so operated
21 periodically but deny any inference therefrom that the same was
22 done for the purpose of permitting spawning inasmuch as weir
23 may have been removed to prevent their destruction from high
24 water or because the Indians had caught all the fish they needed.
25

26 3.309 Admitted.
27

28 3.110 Deny the same on the ground that the question is too
29 vague and multiple to permit rational admission or denial.
30

31 3.311 Admit the same but deny any inference therein that
32 the entire waters listed constituted usual and accustomed fishing
33 grounds within the meaning of the treaty (subject to the possible

1 establishment by the Yakimas of their claim to the Upper Puyallup
2 River).

3
4 3.312 Admit the same but deny that it has any relevancy
5 to treaty interpretation.
6

7 3.313 Deny the same as there is no foundation for the con-
8 clusions set forth therein and further it has no relevancy to
9 treaty interpretation.
10

11 3.314 Admit the same but deny that their interest is any
12 greater than any other commercial fisherman.
13

14 3.315 Deny for the reason that no foundation is given for
15 the conclusion set forth.
16

17 3.350 Admitted.
18

19 3.351 Admitted but state that these sources have varying
20 degrees of reliability and deny that they are the only sources
21 of information on this subject.
22

23 3.352 Admitted but state that these sources have varying
24 degrees of reliability and deny that they are the only sources
25 of information on this subject.
26

27 3.353 Admitted.
28

29 3.354 Admitted.
30

31 3.355 Admit the same while distinguishing the term "principal
32 means of subsistence" from significant or important means and
33 denying the term "principal" in this context.

1 3.356 Admitted.

2
3 3.357 Admit the same, but deny that their interest is any
4 greater than any other commercial fisherman.

5
6 3.400 Admit the same except deny the term "historically"
7 as being a vague term not permitting rational admission or denial.

8
9 3.401 Deny for the reason that these were autonomous villages.
10 (Riley)

11
12 3.402 Denied on the grounds that the Quileute and Hoh
13 spoke a similar dialect to the Chimakum, a small group living
14 north and west of the Skokomish. (Riley)

15
16 3.403 Denied for the reason that the Quileute and Hoh never
17 constituted a "tribe." (Riley)

18
19 3.404 Admitted.

20
21 3.405 Admitted.

22
23 3.406 Admitted.

24
25 3.407 Admitted.

26
27 3.408 Admitted.

28
29 3.409 Admitted.

30
31 3.410 Admitted.

32
33 3.411 Admit the same but deny it has any relevancy to treaty
ANSWERS - REQUESTS FOR ADMISSIONS - 17

1 interpretation.

2
3 3.412 Admit the same but deny it has any relevancy to treaty
4 interpretation.

5
6 3.413 Admitted.

7
8 3.414 Admitted.

9
10 3.415 Deny the same for reason that no supporting information
11 substantiates this conclusion.

12
13 3.416 Admit the same with the reservation that the reference
14 to property concepts be interpreted in an aboriginal sense rather
15 than in the common law sense of ownership. (Riley)

16
17 3.417 Admitted.

18
19 3.418 Admitted.

20
21 3.419 Deny. The maps were admitted into evidence by the
22 Indian Claims Commission but no supporting information is pro-
23 vided as to who prepared the map or on what basis. The documents
24 are hearsay and not subject to cross-examination, and no foundation.

25
26 3.420 Admit that the Quileute and Hoh people fished these
27 waters but deny any inference that all of the areas listed con-
28 stituted "usual and accustomed fishing grounds" within the
29 meaning of the treaty.

30
31 3.421 Admitted.

32
33 3.422 Admitted with the exception of the first line. This
ANSWERS - THIRD REQUESTS FOR ADMISSIONS - 18

1 is denied for the reason that the Quileute Indians also con-
2 sidered hunting very important and collected shellfish and
3 gathered extensively. (Riley)
4

5 3.423 Admitted but deny its relevancy to the issue of treaty
6 interpretation because actions of Indians or non-Indians after
7 the treaty do not shed any light on the intent of the parties,
8 and, further, are hearsay.
9

10 3.424 Admitted. Same objection as 3.423.
11

12 3.425 Admitted. Same objection as 3.423.
13

14 3.426 Admitted. Same objection as 3.423.
15

16 3.427 Admitted. Same objection as 3.423.
17

18 3.428 Admitted. Same objection as 3.423.
19

20 3.450 Admitted that the sources cited have varying degrees
21 of reliability and deny that they are the only sources of infor-
22 mation on this subject.
23

24 3.451 Admitted but state that these sources have varying
25 degrees of reliability and deny that they are the only sources
26 of information on this subject.
27

28 3.452 Deny the same for the reason that the terminology used
29 in the request for admission is too broad and vague to permit
30 a rational admission or denial.
31

32 3.453 Denied for the same reason as stated in answer to
33 3.452 and specifically deny "ownership" of halibut banks. (Riley)

1 3.454 Admit the same but deny any understanding of the term
2 "vast" as used in the request for admission and further deny the
3 relevancy of this to the question of Indian fishing rights on
4 anadromous fish at usual accustomed fishing sites.
5

6 3.455 Admit the same with the understanding that the term
7 maritime economy refers to the Makah's efforts with reference
8 to halibut, whale, and other saltwater fisheries.
9

10 3.456 Admitted.
11

12 3.457 Admitted.
13

14 3.458 Admit that the request was made for salmon and
15 seine twines for making nets but deny that this was done pursuant
16 to treaty or was in the nature of a gift as stated in the
17 supporting document.
18

19 3.459 Admit the same insofar as it relates to development
20 of their halibut type fishery in saltwater. Deny that the
21 intention of the United States at the time of the treaty was
22 other than to make the Makahs agricultural people. See
23 Doctor Barbara Lane - Makah, 401, Superintendent of Indian
24 Affairs for Washington Territorial Annual Report 1863 recom-
25 mending consideration whether government efforts should be to
26 a different channel to make them fishermen instead of farmers.
27

28 3.460 Deny on the ground that the request is too vague to
29 permit rational admission or denial and further deny that the
30 Makah maintained "distinct property rights." (Riley)
31

32 3.461 Deny for the same reason as 3.460.
33

1 3.462 Deny the same on the ground that it is not supported
2 by what Doctor Lane said and further, that the opinion goes to an
3 ultimate legal issue before the court and is based on insufficient
4 foundation and goes beyond Doctor Lane's expertise. (Riley)
5

6 3.463 Deny the same for the reasons that there was no
7 "ownership" in pretreaty times except in an aboriginal use sense.
8 (Riley)
9

10 3.464 Admit the same except deny any Indian "property
11 rights" other than in an aboriginal use sense. (Riley)
12

13 3.465 Admitted.
14

15 3.466 Admitted.
16

17 3.467 Admitted, but deny that this has any relevancy to
18 the question before the Court which is related to anadromous fish
19 and the claimed treaty rights of the Indians outside of their
20 reservation in relation thereto.
21

22 3.468 Admitted.
23

24 3.469 Admit the same and state that this appears to be in
25 violation of the Makah Treaty, Article XIII.
26

27 3.470 Admitted.
28

29 3.471 Admitted.
30

31 3.472 Admitted.
32

33 3.473 Deny the same insofar as it contemplates ownership
ANSWERS - THIRD REQUESTS FOR ADMISSIONS - 21

1 other than as in an aboriginal concept of usage. (See: Request
2 for Admission 3.011 and Riley)

3
4 3.474 Admitted.

5
6 3.475 Admitted.

7
8 3.476 Deny the same as being beyond the competence of the
9 defendants to admit error in a finding of a federal court, further,
10 we question the propriety of the United States to do this when it
11 was a party to Makah Tribe v. United States, Docket No. 60 (1959).
12 In any event, the testimony of Riley supports this finding.
13 See also: State v. McCoy, 63 Wn.2d 421 at 425, 387 P.2d 942
14 (1963).

15
16 3.477 Admit that the Makahs probably fished these waters
17 prior to the treaty and deny any inference therein that the fresh
18 water fisheries and rivers constituted usual and accustomed
19 fishing sites within the meaning of the treaty.

20
21 3.500(a) Admitted excepting it is denied that the "pre-
22 treaty Lummi, along with the Semiahmoo and Samish, both of whom
23 were subsumed with the Lummi at the Treaty of Point Elliott,"
24 "owned" reef net locations in the San Juan Islands, off Point
25 Roberts, off Lummi Island and Fidalgo Island. It is further
26 denied that "A number of Lummi signers of the Point Elliott
27 Treaty 'owned' reef net locations off Village Point" as set forth
28 in the answer to Interrogatory No. 1 of plaintiff Lummi Tribe.
29 They further deny that a state reef net license purports to,
30 and in effect does, authorize the construction and use of a device
31 which gives exclusive possession of the fishing places to non-
32 Indians and exclude members of the Lummi Tribe," as is stated
33 in the answer by said plaintiffs to this defendant's Interrogatory

ANSWERS - THIRD REQUEST FOR ADMISSIONS - 22

1 No. 7.

2
3 3.500(b) Admitted excepting as to the incorrect conclusions
4 of law and incorrect statements of fact, already denied in
5 3.500(a) above.
6

7 3.501 Admitted.
8

9 3.502 Admitted through (a), but denied as to (b) insofar
10 as it implies, or states, that the "specialized fishing technique"
11 therein referred to is similar, other than remotely, to the
12 present methods and techniques called "reef-netting."
13

14 3.503 Denied upon the ground that no reliable, or legally
15 admissible, evidence exists to show who may have "invented" the
16 technique.
17

18 3.504 Admitted, subject to the right to revise the admissions
19 should later research and information cast discredit upon, or be
20 in conflict with, the reports and writings of George Gibbs and
21 Theodore Winthrop. The request is also denied insofar as it
22 implies there are no other reliable reports of the pretreaty
23 activities referred to therein.
24

25 3.505 Same answer is made to this request as is made
26 for 3.504 above.
27

28 3.506 Admitted.
29

30 3.507 This request is denied for the reasons that no
31 reliable, or legally admissible or acceptable, evidence exists
32 to support the assertion that such "assurances" were given and,
33 in particular, it is denied that the rights to the reef net

1 locations were "private property." It is also denied that it is
2 "highly probable" that these assertions were accurate. (Riley)

3
4 3.508 Admitted.

5
6 3.509 It is admitted that at the time of the Treaty of Point
7 Elliott, the Lummi, Semiahmoo and Samish Indians maintained com-
8 munities by virtue of their operation of saltwater fisheries,
9 but "prosperous" and "lucrative" being highly relative terms,
10 the conclusions thus sought to be drawn are denied and, in
11 particular, it is denied that said Indians had "ownership"
12 thereof in any true legal sense; at most they had a fluctuating
13 and changing right of operation of appropriate gear near such
14 communities. (Riley)

15
16 3.510 Denied for the same reasons stated as to purported
17 "ownership" as are set forth above in the answer to 3.509.

18
19 3.511 It is admitted that Spanish ships may have come into
20 Boundary Bay in the year stated and observed Indians fishing
21 therein in various manners. No valid legal evidence, nor
22 reliable records, support any inferences as to what articles
23 were then possessed by the Indians and, in particular, the
24 source thereof.

25
26 3.512 It is admitted that they may have followed a method
27 of fishing later called "reef netting" and that native materials
28 were used for the gear as then operated. It is denied as to
29 (b) that the fact that each detail of gear and construction may
30 have had a native name is any proof of exclusively Indian origin;
31 that as to (c) anyone has legally admissible evidence of any
32 rituals which may have been observed or that any were peculiar
33 to reef netting; as to (d), it is admitted that a form of fishing

1 later called "reef netting" was employed from the Straits of Juan
2 de Fuca to Point Roberts, but it is denied that it was "to all
3 feasible locations" or that "this necessarily implies an
4 intimate local knowledge" of the underwater topography of the
5 region or a close observance of salmon behavior.
6

7 3.513 This is an over-formalized statement of the economic
8 or social relationships then existing between the tribes referred
9 to, (see testimony of Doctor Carroll Riley) no reliable or
10 legally acceptable evidence exists as to the "economic aspects"
11 of such reef net fishing as may then have been pursued or the
12 effect thereon on "kinship ties."
13

14 3.514(a) Denied for lack of reliable or legally admissible
15 evidence as to the actual seasons of so-called reef net fishing
16 or the type of fish gained thereby.
17

18 3.514(b) Admitted insofar as it implies that the Lummi
19 trolled the waters of the San Juan Islands at times for various
20 species of salmon.
21

22 3.515 The first sentence of this request is admitted.
23 The second sentence is denied for lack of reliable information
24 as to what type of fish were the "bulk" taken in the fall and
25 cured for winter stores or that they had a weir on Lummi (Red)
26 River consistently or exclusively.
27

28 3.516 It is admitted that the Lummis fished by various
29 methods, including reef netting, in the waters referred to, but
30 the exact details, and locations, thereof are denied on
31 grounds of insufficient legally admissible evidence.
32

33 3.517 It is admitted that the Lummi Indians continued

1 after the Treaty of Point Elliott to fish by so-called reef
2 netting operations, but it is denied that "fish traps owned by
3 non-Indians were located so as to render valueless most (emphasis
4 supplied) of the Lummi's reef net locations."
5

6 3.550 Admitted.
7

8 3.551 Admitted but state that these sources have varying
9 degrees of reliability and deny that they are the only sources
10 of information on this subject.
11

12 3.552 Admitted.
13

14 3.553 - 3.554 Deny the same for the reason that these appear
15 to be contradictory with one another. We are therefore unable
16 to rationally admit or deny.
17

18 3.555 Admitted.
19

20 3.556 Deny the same for the reason that it is too vague to
21 permit any rational admission or denial.
22

23 3.557 Admit the same with the understanding that the Sauk-
24 Suiattle were influenced by their Eastern neighbors in the same
25 manner and extent as other upper watershed Indian bands and
26 groups.
27

28 3.558 Admitted.
29

30 3.559 Admit that the writings of R. C. Fay, Agent N. D.
31 Hill and Doctor Sally Snyder have varying degrees of reliability
32 and deny that the members of the Sauk-Suiattle Indian Tribe
33 provide any reliable information either as to activity during

1 the treaty times or after the treaty times for the reason that
2 they are parties in interest to this litigation, the lapse
3 of time precludes accuracy, and the fact that they have been in-
4 volved in litigation concerning fishing would tend to color
5 their testimony.
6

7 3.560 Admit that at least some of the Indians from said
8 groups probably continued to live along the rivers but deny
9 that this constitutes an integrated Indian community or group.
10

11 3.561 Admitted.
12

13 3.562 Admitted.
14

15 3.563 Admit the same except deny the use of steelhead livers.
16 (Riley)
17

18 3.564 Deny the same except as applicable to the period of
19 time when the treaty was made.
20

21 3.565 Deny the same as hearsay and being unsupported in
22 the supporting Lane material.
23

24 3.700 Admitted.
25

26 3.701 Admitted.
27

28 3.702 Admitted.
29

30 3.703 Admit the same except deny that the fish was the
31 "principal food" and "great staple" to the extent set forth
32 therein. Defendants reserve the right to cross-examine the
33 Yakima tribal witnesses on these allegations.

1 3.704 Admitted.

3 3.704 Admitted.

5 3.705 Admit subject to the right of cross-examination of
6 the Yakima tribal witnesses.

8 3.706 Admit subject to cross-examination of the Yakima
9 tribal witnesses.

11 3.707 Admit subject to cross-examination of the Yakima
12 tribal witnesses.

14 3.708 Deny for the reason that there is no evidence cited
15 in support thereof.

17 3.709 Admit subject to cross-examination.

19 3.710 Admit subject to cross-examination.

21 3.711 Admit subject to cross-examination.

23 3.712 Admit subject to cross-examination.

25 3.713 Deny the first sentence for reason that there was
26 no reservation by the Indian of any rights; the United States
27 purchased the Indian title by treaty from the Indians and
28 secured to them equal treatment off of the reservation
29 with other citizens by Article III. Further deny any inference
30 of "reserved right" from the balance of said paragraph to that
31 effect and admit the remainder thereof subject to the right of
32 cross-examination.

1 3.714 Deny any inference therein that the Indians of pre-
2 treaty and treaty times regulated fisheries for the purpose of
3 conservation of the resource. Deny that the expansion of salmon
4 landings made it necessary to regulate non-Indian fisheries only
5 and assert that state regulations applied equally to Indians and
6 non-Indians is consistent with the treaty provision in question.
7

8 3.715 Deny that the Yakima Tribe has any right to off-
9 reservation fishing other than "in common" equal to that of other
10 non-Indian citizens. Deny that pressure of non-Indian fisheries, or
11 the destruction of runs caused the Yakimas to limit their off-
12 reservation fishery or that there was or is harassment by the
13 State of Washington. Admit that, at the present time, the
14 fishing efforts of members of the Yakima Tribe in Puget Sound
15 are intermittent and minimal.
16

17 3.716 It is specifically denied that the Yakima Tribe has
18 the power to regulate Indian fisheries off of their reservation
19 or to enforce any attempted regulation off the reservation or
20 that the Secretary of Interior has the authority to authorize
21 any such Indian regulation off the reservation or that any
22 attempted efforts to regulate off of the reservation are
23 successful. Deny any inference that the Yakima Tribe has
24 successfully regulated fishing for anadromous fish within its
25 reservation. All other statements are admitted subject to
26 cross-examination of the Yakima tribal witnesses.
27

28 3.717 Admitted subject to cross-examination, but deny
29 its relevancy to any issue in the lawsuit.
30

31 3.718 Admitted subject to cross-examination, but deny
32 its relevancy to any issue in the lawsuit.
33

1 3.800 Admitted.

2
3 3.801 Admit the same to the extent that we are informed
4 by Doctor Riley that he will not expect any substantial change
5 or difference in his opinions today from those he expressed to
6 the Indians Claims Commission.
7

8 3.850 Admit the same on the basis of the representation
9 from the United States that this is so.
10

11 3.851 Deny the same as we feel there are serious evidentiary
12 objections to portions of Doctor Lane's materials, as more fully
13 set forth in our specific responses herein.
14

15 Respectfully submitted:

16 SLADE GORTON
17 Attorney General

18 
19 JOSEPH L. CONIFF, JR.
20 Assistant Attorney General
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