

7-30-1973

Docket Entry 311 - Filed Deposition of J. E. Lasater on behalf of Plaintiff

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U. S. -vs- STATE OF WASHINGTON
U. S. Western District Court #9213

DEPOSITION OF J. E. LASATER

Olympia, WA
March 29, 1973

(Original)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

U. S. OF AMERICA, et al.,

Plaintiffs,

-vs-

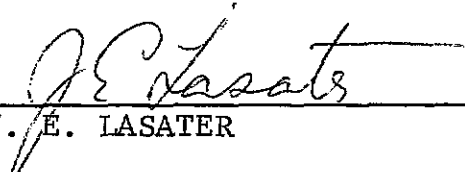
STATE OF WASHINGTON, et al.,

Defendants.

NO. 9 2 1 3

CORRECTION SHEET -- DEPOSITION OF J. E. LASATER --
MARCH 29, 1973

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION</u>
13	5	"nineteen" -- should be "nine"
29	17	"fisheries" -- should be "fishery is"
37	1 & 2	Reference is to the Makah Tribe
39		I am unable to locate the letter.
53	20	Should read "Yes."



J. E. LASATER

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT TACOMA

4 U. S. OF AMERICA, et al.,
5 Plaintiffs,

6 -vs-

NO. 9 2 1 3

7 STATE OF WASHINGTON, et al.,
8 Defendants.

9 DEPOSITION UPON ORAL EXAMINATION OF J. E. LASATER
10

11 BE IT REMEMBERED That the oral examina-
12 tion of J. E. LASATER was taken herein in the above-entitled
13 and numbered Cause on the 29th day of March, 1973, at Olympia,
14 Washington, before Eugene E. Barker, a Court Reporter and a
15 Notary Public in and for the State of Washington.

16 Counsel present were:

17 STUART S. PIERSON, Special Assistant
18 to the U. S. Attorney;

19 GEORGE D. DYSART, Assistant Reg.
20 Solicitor, U. S. Department of
Interior;

21 DAVID GETCHES, Attorney at Law;

22 ALVIN J. ZIONTZ, Attorney at Law;

23 JAMES B. HOVIS, Attorney at Law;

24 EARL R. MCGIMPSEY, Assistant Attorney
25 General, State of Washington;

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JUL 30 1973

EDGAR SCOFIELD, CLERK
By *eh* Deputy

1 WILLIAM M. GINGERY, Assistant Attorney
2 General, State of Washington;

3 JOSEPH L. CONIFF, Assistant Attorney
4 General, State of Washington.

5
6 WHEREUPON, the following
7 proceedings were had and
8 done and testimony taken,
9 to-wit:
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I N D E X

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J. E. LASATER

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By Mr. Getches	75 - 87
By Mr. Hovis	87 - 89
By Mr. Dysart	90 - 91
By Mr. McGimpsey	91 - 92
By Mr. Getches	92 - 93

1 MR. PIERSON: May the record show that
2 this is the deposition of Mr. J. E. Lasater taken in the
3 case of United States versus the State of Washington,
4 No. 9213, Western District of Washington at Tacoma.
5 This deposition is taken pursuant to notice.
6
7
8

9 J. E. LASATER,

being first duly sworn to
testify the truth, the
whole truth and nothing
but the truth, deposed
and said as follows:

12 EXAMINATION

13
14 BY MR. PIERSON:

15 Q Mr. Lasater, you are employed by the Department of
16 Fisheries?

17 A Yes.

18 Q Could you describe what your position is, please?

19 A I am Assistant Director in Charge of Operations.

20 Q How long have you been employed with the Department of
21 Fisheries?

22 A Twenty-two years in either April or May.

23 Q The position which you hold now, how long have you held
24 it?

25 A I meant to look that up. I think ten or eleven years.

1 Q And before that, what types of work were you doing?

2 A I was a Fisheries biologist working in several categories,
3 biological work.

4 Q What is your academic background relative to fisheries
5 management and biology?

6 A I have a degree in Fisheries from the College of Fisheries,
7 University of Washington.

8 Q Have there been any other academic pursuits or research
9 projects you have been involved in in an academic way?

10 A I took a couple of courses of graduate work, and I have
11 taken certain training sessions in the years since, but
12 nothing toward a formal further degree.

13 Q Would it be accurate in short terms to describe your
14 position as being the Head Man in the determination of
15 what management techniques will be utilized to carry out
16 the policies of the Department with respect to fisheries
17 on salmon and other anadromous resources?

18 A It is much more a team effort than that. I rely heavily
19 on senior staff members and right on down through the
20 level. I do have a prominent role.

21 Q It is accurate to say you are the head of the team?

22 A On management, yes.

23 Q Were you here this morning and this afternoon when we
24 took the deposition of Director Tollefson?

25 A Yes.

1 Q I would like, if I may just to talk about some of the
2 subjects we talked about then. One of the later items
3 was the question of biological incompatibility between
4 salmon species such as Coho and Steelhead comingled
5 within the river. Can you explain what incompatibility
6 that is, if any?

7 A They are not incompatible. They are competing to a cer-
8 tain degree, and they do affect each other, but both
9 occur in the streams normally and always have, so they
10 do accommodate to each other but the abundance of one
11 will affect the abundance of the other.

12 Q Are there any other salmon species which similarly
13 compete with the Steelhead?

14 A I would say the Chinook do to some degree, yes.

15 Q Now, are we talking about summer or winter Steelhead?

16 A Either.

17 Q Okay.

18 A Both summer and winter they have to stay in the stream
19 for a time and cohabit with the salmon species.

20 Q And it is within the jurisdiction of the Department of
21 Fisheries to regulate the management, including the
22 planting and harvest, of the Coho and Chinook which are
23 comingled with Steelhead?

24 A Yes.

25 Q In how many rivers by rough estimate is this salmon and

1 Steelhead comingling and competing going on?

2 A A tremendous number.

3 Q Can you give me some examples of some Puget Sound drain-
4 age systems where it occurs?

5 A I can start and you can stop me where you please. Start-
6 ing at the mouth of the Strait, the Hoko, the Clallam,
7 Sekiu, Dungeness, Elwha, Dosewallips, Hamma Hamma,
8 Skokomish, Dewatto Creek, Tahuya, and coming around down
9 Sound Chico Creek, a number of other small streams, a
10 number of small streams in Southern Puget Sound, Nisqually,
11 Puyallup, Snohomish, the Green and its tributaries,
12 Stillaguamish, Skagit and Nooksack. These are some of
13 the more important ones in the Puget Sound area. There
14 are numerous other smaller streams also.

15 Q Are there some on the Pacific Coast as well?

16 A Yes. I would say virtually all of them, starting from
17 north to south with the Quillayute system, the Hoh, the
18 Queets, the Quinault, Moclips, and now we are getting
19 down out of treaty Indian territory from there south.

20 Q In setting regulations on the harvest of these comingled
21 and competing salmon, could you describe for us what
22 coordination you have with the Department of Game?

23 A We examine each other's regulations for areas where we
24 might find a conflict, either conflict for the utilization
25 by people or a conflict that might actually affect the

1 stocks one way or the other, and if they are severe then
2 we try to adjust them, and on planting schedules we
3 often work together so that neither one of us will make
4 a heavy plant of larger fish over a plant of the other
5 agency of smaller fish so that the one plant might eat
6 the other one.

7 Q Would it be accurate then to say as far as the biological
8 competition between these species that you try to keep
9 them in a rough balance, one against the other, in your
10 cooperation with the Department of Game?

11 A To a limited extent. There is not a great deal of this.
12 The species existed together in the streams prior to our
13 management, and were successful or they would not be
14 here, so there is no major problem on them existing
15 together. Like any other group of animals that live in
16 the same territory, they affect each other. We try to
17 see that in our handling of them we don't tip the balance
18 too strongly one way or the other, but it is not a major
19 concern.

20 Q And I take it by that that you don't have any, as between
21 you and the Game Department, any determinate of a priority
22 species, that is, for example that the Coho would be
23 allowed to be a much larger species in the river than
24 Steelhead?

25 A In numbers?

1 Q Yes.

2 A No. We just expect it to be that way because it always
3 has been.

4 Q Considering for a minute some of the questions that were
5 brought up by Mr. Hovis earlier, is it accurate to say -
6 and I am trying to understand the conversation he was
7 having with the Director - that from strictly a manage-
8 ment point of view if all of the harvesting of the resource
9 were at the mouth of the various rivers, and you as the
10 Department of Fisheries had the legal authority to deter-
11 mine who would harvest and who would be prohibited, that
12 that would be an easier management scheme than you
13 currently have with the fishing of the resource all the
14 way from the Strait to the heads of the rivers?

15 A I am not certain that it would be. It would be in many
16 cases more biologically precise, but we have just for
17 instance a great number of small streams that you couldn't
18 make it pay off to manage the takeout of a small stream,
19 that is, put the effort on it and the knowledge and
20 count the fish that precisely. It wouldn't be worth
21 your effort. We have many of these streams that it would
22 be a loser to manage in that way.

23 Q Could you solve that problem by authorizing some other
24 entities, say for instance an Indian tribe, to determine
25 access and count the fish, having given them an escapement

1 goal?

2 A Oh, I don't believe it would be worth anybody's effort
3 to put the manpower on some of these small streams to
4 manage them as a single entity. There just aren't
5 enough fish there.

6 For example I know one little creek that I think
7 that if you put the time of one man there that the hand-
8 ful of fish wouldn't pay for his time, and I doubt if
9 it would pay for anybody, so this is an example of where
10 I doubt if it would be a worthwhile thing to do.

11 Q Turning for a minute to the years in your experience
12 in the Department prior to 1968, and prior to Mr. Tollefson
13 becoming the Director, you did as I understand it have
14 only two recognized clients, and those were the commercial
15 fishermen and the sport fishermen on salmon?

16 A Recognized in that sense, although we have always known
17 that we had Indian fishermen, we have had reservation
18 fisheries, and we have always worked with the Indian
19 tribes, but as special clients under the law, no, so in
20 one sense we have always worked with them and recognized
21 that they're here certainly and fished, but as a legal
22 recognition, not until the Puyallup case.

23 Q And during these earlier years, and considering the
24 various requests, interests, of the sport fishermen and
25 the commercial fishermen, were there any instances where

1 the two interests were competing such that the Depart-
2 ment had to decide how to adjust their interests in its
3 regulations?

4 A The two groups do compete, and what we have done is,
5 since both are recognized as legal fishing entities by
6 the Legislature, provide them both with a maximum oppor-
7 tunity to fish, and how the share comes out is up to the
8 intensity of the fishery, the shifting numbers. The
9 opportunity changes as you talk about different species
10 and the way they behave and the weather of a particular
11 season and so forth.

12 Q As the season progresses, have you in the past ever
13 adjusted the seasons and the opportunity to take to allow
14 the other fish users to get more?

15 A Not for that reason, no.

16 Q In determining between the two competing interests and
17 in your regulations defining their opportunity to take,
18 what standards do you use for deciding the opportunity
19 of the sports fisherman when competing with the oppor-
20 tunity concerning the commercial fisherman?

21 A We don't decide in that manner.

22 Q Earlier I think --

23 A See, we recognize that when the purse seiners come in
24 and are fishing an area it is virtually impossible to
25 sport fish the same area. That is recognized. We don't

1 do anything about something like that.

2 Q My question was really addressed to allocations of
3 catch, and I understand, as Mr. Gingery has explained
4 to us through the Director, that there are several
5 different methods for augmenting or reducing or changing
6 the catch of various user groups; what I am after really
7 is that in the days when you were worried about the
8 competing interests of commercial and sport fishermen,
9 and you were trying to put together your regulations to
10 decide what their opportunity would be in light of the
11 fact that they compete, how would you decide that you
12 were going to give one one thing and one another? What
13 standard did you have? Was it just a fair-share standard,
14 or was there something more definite or more clear than
15 that?

16 A You give them each all the fishing time that you can
17 that will not in your best judgment impair the escapement
18 for spawning.

19 Q Assuming you have a run which you can estimate at one
20 hundred fifty thousand fish, and you need fifty thousand
21 for escapement, and you realize that the sport fishing
22 interests and the commercial interests will compete for
23 the remaining hundred thousand, while I am not asking
24 for a formula, how would you decide how to adjust the
25 opportunities for those two various interests to insure

1 that they get some equitable share of that harvestable
2 resource?

3 A Generally the nets will remove the largest number of
4 fish out of the water in the shortest period of time, so
5 the general thing you do is allow the sport fishery to
6 continue virtually unhindered except by regulations
7 which limit the amount of fish a person can catch per
8 day and the number of lines or such, in other words,
9 since your goal is recreation you make the sport fisher-
10 man relatively inefficient, and then you can allow him
11 to fish for a great period of time for recreation. Then
12 when the commercial fishery starts usually by the time
13 the run is approaching the river it is going to go to a
14 closed area and there is a relatively brief commercial
15 fishery and it is all over and the fish are beyond the
16 fishery and neither the sport fisherman or the commercial
17 fisherman can longer take them, they're home free.

18 Q Then it is accurate to say that in view of the fact that
19 a commercial net fishery can take more fish for the same
20 amount of effort you give them less time at the resource?

21 A And less area, less area to fish.

22 Q I see. And as compared to the competition with the
23 recreational fishery by the sport fisherman, this is a
24 kind of a rough equality or equitability that you dis-
25 tinguish between the two?

1 A It is a full opportunity to fish and compete with each
2 other, and we are constantly being told by both sides
3 that each one should have a larger share, and we say,
4 "You have plenty of opportunity to fish. Go fishing."

5 Q And in response, when they say they each want a larger
6 share, do you ever say that, "We think this is an equitable
7 distribution"?

8 A We tell them that if they have a problem along this
9 line that it is a legislative problem, and the Legislature
10 will have to deal with allocation, that they should take
11 it up with their Legislators.

12 Q But there is no statute or legislation that tells you of
13 or gives you a standard for allocation currently?

14 A No. As I understand it we are not allowed to allocate.

15 Q By that, do you mean you are not allowed to utilize your
16 regulations to give equitable shares to each of the user
17 groups?

18 A We are not allowed to even define a share that I know of.

19 Q I see. For example, in later years when you have been
20 considering as a third client the Indian net fisheries
21 off-reservation in the various rivers, has it been your
22 intention at all, or have you had an intention to augment
23 the catch that these various Indian fisheries would take?

24 A Yes. If they have a special right, and Puyallup says
25 so, then they must have fish or their right is empty.

1 Q And I take it then there is nothing in State law, the
2 statutes, that requires you to allocate a particular
3 share to these Indian net fisheries?

4 A Not a particular share, no.

5 Q By what method do you attempt to augment the Indian net
6 fisheries that you are now considering and dealing with?

7 A Several ways. One is that we take the Indian fishery
8 into account when we set our over-all regulations for the
9 entire Puget Sound area for instance. Our people know
10 for instance that we have set an off-reservation area on
11 Nisqually, and there is an off-reservation area for
12 Squaxin, and they know that these fisheries will take
13 place, and we are gaining experience on about how many
14 people will fish, what their effort will be, what their
15 take might be, and this has to be taken into account
16 through the rest of the fishery. That is a general
17 system. Then a particular instance is we have closed a
18 portion of East Pass up north of Tacoma to commercial
19 fishing because there will be an increased Indian catch
20 under our regulations and we are decreasing the catch in
21 Puget Sound by some degree with this closure. Those are
22 a couple of instances.

23 Q And do you increase or augment the Indian catch also by
24 additional planting in the various rivers?

25 A Yes. We have shifted for instance on Hood Canal our

1 planting from the Hoodspout Hatchery, which is away from
2 the reservation, to the Skokomish River, so that we will
3 not get as many fish back at the Hoodspout Hatchery and
4 the fish will instead go into the Skokomish Indian catch
5 the Chinook catch is increased about nineteen times.

6 Q Just referring to the example of the East Pass closure,
7 is this the same closure that you testified about in the
8 Puyallup case?

9 A I must have.

10 Q And is it true that at the area where that closure took
11 place there were other runs than the Puyallup River run?

12 A There are some other runs that come through there in
13 addition. I think probably largely Deschutes.

14 Q And would it be accurate to say that the East Pass
15 closure was a more precise method for adjusting the level
16 of fish entering the Puyallup than if say you had had a
17 closure up next to Whidbey Island?

18 A Very definitely. A closure up next to Whidbey Island,
19 we might not even protect Puyallup stock because there
20 would be fisheries following it. It just might move the
21 fish from one fishery to another.

22 Q Your experience with the East Pass closure, has it
23 indicated that you have increased the run of fish in the
24 Puyallup by that?

25 A We can't tell because there has been a very large legal

1 problem up on the Puyallup, and there hasn't been any
2 control of the fishery, and we aren't able to measure.

3 Q Okay.

4 A We will be able to I think when there is proper manage-
5 ment on the river.

6 Q Are there other examples where you similarly have im-
7 posed a closure on comingled runs where you do have infor-
8 mation of what impact it has had on the river that you
9 are intending to augment?

10 A We avoid the fishing on comingled runs to the greatest
11 extent possible, and we minimize it, although there is
12 hardly a marine fishery that there won't be some fish
13 from another run present, but I don't think of an area,
14 well, in East Pass for instance, a problem on comingling
15 like there would be further up the Sound, so we will I
16 think have closures, and some of our closures are where
17 there are several groups in the area, but we can reason-
18 ably determine them. For instance I am sure that the
19 South Sound preserve would be much, much smaller if we
20 didn't have a Nisqually Indian fishery. We would move
21 the preserve line down so that the fish would be har-
22 vested.

23 Q Does the data you have available to you indicate that
24 this larger South Sound closure has in fact augmented the
25 run into the Indian net fishery on the Nisqually?

1 A I would put it the other way, that if it wasn't there
2 their run would greatly be diminished.

3 Q Okay. When you are considering at the very outset of
4 compiling or adopting your regulations or proposing them
5 to the Director, you say that now you consider these
6 off-reservation Indian net fisheries as one of the ele-
7 ments of harvest on the total run?

8 A Yes.

9 Q Okay. If you will bear with me I am going to try to
10 work through what you do when you arrive at a final
11 regulation.

12 Is it accurate to say that the first thing you do
13 with the general run is try and estimate what escapement
14 goal you need for spawning before you talk about the other
15 regulations on the same run?

16 A Oh, our needed escapements are a thing that is with us
17 all the time, and the figures usually persist from year
18 to year with small amendments and refinements as we see
19 the needs, so those are always before our people.

20 Q And after that you basically have before you a harvest-
21 able resource?

22 A No, your next step is to predict the run size.

23 Q Oh, okay.

24 A Without a run size prediction you can't estimate whether
25 you have a harvestable portion or how large it might be.

1 Q Okay. So let's say we have the coming year, and you
2 have got an estimate of escapement, you do that in per-
3 centages?

4 A We use a system of indexes. The men will have counted
5 salmon on the spawning grounds on quite a number of
6 streams, particularly portions of the stream, you can't
7 walk out the entire stream, but particular representa-
8 tive portions, and good spawning areas, and you end up
9 with numbers, and you compare these with numbers for past
10 years and production for past years, and you end up with
11 an expected production from that spawning. Then you
12 examine water flows and weather and other things that
13 would affect the degree to which the eggs and young will
14 survive. In some cases we make estimates in the marine
15 areas after the young fish go into the marine area, of
16 their abundance. Then we tend to lose them at sea for a
17 time, where it isn't practical, largely from a monetary,
18 a large-vessel standpoint, to follow them. Then when
19 they come back we pick them up as they enter the fishery,
20 and once again run the figures we are seeing for vessels
21 and numbers of fish back against our past experience and
22 we start refining the estimate, and your estimate first
23 is on a total Puget Sound basis, then on a smaller region
24 and a smaller area, as you get back to the river, and
25 you see your estimate is getting better and better all

1 the time but your time span is running to zero, your
2 opportunity to adjust the fishery, so you are working
3 faster and faster with a more and more precise estimate
4 as the fish come on back, and so you have a number of
5 indexes that give you the health of the run, approximate
6 size, and they will tell you that we are going to be
7 all right in the spawning areas, without ever in many
8 cases having an actual number.

9 Q Now, when you say as you are proceeding to zero, which
10 I presume would be the threshold of the spawning grounds --

11 A Or past the last fishery.

12 Q All right, past the last fishery. You include within
13 the entire group of harvesters where it happens also
14 these Indian net fisheries?

15 A Yes, of course.

16 Q And it is true, isn't it, in most cases that as far as
17 the progress of the resource is concerned the Indian
18 net fishery is the last in line?

19 A The special Indian or treaty Indian fisheries are last
20 in line. There are, of course, many opportunities for
21 Indians to fish in all of these fisheries as they go on.

22 Q Before the season begins and the resource enters the
23 Straits you have from spawning ground counts and out-
24 migrant counts other brood year information, some estimate
25 of what the run size will be?

1 A Yes.

2 Q Okay. And prior to the season you set general regu-
3 lations concerning the commercial, the sport, and where
4 you coordinate the Indian net fisheries will be under-
5 taken?

6 A Our staff starts coming up with recommendations and an
7 assessment of run size, and I see many of the working
8 papers as they progress, and they will finally arrive at
9 a set of recommendations for the Director, and then we
10 have a full review of their recommendations, bringing
11 into it all of the pertinent background for making those
12 particular regulations. There will be certain matters
13 at times that are alternatives, which the biological
14 staff will consider to be policy matters, we can do it
15 this way or this way or this way, and so we go through
16 all of these matters, and then the Director will decide
17 the recommendations that are going to go to the public,
18 and then these are announced, and under the A.P.A. system
19 there is a twenty-day notice before a public hearing,
20 and then go through the hearing process, hear any tes-
21 timony, take written testimony in the interim, and then
22 usually two to five days later we have what we call an
23 adoption hearing. In the interim we go back over the
24 material, what was the testimony, what did we hear, have
25 we changed our minds in any way, and then we will adopt

1 the regulations on that adoption date. Then the process
2 is not finished because we have emergency powers, and
3 the season regulations are based upon our best estimates
4 before the fish show up. Then as the fish arrive we
5 begin refining our estimates, and wherever and whenever
6 necessary change our regulations on a very immediate
7 basis to accommodate the necessities of the moment.

8 Q Okay. And in Puget Sound, while you don't have the
9 precision of an over-the-dam count, you do estimate run
10 size with greater precision as it progresses down the
11 Sound towards the river?

12 A Yes.

13 Q And you do impose, where it looks like the run size may
14 be less than you expected, regulations to cut back on
15 the pressure on the resource as it comes down?

16 A May I clarify?

17 Q Sure.

18 A Our precision is just as good up Sound on the total
19 aggregate but there are more units. Our precision on
20 any particular unit increases toward the river, the par-
21 ticular run to that particular river, so our accuracy
22 is good on the numbers we are working with at any point,
23 but the precision for a particular river, of course, is
24 greater as you approach that river.

25 Q Okay.

1 A So I didn't want to give the idea that our work was that
2 much sloppier away from the river.

3 Q It is, though, in the upper Sound considerably more
4 imprecise when you are thinking about just one run?

5 A That is right.

6 Q Okay. As you proceed with your management regulations,
7 as the runs come down the Sound and begin to split off,
8 is it accurate to say that as to the Indian net fisheries,
9 which you have tried to coordinate with off-reservation,
10 that it is your intention where you have the ability to
11 keep an amount or an opportunity for those Indian net
12 fisheries eventually to take a portion of that run?

13 A We must do so. We have two sets of laws that say so.
14 One, our Code Book says that we have to preserve the
15 escapement, and then, as we understand Puyallup, the laws
16 of the land say that the Indians have a right to fish.

17 Q Can you give me an example of things that you have done
18 in the various fisheries that occur on the run before
19 the Indian net fisheries to preserve some portion or
20 some opportunity to get a portion of that run for the
21 Indian net fisheries?

22 A We have adjusted the number of days that the fleet can
23 fish as the runs come down south. We have done things
24 such as closing the East Pass to protect Puyallup fish.
25 We keep the South Sound preserve the size it is knowing

1 that fish will proceed to the Nisqually and Puyallup.
2 We have done stream improvement work, work on the
3 hydraulics code, to keep the streams in as good a
4 natural production as civilization moves in as we can.
5 We have increased our planting of salmon to rivers that
6 have Indian fisheries on them; markedly in fact in
7 recent years.

8 Q Well, what I am after really are your emergency regu-
9 lations as they come down.

10 A Oh.

11 Q One is to cut back on the days in the commercial fishery?

12 A Both time and area closures. As you get further toward
13 the river then area closures become practical because
14 your fish are not comingled to any great extent. Then
15 you can close an area to protect the fish of a particular
16 stock. This is very common practice toward the terminal
17 end of the runs, places like Skagit Bay and Bellingham
18 Bay.

19 Q So you really have time and place adjustments which
20 become a lot more manageable and effective the closer you
21 get to the river?

22 A For particular rivers, yes.

23 Q Do you ever have for the commercial fisheries gear
24 limitations such as mesh size and length?

25 A Yes, of course. The length is pretty well set by.

legislation, although we could adjust the length, we could adjust the depth, but largely we use mesh size.

Q And you have adjusted mesh size on an emergency basis?

A Yes.

Q You spoke earlier about the A.P.A. requirements that you follow; in the emergency area, what do you do, do you have the regular hearing framework and written things, or is this some truncated procedure?

A No, the Director can adopt an emergency regulation without hearing and make public announcement of it and it is effective immediately.

Q Is it your normal practice where feasible to give warning to those affected by that?

A Yes, we try to give reasonable warnings so a man can pick his net up. We would have a hard time with a case if you passed a regulation and grabbed the guy before he could raise his net.

Q And where feasible, do you attempt to get information from them about what they are doing and what data they may be able to help you with in reaching the determination on the emergency regulation?

A We use any and all information that we can get.

Q Back when you were talking about the present regulations, the general regulations that you adopted before you get into the emergency circumstance as the runs together

1 proceed southward through the Sound, do you consider in
2 those regulations how the Indian net fisheries you are
3 concerned with will fish, for example when they will
4 fish and what type of gear they will use and where they
5 will fish? In other words, do those advance regulations
6 set specific regulations for the Indian net fishery as
7 well?

8 A They often do.

9 Q And if in this process you were to prohibit the Indian
10 net fishery from using a particular type of net, and
11 expressed an interest in prohibiting them entirely from
12 fishing in this coming year because you found you have
13 an endangered run entirely, would you consider that
14 regulation of general applicability which under the
15 Administrative Procedure Act you would be required to
16 send notice to the Code Reviser on?

17 A Yes.

18 Now, we are talking about the regulations we set
19 for the season?

20 Q Yes.

21 A Yes.

22 Now, may I point out an exception?

23 Q Yes.

24 A And that is on the Columbia River we are not under the
25 same practices we are in Puget Sound due to the Compact.

1 Q I am just speaking about Puget Sound.

2 A All right.

3 Q If you were to consider and propose a regulation or rule,
4 whatever you would call it, which would in the interest
5 of conservation absolutely prohibit any Indian net
6 fisheries of the kind we have talked about, would you
7 consider that an order or regulation or rule which under
8 the A.P.A. you should send notice to the Code Reviser
9 about?

10 A Yes.

11 Q When we were speaking about the Director earlier today
12 we were talking about the problem of being able to pre-
13 dict how many rivers will be impacted by closure in the
14 upper Sound and what effect in the various rivers there
15 would be, and the example he came up with was the one
16 here as to the fish ladder in the Deschutes and Capitol
17 Lake, and he indicated that there was currently a larger
18 number of fish reaching the spawning grounds than were
19 needed; my question really is, if it should occur, this
20 great surplus as a result of some closure in the upper
21 Sound, would it be feasible as the run proceeded down
22 there to alter your seasons on the rivers to allow people
23 to fish in these expected surplus areas?

24 A We have some other criteria that are important to us,
25 and we find that some areas you should not fish at all

1 because harassment of the group of fish as they approach
2 spawning time, that is, to take a certain number of them
3 out will spoil the spawning of the rest of them. They
4 are approaching the end of their lifespan, and have a
5 certain energy level, and on a small stream like the
6 Deschutes, well, turning the public loose on them to
7 get a certain portion of them may mean you spoil the
8 whole spawn. It would be very dangerous to do so. So
9 we in general do not wish to fish in a stream where the
10 fish are holding prior to spawning, where harassment
11 would bother them, especially on smaller streams, and
12 concerning establishing spawning areas. Then, of course,
13 if they are on the spawning grounds, flushing them from
14 the spawning areas, or just too much walking over the
15 spawning beds and such, well, there are certain things
16 that just should not be done, and you end up trying to
17 weigh which is going to kill you off the quickest, and
18 you try not to get in that type of situation. So there
19 are certain places and manners which even with a surplus
20 we might not want to touch the fish with.

21 Q To pursue the example again, as far as salmon are con-
22 cerned, is it potentially harmful to the fish say of the
23 Deschutes River to have an excess or surplus above
24 escapement?

25 A Yes. Two things happen. One, you end up with an

1 extremely low survival of your stock. You can get very
2 nearly wiped out entirely by overspawning in some cases.
3 It ruins the whole production in the stream. Then you
4 can severely impact the other fish in the area that you
5 are also trying to manage, and in extreme cases you can
6 even lower the oxygen in the water. You can pollute the
7 water by --

8 Q By too many fish?

9 A Too many carcasses up the stream, fish that die. Now,
10 those are extremes but they are examples and we have seen
11 them.

12 Q As a biologist, do you know whether the same prospect
13 for harm from a surplus escapement holds for Steelhead?

14 A I have never worked with Steelhead. I wouldn't hazard
15 a guess on that one.

16 Q Just as a general matter for those river drainages in
17 the Puget Sound area, is there a sufficient ability for
18 you to find places to take the surplus in the rivers
19 which may occur from an upper Sound closure or cutback
20 or restriction?

21 What I am driving at is that the understanding I am
22 deriving from your testimony and the Director's is that
23 in some of the rivers where there is now a surplus, or
24 where you may create a surplus in an upper Sound closure
25 or restriction, you don't have the ability to harvest

1 that resource before it reaches a spawning ground and
2 you have, one, wastage, and, two, a potential harm of
3 the run, is that a correct impression, or --

4 A Our ability is very limited. We have some capability.
5 For instance, at a hatchery where we have a hatchery
6 rack in the stream you can load them into the trucks
7 there.

8 Q Do you know of any Indian tribes in the lower and mid-
9 Sound area who would be willing to take up this surplus
10 for you should you give them the opportunity?

11 A Oh, they have the opportunity. We make surplus salmon
12 from our hatcheries available to these people every
13 year.

14 Q What I am speaking of really is as they come into the
15 river and you realize there is a surplus, which for
16 purposes of the hypothetical it has been created by a
17 fairly imprecise closure above in the Sound -- let me
18 take an example. If you were to decide you needed to
19 increase or augment the run into the Puyallup River, and
20 the method you determined to use was to restrict the
21 fishing on the comingled runs very high up, say around
22 Whidbey Island, and you find that coincidental with this
23 there is a very great increase and indeed a harmful,
24 potentially harmful surplus of the fish entering the
25 Nisqually River and other South Sound rivers, is there

1 the capability on those river systems themselves bio-
2 logically and from a fish management point of view to
3 permit Indian tribes to take those surplus fish bene-
4 ficially for the management of --

5 A That is exactly what we are doing on the Nisqually.
6 We take fish from Minter Creek, where we have a very
7 limited capability, and we are planting the Nisqually
8 River very heavily. We are in effect putting the surplus
9 from Minter Creek into the Nisqually, and it is never
10 going to show up where it will cause us a problem, the
11 Indians are going to harvest them.

12 Q Are there from your background and information other
13 rivers in the South Sound which have a potential for
14 sustaining or suffering this harmful excess if you had
15 greater restrictions in the upper Sound area?

16 A Yes, I would say the potential is there for most of
17 them, where we don't have an actual hatchery rack or
18 some such.

19 Q And do you know whether there are places on each or any
20 of those rivers where treaty Indians fishing with nets
21 could take up the surplus?

22 A On larger streams that might be a possibility, and, of
23 course, most of the larger streams do have an Indian
24 fishery of some sort on them right now. On smaller
25 streams you end up with your spawning areas starting at

1 practically immediately above tidewater and you are
2 really talking about a spawning ground fishery with
3 smaller numbers of fish, and we would almost have to
4 get into a "system" of some sort, and I wouldn't know
5 how to handle that at this time on a wide variety of
6 streams.

7 Q That would be basically a political problem?

8 A No, it would be a tremendous headache to try to figure
9 it out from a management standpoint.

10 Q Could you alleviate that problem somewhat by moving the
11 Indian net fisheries out into the Sound waters to take
12 up the surplus?

13 A This is in part what we have begun. For instance on
14 Squaxin they have small streams there, and through
15 negotiation with the tribe they have agreed that the
16 streams should be closed and they should not fish there,
17 and the fisheries then set up out in the marine area.

18 Q What I am really getting at is if by an upper Sound
19 restriction or closure you have a potentially harmful
20 surplus in the lower Sound, and you said it may be diffi-
21 cult to harvest this resource properly in the smaller
22 streams, could you alleviate the problem created by the
23 smallness of the streams and location of the spawning
24 beds by moving the Indian net fishery out into the Sound?

25 A My problem here is that we are getting into an area where

1 I am troubled by the law, and that is in many of these
2 areas I believe other citizens have a right to some
3 fish also, and if we in streams -- for instance, since
4 we are sitting right here, if we use the Deschutes,
5 which runs out here, which is entirely an artificial run,
6 what right do the other people who paid for those fish
7 with their taxes have to those stocks, and how much of
8 them do we take away from these other people? What are
9 the rights of all the other people that are involved,
10 and how far do we cut them back? We are getting into a
11 point where I need legal guidance.

12 Q Okay. I am not trying to push you into a legal corner
13 but I am trying to find out what management feasibilities
14 you have.

15 Now, the other interest you are talking about are
16 people who would take the fish on the Deschutes itself?

17 A No, up Sound.

18 Q Up Sound?

19 A Or wherever. Up Sound primarily, though, where they are
20 fished upon by all citizens.

21 Q And what you are really speaking of is that you think
22 there is a threshold which if you cross it concerning
23 restrictions for those people in the upper Sound you are
24 really not being fair to them, is that it?

25 A If we have three clients, they are all real, and the

1 rights of the other two clients, the sports fishermen
2 and commercial fishermen, are also to be protected, so
3 there must be some sort of a threshold here, some sort
4 of a balance.

5 Q You should not restrict one in order to give an advantage
6 to another?

7 A Well, if we get into a wasteful surplus somehow we have
8 gone wrong because people are supposed to catch those
9 fish, that is what we are here for, whether it is Indians
10 or non-Indians or whatever. The whole name of the game
11 is not to conserve the fish for the fisheries sake, but
12 it is to conserve them so we can have the highest possible
13 crop for our fishermen.

14 Q All right. Now, when you say "a wasteful surplus," you
15 mean that which has a potential if it gets to the spawn-
16 ing grounds either not to be harvested or to harm the
17 resource?

18 A Either way, yes. If it is not needed for spawning then
19 it should be caught.

20 Q And you do have within a limited capability the oppor-
21 tunity very late in the run's progression to take that
22 surplus by Indian net fisheries?

23 A Some possibility. There are such things as weather and
24 any number of other things that do impinge on it. For
25 instance, on Green River, where we have set up a surplus-

1 type fishery for the Muckleshoots, not a treaty fishery,
2 actually fishing quite a lot of the time has not really
3 put a big dent in the run, and this may be in part due
4 to physical limitations, or it may be in part due to
5 how the people wish to fish.

6 Q This particular fishery, the Muckleshoots, that you are
7 talking about, is it confined either by agreement or
8 some other way in terms of time and place and gear?

9 A Yes, it is confined in time and place. We want to stay
10 below the spawning and hold-up areas in the river where
11 vulnerability would become say uncontrollable or very
12 risky.

13 Q And there are physical conditions in the river and
14 weather conditions which limit the capacity of the nets
15 to take the fish?

16 A I think the inclination of the people, the way they want
17 to fish, has quite a bit to do with it, too.

18 Q So they are both factors?

19 A I think if we put Bob Satiacum in there he would clean
20 up.

21 Q Would he destroy the run?

22 A Unlimited -- without regulations he sure would.

23 Q Could you regulate him to prevent him from doing that?

24 A As I --

25 Q If you had the power?

1 A As I just said, in that particular area we have put
2 Indian fishermen in there and they are not overly
3 impacting the run, so the regulations that we have that
4 apply to those Indians, well, they are not damaging the
5 Coho run.

6 Q You just said if I understand it that there were two
7 factors concerning which they are not greatly impacting
8 the run, one was the physical limitations on the time,
9 place and gear, and the other was the fact that apparently
10 they have not fished to the maximum opportunity, is that --

11 A Well, there are almost an infinite number of factors that
12 affect a person's ability to catch fish, and we have
13 named some major ones.

14
15 (RECESS)

16 Q (By Mr. Pierson) Okay, continuing, Mr. Lasater, trying
17 to take up with the question I was about to ask, as I
18 understand it there were two reasons why this Muckleshoot
19 Indian net fishery had not substantially cut into the
20 run, and one was that the Indians didn't fish to the
21 maximum opportunity, and the other was the general physical
22 limitations and regulatory limitations on use of gear,
23 time and place, is that correct?

24 A All of those are considerations, yes.

25 Q If the Muckleshoots determined and actually did fish to

1 the maximum they were allowed under the regulations for
2 that fishery, would it decimate or destroy or harm the
3 run?

4 A I don't know. I don't know what maximum -- right now
5 I don't personally know what maximum effort they could
6 put in the area under particular regulations and other
7 circumstances.

8 Q In deciding what time, place and gear limitations to
9 place on that particular fishery, did you assume a maxi-
10 mum utilization of the opportunity?

11 A I wouldn't think so because this isn't a treaty Indian
12 fishery. We are operating under regulations which allow
13 us to take surplus, salmon surplus to our needs, and we
14 have set this up for the Muckleshoots under that set of
15 laws and not under treaty fishing laws.

16 Q I see. So that this Muckleshoot fishing effort is basi-
17 cally to take away from the run surplus fish which would
18 either be wasted or would harm the run?

19 A Yes.

20 Q Have you tried such a surplus fishing effort with Indian
21 tribes anywhere else in the State?

22 A I think I mentioned the Skokomish and Nisqually, where
23 we have actually shifted our planting effort, which is
24 the best way to handle a surplus area, is to put them in
25 an Indian fishery that is in existence.

1 Q And by "planting" you mean putting small fish in the
2 river and hoping that they will return to the same river
3 for catching?

4 A We don't have to hope they will; they will.

5 Q Okay. You mentioned for example the Squaxin Island
6 fishery, and I am looking at a Washington Department of
7 Fisheries News, Volume 1, March, 1973, and there is an
8 article here dealing with Squaxin Island Chinook, and I
9 think discussing generally the taking of salmon around
10 and on Squaxin Island. Now, with that prefatory reference,
11 do you know whether the fish or the runs which are aug-
12 mented around Squaxin Island will be taken mostly by the
13 sport fishery or mostly by the Indian fishery?

14 A Oh, this is quite a separate thing. We are experimenting
15 with extended rearing of salmon to cause them to residu-
16 alize in Puget Sound, or go where we want them, and the
17 Squaxins are in a pen-rearing venture, and we have an
18 agreement with them whereby we furnish them a certain
19 number of young fish to rear in saltwater pens and they
20 rear them and as payment for those fish we get a certain
21 number released into the environment after rearing, so it
22 is a cooperative rearing arrangement to add to the fish-
23 ery while the Squaxins get fish to rear for sale, so that
24 is a separate business arrangement, and it is aimed at
25 enhancing the sport fishery in Puget Sound, so it is a

1 straight business arrangement aimed entirely away from a
2 particular Indian fishery. It just happens to be very
3 convenient to work with the Squaxin tribe in that manner
4 and we appreciate it.

5 Q You take small fish and give them to them and they rear
6 them in the pens?

7 A Yes.

8 Q They manage the entire rearing operation?

9 A Yes.

10 May I clarify one thing?

11 Q Surely.

12 A When I say they manage it, we have certain terms in our
13 agreement, numbers of fish we will get, physical con-
14 dition, things of that nature, and I don't think that
15 that is contrary to the sense of the question as you
16 asked it, is it?

17 Q No. Do you have any general impression of whether any
18 individual Indian treaty net fisheries outside reserva-
19 tion boundaries have taken greater numbers of fish since
20 inaugurating your formal attention to the Indian net
21 fishing ventures as part of your clientele of the Depart-
22 ment?

23 A I am quite sure that the take by -- wait a minute, off-
24 reservation. I was thinking of the Skokomish. There
25 we planted so the fish would return to the reservation.

1 I am sure that that would show an increase in their
2 troll catch due to the season that we have set for them.
3 On the Puyallup, when we did have a season that was
4 operating, the Puyallups took a substantial quantity of
5 salmon in that fishery under State regulations. The
6 Nisqually, I think that we are really talking about an
7 increase that is largely to come. Our main plants -- it
8 takes a few years after you plant before the fish are
9 adults and come back. Their fishery off-reservation is
10 probably benefitted to a degree already but will acceler-
11 ate sharply in the next few years.

12 Q That is your hope at least?

13 A I will guarantee it.

14 Q All right. Just for a specific example, Mr. Lasater,
15 it is true, is it not, that the game fish jurisdiction
16 begins on December 1st of the year?

17 A No, their jurisdiction is year-around.

18 Q In the various rivers where Steelhead run their juris-
19 diction in terms of regulations and enforcement begins
20 on December 1st, does it not?

21 A No, it is year-around.

22 Q In the Nisqually River, do you know whether there is a
23 Chum salmon run during December, January and February?

24 A Yes, there is.

25 Q To your knowledge, is there an Indian net fishing effort

1 on that run?

2 A Yes, there is.

3 Q Is it on-reservation or off?

4 A Starting after December 1 the fishery is on-reservation.

5 Q That is to say that the Department of Fisheries after
6 the 1st of December does not authorize any of the treaty
7 net fisheries we have been talking about before outside
8 reservation boundaries?

9 A That is correct.

10 Q What is the reason for that?

11 A The reason is that at the request of the Game Department
12 we close the off-reservation season because of management
13 of the Steelhead run.

14 Q And do you know the justifications for their request?

15 A No, not in any detail.

16 Q Well, what reasons did they give you that it was necessary
17 to conservation of the Steelhead resource that you pro-
18 hibit the Indian net fishery on Chum after the first of
19 December?

20 A I don't remember any specific reasons. It is for manage-
21 ment of the Steelhead run.

22 Q Just so I understand you completely, all that was asked
23 was not to allow any Indian net fishery after December
24 1st on Chum on the Nisqually and without more you said
25 Fine?

1 A I would have to go back into the record to look at the
2 letters or whatever there might be to see specifically
3 what was said. It is for management of the run, whatever
4 that implies, and I don't remember in detail what the
5 documents might have said specifically. They may very
6 well have referred to conservation or such, but I don't
7 remember particularly.

8 Q Okay. Is there anybody besides you that we would go to
9 to find out the details?

10 A Oh, we would look in our files to find out what the
11 letters were that came to us on this matter.

12 MR. PIERSON: Bill, Earl, could we
13 agree among ourselves as to a chance to look at some of
14 those letters before we leave?

15 MR. HOVIS: Or furnish them as part of
16 the exhibits.

17 MR. PIERSON: Or furnish them to us.

18 MR. MCGIMPSEY: Sure.

19 THE WITNESS: I am reasonably sure from
20 my memory that we have a letter of request from the Game
21 Department on the matter.

22 MR. HOVIS: Would you ask him if it
23 was based on those letters rather than conversations that
24 the Department acceded to this request, and if so, then
25 at the time he signs the deposition why, or reviews the

1 deposition, why, we can attach that letter to the depo-
2 sition perhaps.

3 MR. PIERSON: Okay. Let me go back
4 a little farther.

5 Q (By Mr. Pierson) Without feeling that you are pinning
6 yourself down - I am trying to get an idea of what
7 happened - is it your recollection that there were specific
8 citations of data or practices or any kind of conserva-
9 tion information which were at the basis of this report,
10 or was it just the request that it was in the interest
11 of conservation?

12 A I don't remember the full basis for the request. I think
13 we would have to look at the letter.

14 Q Do you have any independent recollection of what would
15 be in the files about conservation or other verbal
16 communications you might have had with the Department of
17 Game on the matter?

18 A As I remember it we either requested verbally or by
19 letter Game's consideration on certain seasons and their
20 timing as to how it might affect Steelhead and their
21 views on the matter and we got a letter back. That is
22 the best of my recollection on it.

23 Q And you do this customarily when you get into the area
24 of Fisheries Department regulations which may influence
25 the take of Steelhead and the Steelhead resource?

1 A. Sometimes our interactions are verbal; sometimes in
2 writing. We communicate any particular way that is
3 convenient and would suit the purpose.

4 Q But this is part of the practice of getting their views
5 on your regulations which influence conservation of the
6 Steelhead resource, that is what you do it for, that is
7 why you wrote and asked them for their views?

8 A Yes.

9 Q Okay. And customarily, do their views come back with
10 detailed information about why they feel as they do, or
11 do they just state their position without more?

12 A Over the years it must have varied from one extreme to
13 the other, depending on the circumstance.

14 Are you particularly referring to off-reservation
15 Indian fisheries? You said Steelhead management.

16 Q Well, what I am getting at is an idea of the practice
17 under which you take the requests or recommendations or
18 views of the Department of Game in deciding how to set
19 seasons on salmon.

20 A Okay. It is going to vary all over the place because if
21 it is a minor point and the guy calls up and says, "Hey,
22 how about this?" and the other guy says, "Heck, there's
23 no problem," then you will forget about it, or if it
24 gets into where there might be say a conflict of regu-
25 lations or such, that becomes a policy matter, and it

1 will be referred all the way up to the Director, or
2 something like this where it is a matter of law you
3 might end up with a signed document or letters of some
4 sort. It is going to all together depend upon the cir-
5 cumstance.

6 Q In your experience and under the policy directives which
7 were given to you within the Fisheries Department, have
8 you determined that the Indian net fisheries which you
9 permit will be confined to the periods in the Nisqually
10 River before December 1st?

11 What I am getting at is why all of a sudden on
12 December 1st the Indian net fishery which you have per-
13 mitted before that time is eliminated.

14 A As I remember the letter the Game Department set that
15 as the date at which time our regulations would impact
16 the Steelhead run and requested no net fishing after
17 November 30th.

18 Q And was there any indication as you recall in the letter
19 of previous experience with such Indian net fisheries on
20 Steelhead?

21 A I don't remember.

22 Q Okay. Was your decision in any way to eliminate the
23 off-reservation fishing as of December 1st influenced by
24 your concern to conserve the Chum resource?

25 A No.

1 Q Do you know how many Chum salmon were taken this past
2 season by the Indian net fishery on the Nisqually before
3 December 1st?

4 A No, I don't. I would have to go to our statistical
5 people and ask for a breakdown on the information.

6 Q Do you know just offhand whether the peak of the Chum
7 run occurs before or after December 1st?

8 A It occurs after December 1st on the Nisqually.

9 Q Do you know whether as far as the Nisqually is concerned
10 the more desirable Indian net fishing sites are on or
11 off the reservation?

12 A Give me an area. Do you mean in the total river, river
13 and Puget Sound, or the river itself?

14 Q Well, in your experience with the Indians in this off-
15 reservation net fishery on the Nisqually, would they
16 have preferred to take the Chum salmon off-reservation
17 than on?

18 A Gee, I think they would have to answer that. I am not
19 sure.

20 Q You don't know as a matter of the efficiency of the
21 technique of the net fishing they utilize whether it is
22 more efficient or better or easier to operate on the
23 reservation as opposed to off?

24 A Well, here is what I have to go on: In talking with the
25 Nisqually Tribe about the off-reservation area they said

1 that they would like to fish a greater area off-reservation
2 than we have allowed, and I pointed out to them that in
3 our opinion they were taking about the full harvest that
4 the river could afford, and that if we were going to
5 expand the area then we would want to talk to them about
6 what measures they would be taking on-reservation to
7 keep the total catch within bounds, and then we could
8 negotiate about the size of the area off-reservation.
9 They have not chosen to negotiate to further restrict
10 on-reservation, so my conclusion is that they regard
11 their on-reservation sites very highly.

12 Q And in this consideration with the Nisquallys, was there
13 any discussion or consideration given to limiting any
14 of the take at any point seaward of the mouth of the
15 Nisqually?

16 A I don't remember a particular conversation along this
17 line.

18 Q Did you consider that at all as a means for augmenting
19 the off-reservation Nisqually take?

20 A I would be certain that we would have pointed out the
21 size of the salmon preserve, that we now have to protect
22 the Nisqually run, and our management efforts throughout
23 the rest of the fishery. I think we would have gotten
24 into this as a matter of course.

25 Q From your information and experience, if you had increased

1 even further the preserve out in the South Sound, would
2 it have increased the run in the Nisqually?

3 A Not on Chums it wouldn't, because the Chum run for the
4 Nisqually almost entirely comes through after the rest
5 of the Puget Sound fishery is closed. It is almost
6 entirely a Nisqually Indian fishery.

7 Q And our whole conversation to your mind has been confined
8 to the Chum run in this regard, we are not talking about
9 salmon generally?

10 A No, I thought your questions were on Chum.

11 Q Yes.

12 MR. DYSART: Off the record a second.

13 (WHEREUPON, there was
14 an off-the-record
15 discussion.)

16 Q (By Mr. Pierson) Just one further thing. In the dis-
17 cussions which you had with the Nisquallys, would you
18 have considered expanding the South Sound preserve if
19 the Nisquallys had shown an amenability to limit their
20 on-reservation take?

21 A That would have been I think a matter of trying to figure
22 out what in the world the law requires us to do further
23 to meet the treaty right. We are back into the legal
24 judgment of what are we required to do when we get to
25 how far do we go.

1 Q If the law required you to provide for the Indians by
2 comparison with the other groups who utilize the resource
3 a fair and equitable share and you had requested that
4 they limit their on-reservation take of the Chum, in
5 return for their agreement to do that, would you have
6 considered expanding the South Sound preserve to increase
7 the run in the Nisqually?

8 A Oh, not on Chums because it wouldn't work. There is
9 virtually no commercial fishery by non-Indians on the
10 Nisqually Chum run. It comes through after we have
11 closed the Puget Sound fishery. They are in a very nice
12 position in that regard.

13 Q Would you have considered increasing your planting effort
14 in the Nisqually to augment the run if they were to
15 agree to limit the level of their on-reservation fishing?

16 A Not on Chums. Our hatchery capability on Chums is very
17 limited, and we are building it up, but we are not in a
18 position to make massive plants of Chums any place now,
19 any river. Our techniques are not anywhere near as good
20 on Chums as they are on Chinook and Coho, so our main
21 hatchery fish are Chinook and Coho, and we are starting
22 to build up our hatchery efforts on Chums. We are just
23 getting our techniques down in that regard. Sockeye and
24 Pinks, we have virtually no hatchery effort. We do a
25 little at Hoodspout. So our capabilities are different

1 on the different species.

2 Q In terms of your consideration, your discussions, coord-
3 dination with these fairly-recent Indian net fisheries,
4 would you consider such adjustments if you were instructed
5 that as a matter of law the guiding standard was a fair
6 and equitable share?

7 A If somebody defined a fair and equitable share, then I
8 would give this guideline to the staff and say, "Come up
9 with the best alternatives to meet this," and then we
10 would consider those alternatives. Then we would want
11 to talk to the particular tribe of Indians about these
12 alternatives, probably informally before we ever got to
13 the hearing stage, and then go through the A.P.A. pro-
14 cedures to enact the needed regulations.

15 Q To take the Nisqually example again, let's assume just
16 for the purpose of my trying to understand how you might
17 implement a fair and equitable share that if you had the
18 capability of expanding the river run, either by increased
19 hatchery plants or expanding the preserve area, and you
20 wished to decrease the number of on-reservation fish
21 taken, and adjust the fair and equitable share, would you
22 consider the Department's adjusting of the South Sound
23 preserve or increasing the hatchery plants in return for
24 the Indians' agreement on-reservation to limit their take?

25 A To me you have asked me a contradiction. If you are

1 going to increase the run through hatchery plants, then
2 chances are you don't have to ask for a decrease in the
3 reservation fishery. You put them both together.

4 Q Let's assume in the hypothetical you had a sport fishery
5 above the reservation and your intention was to have an
6 increased escapement from or beyond the Indian net
7 fishery, the Indians wanted to fish a fair amount but
8 they wanted also to do it off-reservation, and you deter-
9 mined to provide a sport fishery above the reservation,
10 you had to have a substantial escapement from the on-
11 reservation net fishery but you couldn't be sure to do
12 that unless the Indians on-reservation would agree to
13 restrict somewhat their on-reservation net fishery, and
14 the Indians say in return for that, "We would like you
15 to expand the initial influx into the river so that out-
16 side the reservation we can take more," in return for
17 their agreement to limit their on-reservation net fishery,
18 would you discuss, would you consider the options of in
19 return expanding the South Sound preserve or increasing
20 the number of hatchery plants in the river?

21 A We have told the Nisquallys that the matter is open for
22 negotiation, and that is a matter of record with the
23 tribe.

24 Q I am not sure whether you answered me yes or no or in
25 between.

1 A Oh. The potential is there for us to work out various
2 arrangements with the tribe, depending upon the circum-
3 stances, and basically I have told them that if we are
4 able to increase the numbers of fish in the Nisqually
5 to the point where it makes sense to harvest over a
6 larger area, then we are going to be ready to negotiate
7 it. Now, even beyond that, of course, we may just plain
8 believe that if there is enough fish it is our obligation
9 under the law to increase the area.

10 Q Okay.

11 A But when I say "negotiate," we would like to talk to the
12 tribe about it.

13 Q Switching for the moment to an entirely different sub-
14 ject, are you aware of any studies on the Fraser River
15 concerning the capability of nets to take anadromous fish
16 runs?

17 A Yes, I am aware of it.

18 Q Can you give me some samples of how recent these were
19 and what fish runs were involved and precisely the con-
20 clusions and data involved to the extent you know?

21 A Well, the study I remember, and I can't remember the date,
22 it's been several years ago now, and I doubt if the data
23 would have changed, is on Sockeye. One of the statements
24 of the Salmon Commission staff was that the fleet is
25 capable of taking ninety-eight percent of the run. I am

1 not sure whether they meant exclusively on the river.
2 They may well have been talking about the total U.S.-
3 Canadian fleet throughout the fishery.

4 Q This is a fishery that is first of all bi-national, two --
5 A Right.

6 Q And there is a Commission which regulates the harvesting
7 techniques, time, place and manner of both of the
8 nations' fishermen?

9 A Yes, the U.S. and Canada.

10 Q And the method of fishing is by net?

11 A Yes.

12 Q Is it purse seines and gill nets?

13 A Yes. There are some Indian dip net fisheries, and
14 probably other methods by native Indians upriver also.

15 Q And the conclusion of this report about ninety-eight
16 percent capability, was it including the Indian dip net
17 fishery?

18 A I am reasonably sure it was referring to the net fishery,
19 and off the river, and by the two nationals. I don't
20 think it was referring to the exclusive Indian fishery
21 that exists upriver.

22 Q And the reports spoke only in terms of capability, is
23 that correct?

24 A Yes, because it is regulated to prevent just that from
25 happening.

1 Q That regulation has been successful I take it?
2 A There is, of course, a margin of error in any regulation
3 scheme, but it has been reasonably successful.
4 Q Were there to your knowledge any Steelhead involved
5 in the runs which they were studying?
6 A Not to my knowledge.
7 Q Were they all salmon?
8 A The study I am quite sure referred specifically to
9 Sockeye salmon.
10 Q Now, you are speaking just of one study; do you remember
11 when that was done?
12 A No, I don't.
13 Q Has it been five years, or more than that?
14 A I wouldn't be at all surprised that it has been.
15 Q In your knowledge of the Fraser River fishery, has it
16 materially changed in the type of fishing or the degree
17 of effort since the report?
18 A If anything the capability of the fleet is increased due
19 to more modern gear, more modern nets, better power and
20 such. I think the capability of the fleet is greater
21 now than it was at the time the report was written up.
22 Q And the resource, although with incidental decreases,
23 has generally either stayed the same or expanded?
24 A It varies all over the place, depending upon race and
25 cycle of Sockeye, but it has been maintained.

1 Q Do you know of any other reports on the Fraser River runs
2 besides that one which would speak in terms of the per-
3 centage capability of the net fisheries?

4 A I am quite certain that in some respect there would be
5 any number of others. The annual report and such con-
6 stantly refer to the efficiency of this gear or that
7 and how it affected certain runs and so forth. So there
8 is much information upon the efficiency of the gear in
9 any particular year or area in their report.

10 Q Would these get into the specifics about those years and
11 runs which have decreased, or showed some --

12 A Oh, yes.

13 Q They are put out yearly?

14 A They have an annual report that pretty well covers the
15 past season's fishing.

16 MR. PIERSON: That is all I have.

17
18
19 EXAMINATION

20 BY MR. ZIONTZ:

21 Q Mr. Lasater, I want to ask about the reef net fishery
22 near Lummi Island. Are you familiar with the reef net
23 licensing?

24 A Yes, I am.

25 Q First of all, could you tell me whether the license that

1 is issued by your Department has reference to any par-
2 ticular site?

3 A No, it doesn't.

4 Q It is an annual license?

5 A Yes.

6 Q Is that license issued to anyone who applies?

7 A That is right, anybody that fills out an application and
8 puts down the price of the license may get a reef net
9 license.

10 Q It doesn't matter whether he has a site or location on
11 which to use that license or not?

12 A Not to this Department, no.

13 Q Now, you do attempt to regulate the reef net fishery?

14 A Yes, it is regulated by time, and there is a State law
15 that regulates the areas in which reef nets may be used.

16 Q And do you also by regulation provide for the number of
17 nets that may be located in any given area?

18 A No.

19 Q Do you provide for the separation between nets or boats?

20 A No.

21 Q Do you have any knowledge, formal or informal, as to how
22 these sites are occupied by individuals?

23 A It's by agreement among the fishermen.

24 Q Has there been any sale of sites, that is, does a fisher-
25 man have some claim of ownership which he can transfer

1 to somebody else for a price, do you know?

2 A I believe that on an informal basis between them that
3 this is the case.

4 Q You have been in this fisheries work for what, twenty-
5 five or thirty years?

6 A I have been with the Department about twenty-two years.
7 I haven't been in management of fisheries that long.

8 Q At one time these reef net sites up near Lummi Island
9 were at least to some extent occupied by Lummi Indians,
10 are you aware of that?

11 A I have heard testimony that the original idea of reef
12 netting is an Indian idea, but I don't know specifically
13 if the Lummis themselves fished that way or not. I have
14 no personal knowledge of it.

15 Q You have no knowledge as to whether any of the reef
16 netters were Lummis at any time?

17 A I am sure that Lummi Indians must have served on reef
18 net crews, and probably still do, but I have no personal
19 knowledge.

20 Q You have never gone up to the reef net sites and per-
21 sonally gone aboard or talked to any of the people?

22 A I have not asked a person if he's a Lummi Indian.

23 Q I see.

24 A I have seen people that I would consider to be Indians
25 working the gear.

1 Q Now, your Department, of course, does not require
2 licenses of treaty Indians who engage in fisheries at
3 their usual and accustomed places?

4 A We don't require licenses of any Washington Indian,
5 treaty or non-treaty.

6 Q Okay.

7 A Now, this is fishing licenses.

8 Q Right.

9 A If he wants to get into the wholesale fish business or
10 something that is different, but we don't require a
11 license of any Washington Indian.

12 Q What is the reason you make no distinction between treaty
13 and non-treaty?

14 A It is a policy matter in State government, and we have
15 been doing this for quite a long time, and so it is a
16 State policy.

17 Q I see. Does your Patrol check the reef netters to see
18 whether they are all licensed?

19 A Yes.

20 Q Have you ever encountered a situation where you had an
21 Indian reef netter who was there but did not show a
22 license because he was an Indian?

23 A I have no knowledge of this.

24 Q I see. Presently your Department is setting a Makah
25 troll fishery season separate and apart from your regular

1 commercial season, isn't that right?

2 A It is an off-reservation fishing season for Makah Indians.

3 Q What area is covered by that off-reservation season?

4 A It is generally the area adjacent to the reservation and
5 extending, if my memory serves me right, down the Strait
6 of Juan de Fuca a distance past the reservation. I don't
7 know the number of miles.

8 Q Do you know by what method the Makahs are fishing in
9 that season?

10 A They are trolling.

11 Q Trolling only?

12 A Yes, I am quite sure it is a troll season.

13 Q During that same period when the Makahs are trolling,
14 is that area also open to sports fishing?

15 A I am trying to remember where the line is.

16 No, it is not all open to sport fishing. If I
17 remember correctly now the line for sport fishing is at
18 Waadah Island, and the Indians fish seaward of that point,
19 so there's a part of the area that is open to Makah
20 Indians to troll that is closed to all non-Indians for
21 fishing for a time. Then when the season opens up on
22 April 15th, then people can fish seaward.

23 Q That is sports fishing?

24 A Yes. Then there is a line out by Tatoosh where commercial
25 trolling takes place beyond that.

1 Q But there is some point in that season where you have
2 Makah trollers and sportsmen but no non-Indian trollers
3 permitted?

4 A Yes, in part of the area. Part of the area it's only
5 Makah trollers.

6 Q Now, I think it was you who said that you have no par-
7 ticular concern about hook-and-line fishermen causing any
8 impact on a particular run, it is the commercial effort
9 which creates the most serious problem for management?

10 A I didn't say "no concern." The concerns are different.
11 The sport fishery, of course, takes a particular number
12 of fish and they have to be accounted for, but your
13 management concern is not as great due to the lower
14 efficiency and the spreading of the fishing effort over
15 a larger period of time, so you don't get the sudden
16 extraction of a large body of fish so that you lose con-
17 trol.

18 Q I see. If other Indian fishermen were to enter the
19 troll fisheries so that you got an increase in the num-
20 ber of Indian trollers, would this cause any particular
21 problem for the Department in terms of allocating an
22 Indian commercial season that was broader than the non-
23 Indian commercial season?

24 A First I would like to distinguish between hook-and-line,
25 meaning sports fishery, and commercial trolling. The

1 impact is quite different.

2 Q Why is that?

3 A Because the commercial troller can use six main lines
4 with any number of lures attached, where the sport fish-
5 erman is fishing a rod with one line and lure, and the
6 commercial troller may be fishing up to forty-eight
7 lures at times, and there is a vast difference in their
8 capability to catch fish. The sports fisherman can take
9 three salmon per day; the troller can take an unlimited
10 amount per day. It just depends on his capability
11 while he is fishing. There is a big difference between
12 hook-and-line fishing by commercial trollers and hook-
13 and-line fishing by sportsmen.

14 Q Your sports fishery has been increasing each year for
15 the past fifteen years, hasn't it, in terms of the number
16 of people entering the fishery?

17 A Yes.

18 Q Have you any idea of what the average increase is per
19 year?

20 A No. We could look that up for you but I haven't
21 committed it to memory, no.

22 Q Which reminds me, when you mentioned that your management
23 process is a process of gathering the catch data and
24 analyzing it and reading that out seeing what the story
25 is each time, do you utilize a computer in that operation?

1 A Yes, we do. Basically we have this whole matter set
2 up to make computer runs very rapidly, cranking the data
3 in, and it is information from the commercial fishery
4 once the run starts that gives us our precision as we
5 come down Sound and toward the river mouth, and our
6 sampling comes from the actual catch. That is the best
7 clue to numbers, if you know the variables that are
8 involved. So our accuracy is dependent upon the sampling
9 of the commercial fishery. That is our sampling tool on
10 the run as it proceeds.

11 Q I understand that. Where is the computer located that
12 you use?

13 A On the campus here some place. I have never gone and
14 viewed the beast myself.

15 Q Do you have a computer programmer that is part of your
16 staff --

17 A Yes.

18 Q (Continuing) who operates that?

19 A (Witness nods affirmatively.)

20 Q I take it your computer is programmed so that you have
21 the index numbers built into it that represent the
22 spawning levels and the catch levels at each point along
23 the season so that you just feed in your current data
24 and you get a comparison, you know, whether you are doing
25 better or worse than a previous season, is that right?

1 A Oh, we don't rely on a computer I don't think to quite
2 that extent. We rely on the computer to spit out the
3 figures quickly so that we can compare them using human
4 judgment. We don't have every last item in a computer
5 program so that all you have to do is punch the button
6 and you get the answer for managing the fishery. By no
7 means.

8 Q I see. But I take it there is no question that you
9 could, whether by human analysis or computer analysis,
10 adjust your times and areas so as to allocate or provide
11 differing quantities of fish to different fishing users
12 in the process?

13 A If the Court would tell us what we should do for the
14 Indian treaty fisheries, then we have the capability of
15 doing that, whatever it may be.

16 Q Well, you mentioned earlier that you were forbidden by
17 State law to allocate; what is the source for that state-
18 ment?

19 A None of the laws in our code book either point out a share
20 for any group nor does it give the director the authority
21 to decide such shares. It is just not there.

22 Q On the other hand there is no prohibition against it, is
23 there?

24 A We do not do that which we do not have authority to do.

25

(Pause in proceedings.)

1 Q (By Mr. Ziontz) My learned colleague whispers in my ear
2 that you allocate shares on the Columbia River, do you
3 not?

4 A On the Columbia River we try to give everybody an oppor-
5 tunity to fish, and we have never set out a particular
6 number that this group or that group is to take.

7 Q Well --

8 A We try to see for instance that enough fish get through
9 the lower river fishery that based upon our knowledge
10 of the Indian fishery up above, with their capabilities
11 and at the level at which they might fish during par-
12 ticular seasons, well, that they will be able to have
13 a meaningful fishery, that their opportunity is somewhat
14 equivalent to our peoples' opportunity to catch fish.

15 Q Well, I realize that when you say "opportunity" you are
16 not delivering the fish by truck to the user, he's got
17 to go catch those fish, so naturally it is an opportunity
18 and he's got to avail himself of it; on the other hand
19 your Department definitely takes responsibility for
20 making an opportunity available at a time when it is
21 meaningful, and concerning trying to fulfill responsibilities
22 to different groups, for example, the State of Idaho,
23 you have concern that if you don't make sure that Idaho
24 gets fish, Idaho may not care about whether there is any
25 fish that come back downstream, isn't that right?

1 A You see, where we don't have good guidelines on what
2 this fair share is, whatever it is, we hope that what
3 we do cannot be challenged successfully either by the
4 Indians in Court or by the non-Indians in Court. That
5 is just the flat out best that we can do at this time.

6 Q Are you saying that if you were pushed into admitting
7 that you really are allocating somebody might challenge
8 you and say that you have no Constitutional right to do
9 that?

10 A If we did in fact allocate they would be right.

11 Q Okay. You are aware that there is a contention of some
12 kind between the Lummi Tribe and this Department about
13 the North Half or the North End of Bellingham Bay as to
14 whether or not those waters may legally be opened by
15 this Department to commercial fishing?

16 A I don't believe there is a contention, I believe there
17 is a misunderstanding about it.

18 Q Could you explain the misunderstanding as you see it?

19 A Yes. The northern part of Bellingham Bay, you are follow-
20 ing a description in the treaty that describes a line
21 around the area, and when it comes to following the low
22 tide mark, and when it comes to Point Francis, it says
23 and thence to Treaty Rock. The Lummi Indians claim that
24 the line goes directly across the bay to Treaty Rock,
25 and our reading of it and as we understand it the

1 interpretation of it by the Federal Government is that
2 all of the wording to that point is following the low
3 tide line and the words say "around Treaty Rock" not
4 "from". So the view is that the line continues to
5 follow the tide line. Now, the Lummis claim that it goes
6 across and that part of the bay is actually reservation.
7 We have told them that if this is so, then our law is
8 of no force and effect inside that line, and "You are
9 perfectly free to run them out," but that "We have no
10 jurisdiction doing this," so that whichever, "If this is
11 really yours, then go ahead. We don't care." But the
12 interpretation we have from the Attorney General's office
13 and the interpretation as we understand it from the
14 Federal people is that the line does not go across the
15 bay, but we don't really care, it is up to the Lummis.
16 If that is reservation, then our regulation is null and
17 void inside that line.

18 MR. DYSART: Excuse me just a moment,
19 Al. You said a moment ago "around Treaty Rock;" I think
20 you meant to say around "Point Francis."

21 THE WITNESS: Yes, I am glad you
22 corrected that.

23 Q. (By Mr. Ziontz) Are you aware, Mr. Lasater, whether
24 there was any time in the past when this Department did
25 recognize that line on the diagrams and maps and charts,

1 that is, recognize this as a Lummi Preserve or Lummi
2 Reservation area?

3 A Not to my memory.

4 Q I see.

5 Did you plant the Nooksack River?

6 A Yes.

7 Q Have you always planted the Nooksack River?

8 A Not always. There was a time when we weren't here, but
9 we have had a hatchery on the Nooksack for many, many
10 years.

11 Q What I meant was, was there a period when you suspended
12 any planting operations because it was a river that was
13 adjacent to the Lummi Reservation?

14 A I don't believe so. To the best of my memory we have
15 always planted out of the -- I mean, the Nooksack
16 Hatchery into the Lummi system. I don't believe we
17 have ever suspended plants there.

18 Q Where is that hatchery, Mr. Lasater?

19 A What the dickens is the name of the creek it is on?

20 I have lost the name of the particular creek.

21 Q Well, that's fine.

22 Are you aware of any problem with fish survival in
23 the Nooksack River as a result of pollution of that
24 river system?

25 A Bellingham Bay is polluted, and it is our opinion that

1 it affects the survival of the Nooksack River.

2 Q How about the Nooksack River itself?

3 A I am not sure of the situation right at the moment, but
4 there have been a number of problems on the Nooksack
5 River itself from the agricultural industry.

6 Q Has your Department taken any steps to improve that
7 situation, to curtail pollution?

8 A We, of course, do not directly have it within our
9 authority to curtail pollution, but we have worked for
10 years with the old Pollution Control Commission and with
11 the present Department of Ecology to abate the pollution
12 in that general area.

13 Q You talk about your over-all function, your over-all
14 goals; is it not correct to say that you accept a certain
15 set of political and economic facts as given and try to
16 work with those facts in order to achieve a maximum sus-
17 tained yield of this salmon resource?

18 A See, our authority derives from the Legislature, and we
19 do what we can, the maximum that we can within the
20 authority given us and the funds allotted to us.

21 Q Well, what I mean is, you inherit a fishery which has
22 certain people who claim property rights and a right to
23 participate in that fishery, purse seiners, gill netters,
24 trollers, sportsmen, and you are attempting to accommodate
25 all of those interests in that system and still preserve

1 the resource to return for another year, isn't that
2 right?

3 A Not exactly. We would tell them right away that they
4 have no property right, that fishing is a privilege that
5 they derive from the State ownership of the resource.

6 Q Does that mean your Department entertains the view that
7 you could close off the activity to any of the groups
8 that I have mentioned, or would you have to close it off
9 to all?

10 A No, we cannot pick out a particular group and close it
11 to them. That is a legislative prerogative.

12 Q You say it is a privilege, but the Legislature can cur-
13 tail the privilege?

14 A Yes, within Constitutional bounds.

15 Q Do you make any recommendations to the Legislature in
16 that regard?

17 A There are any number of bills that come up, and we point
18 out the biological problems that may occur, and we point
19 out to them problems that may occur, or constitutional
20 problems if we see them, and try to inform them as fully
21 as possible of these things and of the effects on the
22 economy, social structure, whatever we may know about it.

23 Q At present there is no restriction on entry into any of
24 the fisheries, is there?

25 A There is a small area that we can limit entry, and that

1 is if there's an absolute surplus of fish at some point
2 we have to move the gear to it, and then we can limit
3 the numbers, and this is relatively new.

4 Q Are you planting, that is to say is your Department
5 planting any fish in either the Hoko or Sekiu River?

6 A We certainly have. I would have to look up our recent
7 planting record. I don't know what the plants might be
8 recently. We have planted those.

9 Q Well, in what appears to be a general information bulle-
10 tin of your Department, if I can find it, it is stated
11 that the Hoko River was netted or seined on a hit-and-
12 run basis until 1952, when the Director of Fisheries
13 was required by the Ninth Circuit to allow off-reservation
14 fisheries subject to State regulation, that the Makahs
15 set their regulations and the Department did not formally
16 adopt regulations, that this stream has been netted to
17 the point where only a few hundred salmon are caught
18 annually, initially nine thousand Coho, and then one
19 thousand to three thousand Coho were caught, until 1965,
20 that the catches were insignificant after this time,
21 that initially twenty-five to thirty nets were used, and
22 now only four to five are in place all the time during
23 a run.

24 Is that statement and description of the Hoko situa-
25 tion still correct?

1 A What is the date on that, please?

2 Q There is no date on it, sir.

3 MR. ZIONTZ: George, can you tell me --

4 MR. DYSART: I --

5 A Well, it seems reasonably the case, but as far as the
6 numbers of people fishing and catch in recent years, I
7 haven't really looked at it personally to remember it.

8 Q (By Mr. Ziontz) Well, is your Department planning to
9 augment the natural production, present natural pro-
10 duction of all streams where the Indian tribes of this
11 State have usual and accustomed fish rights?

12 A All streams?

13 Q Right.

14 A I would have to look at them one-by-one to find out if
15 it makes good sense in all cases.

16 Q Well --

17 A And whether we have the capability in all cases, and a
18 number of these considerations.

19 Q What limits are there on your capability?

20 A Hauling distance, whether the particular stream is a good
21 spot to plant fish and make good utilization out of fish
22 returning, and any number of these things.

23 Q But your Department is now willing to engage in a planting
24 program to insure runs to these Indian rivers?

25 A We are increasing our plants in this regard. We have

1 always planted any number of streams that have supported
2 Indian fisheries; never stopped. We have always done
3 this. We are increasing this, for two reasons. One is
4 that our capability to bring back hatchery fish has
5 increased in recent years, and then in recognizing the
6 treaty right where there are going to be off-reservation
7 fisheries, well, a treaty right to us implies that the
8 people should catch fish. Then it is a very nice place
9 to pick up any surplus that we might have from a hatchery
10 capability.

11 Q The over-all salmon resource in the waters of this State
12 is added to by Federal hatcheries as well as State
13 hatcheries, is it not?

14 A To some degree. On Puget Sound there is one Federal
15 hatchery.

16 Q Where is that located?

17 A Quilcene.

18 Q I thought there was a hatchery at Quinault.

19 A Oh, that is not on Puget Sound.

20 Q I am sorry, I said the waters of this State.

21 A Oh. I was thinking of Puget Sound.

22 Yes, there is a Federal hatchery on the Quinault,
23 and there's Federal hatcheries on the Columbia River.

24 Q Do you agree that it would be of over-all benefit to all
25 of the fishing interests of this State if the total fish

1 resource were augmented from both sources, that is, State
2 and Federal hatcheries?

3 A Of course. That is the case right now.

4 Q So there is mutual benefit and cooperation is an asset
5 to all sides?

6 A Absolutely.

7 Q You have begun a program of establishing seasons for
8 Indian fisheries, now designated specifically as such,
9 is that right?

10 A Yes.

11 Q When did you begin that?

12 A I don't remember the first year. It would have been
13 since the Puyallup case came down. That is a matter of
14 record but --

15 Q Two or three years?

16 A No, it's been longer than that, but it must be five or
17 six years at least.

18 Q So that you publish in your regulations a provision which
19 specifically says that there shall be a Nisqually season,
20 or there shall be a net season on the Nisqually River,
21 there shall be a net season at the mouth of Commencement
22 Bay or on the Puyallup River for Indians only?

23 A Yes.

24 Q And in that regulation, do you set your opening date and
25 closing date?

1 A Yes.

2 Q And that regulation is intended for the Indians only?

3 A Correct.

4 Q Have you enforced those regulations against Indians by
5 arrests or seizures?

6 A When they fish during closed periods and such as this?

7 Q Yes.

8 A Yes, we have.

9 Q Can you tell me if there have been sufficiently few that
10 you could remember in which cases or what rivers or what
11 tribal groups you have made arrests for violations of
12 your regulations?

13 A I don't remember a violation of the Squaxin agreement.
14 Meaning that there are few enough at least so they haven't
15 come to my attention, not meaning that there have been
16 none. There have been arrests on the Nisqually River,
17 some arrests of Nisqually Indians, but I think more
18 arrests of other people fishing as much in protest I
19 think of State regulations. There have been arrests on
20 the Puyallup, where we have gone through a tremendous
21 legal exercise of who has the jurisdiction, and it has
22 been a rather bad situation, as the notion of who has
23 jurisdiction has shifted back and forth.

24 Q As between what persons or what groups?

25 A Oh, the State Court saying the Reservation does not exist,

1 and then we set an off-reservation Indian fishery, which
2 operated until the Indians and the Federal Government
3 said that Yes, the Reservation does exist, so that we had
4 two sovereign entities with different viewpoints and the
5 Indians caught in a very bad situation where they were
6 listening on the one hand to the Federal Government and
7 we on the other hand had a State Court ruling, and it
8 was a rather impossible situation. Basically, though,
9 the Governor and the Director said that since it is an
10 impossible situation for Indian people that we will back
11 off until the Reservation jurisdiction matter is settled,
12 so that changed.

13 Q You mentioned that there was a Squaxin Island agreement
14 and that there were no violations or there were so few
15 people that it didn't come to your attention that there
16 were any violations --

17 A Yes.

18 Q (Continuing) is it correct to call that an agreement?

19 A Oh, it is under regulation, but the regulation has been
20 arrived at by negotiation with the tribe.

21 Q Are there other cases where this has occurred, that is,
22 a regulation arrived at after negotiation with the tribe?

23 A Yes. There are varying degrees of agreement. The
24 Nisqually regulation, while not entirely agreed to by
25 the tribe, was arrived at after negotiation. We have an

1 area for fishing Coho off Everett for the Tulalips,
2 which was negotiated, but then we adopt regulations or
3 else we don't have anything. I think that the Makah
4 regulations were negotiated, while degree of agreement
5 varied. I met with the Quillayutes, and the Hoh, and
6 the boundaries there were a matter of negotiation, while
7 I wouldn't try to tell you there was complete agreement.

8 Q Would your Department have any objection if a tribe
9 utilized its own patrolmen to observe the compliance or
10 non-compliance of its own members with the tribal regu-
11 lation on these off-reservation sites?

12 A No objection whatsoever.

13 Q There was a plant on the Nisqually River which was widely
14 publicized; when was that, last year?

15 A I am quite sure we announced the plant that we made last
16 year, and probably the year before. I would be almost
17 certain of it.

18 Q Well, in the case of the plant that was made last year,
19 which was announced, do you recall the size of that
20 plant, that is, the number per pound?

21 A No, because it would have varied. We made a series of
22 plants, and the earlier plants were small fish. Then
23 later in the season the fish would have been larger.
24 From memory I would say that we made a series of plants
25 starting with small fish early in the season and progressing

1 to larger seaward migrants later in the season.

2 Q The small fish, do you remember what size they were?

3 A No.

4 Q It has been referred to me that at least one of these
5 plants was a plant of a grade of fish which was surplus
6 to hatchery standards because it was so small that its
7 survival rate was insignificant.

8 A Oh, the survival rate would have been lower than the
9 later plants, but what we do many times is fill the
10 hatchery to capacity with small fish, and then as the
11 fish grow you have to plant some of them out because you
12 can only have so many pounds of fish. Numbers aren't
13 important, it's pounds. So as they grow, then you start
14 planting out, and your degree of survival is lowest
15 with early plants and increases with the later plants.
16 But, you see, your total catch and total return is going
17 to be greater because you actually do plant out these
18 larger numbers with a lower survival. Then later smaller
19 numbers with a higher survival. You get your greatest
20 total return by doing this. That is why it is done.

21 Q Isn't it true that plant was of a size that was smaller
22 than ninety to a pound, it was more like twelve hundred
23 or fifteen hundred to a pound?

24 A I don't remember their size.

25 Q Well, as an over-all policy matter your Department in

1 augmenting Indian production for Indian rivers is going
2 to attempt to plant fish that have as good a survival
3 rate as you will plant any place else?

4 A Oh, sure.

5 May I point out that we would have planted that
6 some place. We didn't have to plant it on the Nisqually.
7 They would have gotten no fish back from them if we had
8 planted them somewhere else. Now, they will get fewer
9 fish than if the fish had been reared longer, but we
10 didn't have the capability to rear them longer. That
11 is why they were being planted. We put them where the
12 Indians got a crack at them. If we'd have planted them
13 for instance in the Green River, they would have con-
14 tributed to other fisheries but not to any specific
15 Indian fishery.

16 MR. ZIONTZ: That is all I have.

17 MR. PIERSON: Off the record for a
18 moment.

19 (WHEREUPON, there was
20 an off-the-record
21 discussion.)

22 EXAMINATION

23 BY MR. GETCHES:

24 Q Mr. Lasater, during questioning by Mr. Pierson you
25 indicated that during the not too distant past the

1 Department of Fisheries had realized an obligation to a
2 user group, that is, the Indian fishermen, that had not
3 previously been realized, and that certain actions had
4 been taken for various reasons that had enhanced Indian
5 fisheries since realizing that obligation; first of all,
6 is that a correct statement that I made, paraphrasing
7 your earlier testimony?

8 A I think it is reasonably accurate.

9 Q All right. Were studies done or was research done
10 specifically to determine ways in which Indian fisheries
11 could be enhanced following the realization of this
12 obligation to Indian fishermen?

13 A I would say yes, with the qualification that we didn't
14 make them as in a large sense a special project which
15 got a separate writeup, they were part of our over-all
16 work, but the staff was told that they had a new client,
17 and they were told that we had to be able to justify
18 our regulations as being reasonable and necessary for
19 conservation, whatever interpretation that means, and
20 that they had an additional burden that they had to
21 assume in setting regulations. So this was done.

22 Q Was any review made of existing regulations to determine
23 the impact or effect of them on Indian fisheries?

24 A That would have been part of the procedure, yes.

25 Q There was an over-all review made then of --

1 A I can be certain of it. That is automatic when you
2 hand this kind of a job to your Fisheries Managers.
3 There is going to be an additional impact. Then they
4 have to review the rest of the fishery. It has to be
5 done.

6 Q Did this take the form of any specifically identifiable
7 studies or research projects within the Department?

8 A I am not sure whether I can specifically identify say
9 a final paper with a signature on it. It is more of a
10 Department effort, where we use all of our expertise
11 and knowledge at hand, which is considerable, to sit down
12 and judge these things.

13 Q On a continuing basis then your people are under instruc-
14 tions to constantly keep in mind the impact on the
15 Indian fishery?

16 A Yes, and we have set up additional capability in that
17 we have assigned a biologist full-time to deal with the
18 Indian fisheries, get to know the Indian fisheries and
19 the Indian people, and to bring together our total
20 Department expertise in the matter and use it to point
21 out where we can and should have such fisheries and how
22 we may manage them.

23 Q Did your comprehensive review of existing regulations,
24 some of which may be regulations that have been around
25 for a very long time, result in the changing of any

1 regulations specifically because of an adverse impact
2 that they might have on Indian fisheries?

3 A No, not to that extent. I think we went the other way,
4 that we adjusted our over-all fishery, but what we did
5 do -- as an example, set nets are not allowed under
6 State law, set gill nets, but when we said we were going
7 to have to review this as being necessary for conserva-
8 tion, then our view was that set nets, or the prohibition
9 of set nets due to social legislation -- well, our view
10 was that the treaty was paramount in this case, so the
11 Department of Fisheries now allows set nets for Indians
12 in its regulations where they are strictly prohibited
13 under State law.

14 Q You mentioned some instances where Indian fisheries had
15 possibly been enhanced by action taken by the Department;
16 did any of this action result directly in a curtailing
17 or reduction in non-Indian fishing through changes in
18 the regulations?

19 A As we heard it loud and clear from the fishermen that
20 used to fish East Pass when we closed it, so they were
21 definitely curtailed, they can no longer fish there.

22 Q Are there other examples besides the East Pass closing?

23 A While it is a little different situation, the Makah
24 fishery, troll fishery, that is fish which would be
25 available to all citizens at a later time.

1 Q This isn't a recent change, though, is it, in the Makah
2 situation? That has been --

3 A What do you mean by "recent"?

4 Q Well, it has been a long-standing practice by the Makahs,
5 hasn't it, this troll fishery?

6 A During a closed period? No, they have always trolled
7 there, but there was a closed season for, gee, a very,
8 very long time, and it's only in recent years, since the
9 Puyallup decision, that we have set up a year-around
10 troll fishery for Makahs near the Reservation.

11 Q You mentioned a special fishery for Nisquallys, a net
12 fishery; was that confined exclusively to Nisqually
13 fishermen, or is that open to other fishermen in the
14 State?

15 A It was confined to Nisqually Indians at their request,
16 and we told them at the time that we weren't certain that
17 they were the only Indians that had a treaty right there
18 but that we would put it down that way and we would take
19 a run at it and if we ended up challenged in Court, the
20 Nisquallys might have to come in Court and testify, so
21 it's at their request.

22 Q Mr. Pierson asked you about a Fraser River study that
23 went to the question of the capability of nets and their
24 impact on the fishery; do you have a copy of that, or can
25 you tell us where we can obtain a copy of that study?

1 A Should obtain it from the Salmon Commission. It is their
2 study.

3 Q I see. And it would be available from them?

4 A I am certain that it would.

5 Q What information did the Fisheries Department obtain
6 about or from the Indian fishermen in the instances where
7 special Indian net fisheries were established, such as
8 the Nisqually situation?

9 A Well, see, we have met with the Nisqually tribe off and
10 on for years and see their fishermen and know a good
11 deal about them, so I can't really relate our knowledge
12 to your question.

13 Q Well, specifically, did you obtain information or did
14 you already have information on the approximate number of
15 fishermen that would utilize the fishery, the type of
16 gear that they would use, the times that they would be
17 utilizing it?

18 A Yes, we had a reasonable amount of information, and then
19 the tribe told us about how many people would fish in
20 the fishery, and much of the information actually came
21 from the tribe, and we told them that we would put in a
22 minimal amount of restrictions in the fishing area, and
23 if they fished with reasonable restraint then further
24 restrictions wouldn't be necessary, if they moved in a
25 tremendous fishing effort then we would have to take

1 another look at it, so a lot would depend on what they
2 did, and so we used their word and followed some of
3 their requests on mesh size, and they requested a week-
4 end closure, so some of the restraints that are in our
5 regulations were asked for by the tribe.

6 Q For as long as you have been with the Fisheries Depart-
7 ment Steelhead have been without the regulatory authority
8 of the Fisheries Department, isn't that correct?

9 A I believe it was in 1935, that Steelhead were made a
10 game fish.

11 Q Do you have a fairly comprehensive knowledge of the
12 biology and migratory and spawning habits of the Steelhead?

13 A Reasonably so.

14 Q Do you know of any biological reason why Steelhead should
15 be regulated separately from other anadromous fish that
16 are utilized for sport fishing?

17 A There are a number of biological considerations. Now,
18 how they would be applied, I have never studied it, but
19 they are far less abundant than salmon, and that has got
20 to be a consideration. Their spawning run is over quite
21 a different period of the year. They spawn in the spring
22 instead of the fall under quite different water flows and
23 temperatures. So there are any number of considerations
24 to be taken into account.

25 Q Would the Department of Fisheries in your opinion be

1 capable of managing the Steelhead resource?

2 A Given some time to acquire the data and expertise and
3 experience, yes. Instantly I would say that we wouldn't
4 be as good at it as we would want to be.

5 Q Would you be as good at it as the Game Department?

6 A I can't answer that question. I don't know.

7 Q Can you conceive of particular factors that would argue
8 in favor of transferring the regulatory authority over
9 Steelhead to the Fisheries Department?

10 A I can conceive of any number of pros and cons on that
11 question and it could be debated for days.

12 Q Is it your personal opinion that it would be a more
13 efficient and effective management of the resource if
14 it were transferred, given the proper time to make
15 adjustments and so forth in the operations here?

16 A I have carefully avoided forming a personal opinion on
17 that subject. I leave it strictly alone.

18 Q Can you conceive of regulations that would make an
19 Indian net fishery for Steelhead feasible in terms of
20 conservation goals, that is, preserving a resource?

21 A Pardon me? I wasn't really listening to that question
22 because I should say that on the former question on par-
23 ticular instances I have often commented off the cuff as
24 a fisherman and whatever on what I thought of a par-
25 ticular regulation by the Game Department and I wouldn't

1 want to hide that from you.

2 Q Very well.

3 A I am sorry.

4 Q That is all right. The question that I asked was, can
5 you conceive of regulations that would make an Indian
6 net fishery for Steelhead feasible in terms of the con-
7 servation goal of maintaining the resource?

8 A I don't know. Maybe given some time and study and data
9 I could.

10 Q Do you think then that there could be regulations that
11 would make an Indian net fishery such that it wouldn't
12 necessarily wipe out a run of Steelhead?

13 A I am just not qualified on Steelhead to that extent.

14 Q All right. Would it be fair to say that the over-all
15 goal of the Fisheries Department is conservation?

16 A Yes, because you can define conservation in a hundred
17 ways, and it certainly is.

18 Q Would you define conservation in the terms which this
19 Department applies?

20 A Yes. The basis for the total pattern is that you get
21 your spawning escapement, so it is a renewable resource
22 and you can count it, and the resource should be main-
23 tained as best you can through maintenance of the natural
24 environment and the control of pollution and the sub-
25 sidiary things to protect habitat. The enhancements of

1 the runs through hatchery practices or cultural practices
2 is to be carried on. The regulation pattern itself so
3 that the fish are useful to people is an aspect of con-
4 servation. Then to prohibit fishing practices which
5 would be destructive in themselves is important. An
6 obvious thing, you should not dynamite the hole. You
7 not only get incomplete recovery but you kill everything
8 else in the food chain. So we have on the one hand the
9 maintenance of the resource basically, and on the other
10 hand those practices which lead to wise use of the
11 resource for people.

12 Q Would it be fair to interpret wise use as meaning obtain-
13 ing a maximum yield from a resource for peoples' use?

14 A Maximum yield is one goal, but there are social benefits
15 also besides poundage yield that should be taken into
16 account. People do things because they want things that
17 way, and they may tell us how they want them through
18 their laws and we don't have to agree that it is the
19 wisest choice.

20 Q All right. Well, if we were to take your definitions,
21 putting a high priority on maintaining and enhancing the
22 fishery resource, and also maximizing production, but
23 just leaving aside for a minute the social goals, then
24 your mission would be to get as many fish as possible
25 produced out of every run without harming escapement

1 goals, is that right?

2 A That is correct.

3 Q Now, as a person familiar with fishing methods and the
4 peculiarities of the fish resource, what is the most
5 effective fishing method that you can conceive of to
6 obtain the largest number of fish possible out of every
7 run without damaging escapement goals? Now, we are
8 setting aside the social aspect of who gets the fish.

9 A Are you talking about salmon when you say "fish"?

10 Q Let's talk about salmon, yes.

11 A All right. It would be some combination of gear, and I
12 am not sure what the combination would be. I think that
13 if that was your sole goal, was fish production, and
14 you used some traps in some areas, I think they would be
15 impractical. For instance, Elliot Bay is not a good
16 place to put fish traps any more. There are many other
17 considerations. There are some areas where a fish trap
18 would have to work on a number of streams. I am not sure
19 it would be suitable in all cases. For instance, if you
20 had a group of fish held to a relatively small stream
21 it might not be practical to put in a trap. Perhaps in
22 that case a seine or gill netting makes much more sense
23 than the bigger gear. I think you would work out a com-
24 bination of gear by regions or areas in that case. I have
25 never attempted to try to work out such a total pattern.

1 Q But probably some combination of traps and gill nets,
2 as you indicated?

3 A And possibly seines also.

4 Q Possibly seines. What would be the location to obtain
5 optimum yield as we have defined it?

6 A I have got to add another definition, and that is quality
7 of the fish, because they do change quality rapidly as
8 they migrate, and I don't mean just for sale price, I
9 mean, they lose oil, the oil content, and the actual
10 food value goes down as they approach spawning time, so
11 at some point you would want to back away from the river
12 mouth to give your highest food yield, total food yield.

13 Q I see. But your answer in terms of location would be --

14 A It would take a great deal of research and hard work to
15 determine the exact location for the optimum yield of
16 your fishing operation in a given situation, and we have
17 five species, and it would vary by species also.

18 Q Would it be in the general vicinity of the river mouth
19 in each case, though?

20 A Not in each case as meaning every case. I think in some
21 cases you would want to get back away from the river
22 mouth.

23 Q Generally speaking, would a river mouth be close to an
24 ideal position?

25 A Now, I am thinking for instance of the Chums in the

1 Willapa, we darn near had a batch of Chums condemned
2 there by the Public Health man, and we had to convince
3 him that is how black they are when they get there. They
4 have always been that way. Now, if those fish were taken
5 considerably further away from the river, instead of
6 getting two bits a pound for instance based upon quality
7 the fisherman might get thirty, thirty-five cents a pound.

8 MR. GETCHES: I don't have anything
9 further.

10
11
12 EXAMINATION

13 BY MR. HOVIS:

14 Q I think, Mr. Lasater, you and Mr. Pierson adequately
15 discussed or at least explored the area that I was talk-
16 ing about in regard to where to take the harvest, and I
17 won't spend any more time with you on that, but one of
18 the things in your questioning that left me confused is,
19 there are not more Chum than there are Steelhead, are
20 there?

21 A In many areas there are, yes.

22 Q I am talking about within Washington State and within the
23 Puget Sound fisheries.

24 A Oh, I bet that the Chum run on the Nisqually exceeds the
25 Steelhead run several fold. I think there are areas in

1 the Willapa and Grays Harbor where the Chum runs exceed
2 the Steelhead run in numbers.

3 Q Talking about specific areas, but there are more Steel-
4 head within the exterior boundaries of Washington State
5 than there are Chum?

6 A I am not sure.

7 Q I see. You don't have the figures on what it is?

8 A No, I would have to put the figures together. I am not
9 all together sure.

10 Q I see. And what is your estimation, do you have an idea
11 about this in regards to Sockeye?

12 A I will bet when the run of the Fraser River gets over
13 twelve million I think we are probably exceeding the
14 total State Steelhead run, but I am just estimating,
15 guessing.

16 Q Within the exterior boundaries of the State of Washington,
17 the waters within the exterior boundaries of the State
18 of Washington?

19 A Yes. I am not sure how many Steelhead there are but
20 twelve million is an awful lot of fish, and sometimes
21 the Sockeye run of the Fraser, well, we have had a total
22 harvest of twelve million, so there must have been many
23 more than that. I can't be assured of my answers in
24 this regard.

25 Q I see.

1 A I don't know how many Steelhead there are, I really
2 don't.

3 Q That is understandable. The only thing I wanted to
4 limit, when you were talking about their being more Chum
5 than Steelhead, you were speaking about a specific area,
6 specific river?

7 A I believe --

8 Q You don't have the figures for State-wide?

9 A I believe I made two statements, one, I think I was talk-
10 ing about the Nisqually when I said Chum, but I made the
11 statement that in a given stream we expect salmon to
12 outnumber Steelhead under any natural conditions. They
13 just plain do. For instance, where Coho and Steelhead
14 are in the same stream, and referring to statements I
15 have heard from the Game Department as well, apparently
16 there are about five times as many Coho as there are
17 Steelhead under an average condition in a Puget Sound
18 stream.

19 Q So when you were speaking about salmon you were not speak-
20 ing about a specific species of salmon, but you wanted to
21 limit your testimony to all races, runs, and species?

22 A When I made that statement I was talking about salmon in
23 general compared to the total abundance of Steelhead, yes.

24 Q Thank you very much.

25 MR. HOVIS: That is all.

EXAMINATION

1
2 BY MR. DYSART:

3 Q Mr. Lasater, would it be fair to say that the habitat
4 protection and improvement effort would be similar for
5 salmon and Steelhead, that is, work that would benefit
6 one would also benefit the other?

7 A It would tend to. Not entirely but it would tend to.
8 They would overlap a great degree.

9 Q Same type of activity?

10 A Yes.

11 Q Now, you earlier referred to a long list of streams
12 which have both salmon and Steelhead; is there any inter-
13 agency arrangement as to which agency will engage in
14 habitat improvement on which stream?

15 A No.

16 Q You are funded from different sources; is there any
17 attempt to divide this work up so that one agency bears
18 part of the cost of habitat improvement in some areas
19 and --

20 A No, there is no effort to divide it up.

21 Q Do you have any idea the extent of habitat improvement
22 expenditures and effort by your Department as compared
23 with that of the Game Department?

24 A I have never seen any figures of this type. I have seen
25 our figures.

1 Q Do you do more than they do, or less than they do?
2 A I think we do more.
3 Q Several times more, or roughly comparable?
4 A I have never seen their figures so I really don't know.
5 Q Do you encounter their activities in particular water-
6 sheds, where you know when you are going in to do your
7 activities that they are also doing something on that
8 watershed, or you consciously know they are not?
9 A I don't know one way or the other usually. It would be
10 our stream improvement crews that would specifically
11 encounter them in any area.
12 Q But there is no formalized division of responsibility
13 between the two agencies or an attempt to equalize out
14 expenditures or anything of that kind?
15 A No, nothing of that sort.
16 Q I see.

17 MR. DYSART: That is all.

18 MR. CONIFF: I have no questions.

19 MR. PIERSON: Thank you very much,

20 Mr. Lasater.

21
22 EXAMINATION

23 BY MR. MCGIMPSEY:

24 Q Are you aware - in response to George's questions here -
25 of any coordination between the Game Department and the

1 Fisheries Department as far as regarding hatcheries or
2 stream improvement on the Yakima River or any other rivers
3 where our personnel might work with the Game personnel?

4 A Oh, absolutely. Under the Hydraulics Code, where we
5 attempt to control the activity of citizens that would
6 affect the stream so we can jointly protect the resource,
7 well, the Hydraulics Code applies both to Game and
8 Fisheries, and we share that back and forth as it applies
9 to the protection of the stream from the effects of
10 civilization largely or flood control efforts, things
11 of that type, and work concerning dams and things before
12 the Federal Power Commission, working jointly concerning
13 the power plant Siting Council, many things of that type
14 that have to do with the protection of the environment.

15
16
17 FURTHER EXAMINATION

18 BY MR. GETCHES:

19 Q The only specific project that you have is the one that
20 you mentioned on the Yakima River then that's undertaken
21 under the Hydraulics Code?

22 A I didn't even mention it.

23 Q I think counsel mentioned it. I thought that is what you
24 were defining.

25 A On the Yakima, well, I don't remember who said the Yakima.

1 We do this all over the State, anywhere in the State,
2 under the Hydraulics Code.

3 Q Approximately how much is expended out of your Departmental
4 budget on these projects annually?

5 A I don't know. I would have to look in the budget. It
6 is all documented, but I sure don't commit budget docu-
7 ments to memory.

8 Q What would it be found under in the budget, what is the
9 designation?

10 A It would be under Salmon, and then further broken down
11 into Resource Protection.

12 Q All right.

13 MR. GETCHES: That is all.

14 THE WITNESS: My titles might not be
15 precise, though.

16 MR. GETCHES: That is fine. Thank
17 you very much.

18 THE WITNESS: Okay.

19
20
21
22 
23

J. E. LASATER
24
25

C E R T I F I C A T E

1
2 STATE OF WASHINGTON)
3 COUNTY OF PIERCE) ss.

4 I, EUGENE E. BARKER, Notary Public in
5 and for the State of Washington, residing at Tacoma in said
6 County and State, do hereby certify:

7 That the annexed and foregoing depo-
8 sition upon oral examination of J. E. LASATER was taken be-
9 fore me and reduced to typewriting under my direction, said
10 deposition upon oral examination being taken at Olympia,
11 Washington, on the 29th day of March, 1973, being completed
12 on said day.

13 I further certify that all objections
14 made at the time of said examination, to my qualifications
15 or to the manner of taking said deposition upon oral examina-
16 tion, or to the conduct of any party, have been noted by me
17 upon said deposition;

18 I further certify that I am not a rela-
19 tive or employee or attorney or counsel of any of the parties
20 to said action, or a relative or employee of any such attorney
21 or counsel, and that I am not financially interested in the
22 said action or the outcome thereof;

23 I further certify that the above-named
24 witness, before examination, was by me duly sworn to testify
25 the truth, the whole truth and nothing but the truth;

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I further certify that the right of said witness to read and sign the said deposition after the same was fully transcribed was reserved;

I further certify that said deposition upon oral examination, as above transcribed, is a full, true and correct transcript of the testimony of said witness, including all questions and answers, and all objections, motions and exceptions of counsel made and taken at the time of the foregoing examination;

I further certify that I am herewith securely sealing said deposition in an envelope, with the title of the above Cause thereon, and marked, "Deposition Upon Oral Examination of J. E. LASATER," and causing the same to be delivered to the Clerk of the above-entitled Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 1ST day of ~~April~~ ^{MAY} April, 1973.

Rugene L. Barber
Notary Public in and for the State of Washington, residing at Tacoma.