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Docket Entry 331 - Filed Direct testimony of Louis Cloud

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AUG 17 1973

EDGAR SCOFIELD, CLERK

By Deputy

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6 Attorneys for Plaintiff
7 509-453-3165

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

4 UNITED STATES OF AMERICA, et al.,)
5 Plaintiffs,) NO. 9213
6 vs.) DIRECT TESTIMONY OF
7 STATE OF WASHINGTON, et al.) LOUIS CLOUD
8 Defendants.)

20
21 This is the direct testimony of Louis Cloud submitted
22 on behalf of Plaintiff, Yakima Indian Nation, in this action.
23 This plaintiff expressly reserves the right to submit further
24 testimony by Mr. Cloud, either oral or written, to rebut the
25 testimony presented by the Defendant in this case.

26 Q. Please give your full name and address.


27 A. Louis Cloud, Route 4, Box 4190, Wapato, Washington 98951.

28 Q. Where are you employed and what is your title?

29 A. I am a self employed farmer and fisherman and I am an elected
30 official of the Confederated Bands & Tribes of the Yakima Indian
31 Nation. As such elected official I serve as a member of said

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1 nation's tribal council and as the Chairman of the Fish,
2 Wildlife and Law and Order Committee which is a standing
3 committee of the Yakima Tribal Council. I also serve on other
4 standing and select committees of the Yakima Tribal Council.

5 Q. Would you briefly describe for us how tribal affairs
6 are handled by the Yakima Tribal Council?

7 A. Tribal affairs are handled by a 14-member Tribal Council
8 elected by a General Council open to the adult members of the
9 entire Tribe in assembly. This meets every November, or on call,
10 to act on matters pertaining to the Tribe. Although lacking
11 a constitution, the Tribe does operate in a formal manner under
12 tribally prescribed rules of procedure set out in a resolution
13 enacted by the General Council, resolution T-38-56. The Tribal
14 Council works through the Committee system and the important
15 Committees are as follows:

- 16 1. Timber, Grazing, Overall Economic Development
17 and Fire Supression Committee,
- 18 2. Health, Employment, Welfare, Recreation and Youth
19 Activities Committee,
- 20 3. Loan, Extension, Education and Housing Committee,
- 21 4. Roads, Irrigation and Land Committee
- 22 5. Fish, Wildlife and Law and Order Committee.
- 23 6. Enrollment Committee
- 24 7. Legislative Committee.

25 In addition to these Committees, the Executive Committee, consisting
26 of the Chairman, Vice-Chairman and Secretary, handle matters
27 to be ratified by the Tribal Council. This government controls
28 the governmental expenditures of approximately 5 to 6 million
29 dollars. This is for maintenance and capital expenditure programs.

30 Q. How many members does the Yakima Nation have?

31 A. 6,040.

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1 Q. How is the membership determined?

2 A. Members of the Yakima Nation, are enrolled under the Enrollment
3 Act (Public Law 706 - 79th Congress) approved August 9, 1946. These
4 enrolled members are descended from the fourteen bands named in
5 the Yakima Treaty. It is estimated that two thirds of the enrollment
6 or 4,000, reside on the reservation. Indians from other tribes in
7 the amount of approximately 1,000 Indians also live on the reservation.

8 The roll is increased with the addition of approximately
9 100 members every six months and is decreased by the average of 60
10 members due to death every six months. The Yakima roll is maintained
11 with diligence and enrollment applications are processed by a Tribal
12 Committee and are later approved by the Secretary of the Interior.

13 Q. What religion or religions do these members follow today?

14 A. Several religions are followed. In addition to the followers
15 of the Protestant and Roman Catholic faith, the Washat, which
16 is the principle Old Indian religion is also followed. Another
17 Indian religion is the "feather cult". Also, the Shakers have
18 three churches on the reservation. Celebrations are in the old
19 tradition. First food feasts are held in the spring, which are
20 thanksgiving to a Creator who brings another season of new foods.
21 At these assemblies religious leaders, men and women, direct
22 the gathering of first food which are partaken of in a religious
23 service. Gatherings at Christmas are mixtures of old and new
24 religions and customs and Longhouse committees are in charge
25 of this ceremony, as well as other ceremonies. Along the same
26 line is a New Year's gatherin for war veterans. Other occasions
27 like Washington's birthday, Lincoln's birthday and the 4th of
28 July are patriotic and also a mixture of the old religions and
29 are social occasions and the so-called war dances and other dances
30 take place when men and women in heirloom costumes of buckskins,
31 beadwork and feather plumes compete with visitors from other

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1 resrvations. Some observance of traditional Indian marriage
2 ceremonies is followed, and there are traditional Indian funeral
3 services and memorials that are respected throughout the reservation.
4 Many Indian customs are followed and practiced by the members
5 on the reservation and these are respected by even those who
6 do not take part in such ceremonies. There has not been a serious
7 break from the general old customs in spite of the many religions.

8 Q. Where and what size is the Yakima Indian Reservation?

9 A. It is located in South Central Washington and comprises
10 a gross area of 1,387,505 acres in Yakima and Klickitat
11 Counties. This area was reserved from the 10 million acres ceded
12 by the Treaty with the Yakimas.

13 Q. Would you describe for us the on-reservation employment of
14 members of the Yakima Nation and what individual income they
15 have?

16 A. The median family income is \$4,940.00 with 23% of our families
17 living on less than \$2,000 annually. This compares unfavorably
18 with the state median family income of over \$10,000.00 primarily
19 for the reason that sufficient year-long work opportunities are
20 not available. Occupational skills of the Indian employables
21 are below average, health and housing deficits, some discrimination,
22 a lack of educational level and some lack of motivation hamper the
23 employment picture. Some of the family income is derived from
24 non-earned sources such as lease rentals, timber sales and per
25 capita payments. Some employment by Indian women takes place
26 in garment factories off the reservation and some are employed
27 seasonally at farm work and in canneries and processing plants.
28 Self-employment on the reservation is limited but there are several
29 farmers who are mainly engaged in raising and feeding beef cattle.
30 There are several Indian organizations that work at this line
31 of endeavor on the reservation. Employment at the Agency consists

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1 of 63 Tribal members out of a total employment of 134. Most
2 of these Tribal members working as government employees are paid
3 through Tribal funds. The Indian Irrigation Project has 33 member
4 employees from a total of 110 employees. The number of Indians
5 working for loggers and sawmills in the area is small. Other
6 on-reservation Indian employment consists mainly of agricultural
7 labor, but because much of the open farm labor on the reservation
8 is done by contract crews arranged by citizens of Mexican descent,
9 forcing Indian laborers to seek other employment off-reservation,
10 this employment is also small. A total Indian employment enterprise
11 consists of a commercial net fishery at usual and accustomed
12 places off the reservation on the Columbia River and approximately
13 63 fishermen and 150 helpers, take part in this endeavor. Many
14 of the members are having to leave the reservation to obtain
15 satisfactory long-term employment, and the quota for vocational
16 training and relocation is exceeded in almost every biennium.
17 Small shops selling tobacco products also employed approximately
18 sixty tribal members. However the state has closed these shops and
19 suit again is being brought by the United States to stop this State
20 harassment. Unemployment is in the neighborhood of 28%.

21 Q. As regards tribal income, how is this money spent?

22 A. To maintain our tribal government and to conserve and
23 develop our human and natural resources. In general these
24 expenditures cover programs dealing with land consolidation and
25 purchase, education, law and order, housing, health, timber
26 management, industrial development, credit, welfare and tribal
27 government.

28 Q. As regards education, what is the education level of your members?

29 A. By an active education program to supplement other education
30 programs we have reduced the large numbers of our members who
31 were illiterate and have in the last ten years increased the

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1 education level from six and one half years to 10.1 years.

2 This still is not up to the state level however.

3 We run supplemental education programs particularly
4 during the summer. The main school is in the forest area where we
5 board our children for six weeks Monday to Friday for two sessions
6 of 165 children each.

7 Q. Are you a member of the Yakima Indian Nation?

8 A. Yes.

9 Q. Are you a direct descendent of Indians from aboriginal
10 tribes and bands that composed the Yakima Indian Nation under
11 the Yakima Treaty?

12 A. Yes, I am a 4/4 Yakima and a descendent of treaty signators.

13 Q. What methods have the Yakima Indians used to pass on the
14 history of the treaty negotiations at Walla Walla and the history
15 of the Yakima Indians?

16 A. Basically this history has been passed on by word of mouth
17 from parents to children and in a great part from grandparents
18 to grandchildren. There has been no Yakima written language.
19 Some of our history has been recorded by non-Indians writing
20 down what Indians have told them. There has been some limitation
21 to both methods. First since our history in this area is over
22 25,000 years, there is some limitation that exists from passing
23 this history down by word of mouth through all these years.

24 There is also some limitation as to the lack of communication between
25 Indian declarants and non-Indian recorders. However, the treaty
26 negotiations and execution were very important to the Yakima
27 Indians and I would be of the opinion that these events
28 have been pretty accurately passed on. Also, since the treaty
29 was signed less than 120 years ago, it is a pretty recent
30 event as we consider our history. In any event, this is the
31 best source of Yakima history to be found.

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1 Q. Did you receive instruction from your parents and your
2 grandparents as to the ancient history of Yakima people?

3 A. Yes, also from chiefs and old leaders at meetings for this purpose.

4 Q. What were you told?

5 A. I was instructed that God created this Indian country for
6 us and placed us here to remain on this land forever. Then
7 God created the rivers and the mountains and placed fish in
8 the rivers and deer in the mountains. God also created berries
9 and roots for us. Then the Creator gave the Indians life and
10 as we awakened we knew that the fish and game were for the men
11 to gather and that the roots and berries were for the women to
12 gather. The Creator also made laws through which the fish and
13 game were to increase. We were taught never to abuse the
14 resource or we would diminish as a people. I was taught that
15 we obeyed those laws and the fish and game increased until they
16 were bountiful and we multiplied as a people. I was taught that
17 the land was created for us as our mother to take care of us and
18 that our strength and blood is from the fish. I was instructed
19 that the fish, game, berries and roots were created as our food
20 for us and that cattle, hogs and grain were for others. I was
21 instructed that whenever the seasons opened on any of these foods
22 that I was to raise my heart in thanks to the Creator for his
23 bounty and to attend first food feasts as I do today.

24 Q. Were you also instructed how salmon and steelhead were
25 used by these Indians?

26 A. Yes, I was told and as a matter of fact saw how these
27 foods were prepared. All of my youth I lived on our native
28 foods and even now use them to a great extent. Salmon and
29 steelhead were used and are now used in great quantities
30 both fresh and cured. Pemican was also manufactured and the oil
31 of the male steelhead was an important part in preserving

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1 pemican. In the area of my fathers birth, because of the
2 shortage of firewood these fish were even dried and stocked
3 for winter fuel. From my experience of the amount consumed
4 during my early life, I would believe that there would be
5 in excess of 500 pounds each consumed.

6 Q. Were you told what Governor Stevens said about fishing
7 at the Walla Walla Council?

8 A. Many, many times. In answer to what would happen to us
9 if the whiteman came into our country he told the negotiators
10 that we would never be troubled in the use of our streams and
11 would be able to take fish from them as long as the sun
12 shines, as long as the mountains stand, and as long as the rivers
13 run. He further told the Indians that the government would
14 always protect us from the bad whiteman in our exercise of these
15 rights and that we could always fish as we had fished.

16 Q. Were you told anything about whether the Indian
17 negotiators relied on these premises?

18 A. Yes, I am told that they did and that they signed the
19 treaty after all these weeks of negotiation. I was told one of
20 the reasons it was so long is the Indians were worried about
21 retaining their hunting and fishing. I am told that Kamiakin
22 said "Let them do as they have said is all we ask" signed the
23 treaty, and other Indian negotiators followed with their marks.

24 Q. Were you told in which areas the Yakimas then fished and
25 gathered food?

26 A. To the east, we ranged clear to the Rockies for buffalo and
27 other food at that time. Beyond the Nez Perce country these
28 trips were mainly for fun and trade however. We went south
29 almost to California for fish, game, berries and roots. To
30 the north we even went to Canada for the same purpose. However,
31 to the west we did definitely on a regular basis fish in

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1 the streams running into the Puget Sound. Many Yakimas lived
2 on the west side of the mountains and others made trips
3 over the passes into this area.

4 Q. What type of gear did the Yakimas use then?

5 A. Dip nets, gillnets, traps, weirs, spears and seines according
6 to my information.

7 Q. What use did the Yakimas make of this fish?

8 A. They ate some fish, and cured the rest for their family
9 use and to trade to others.

10 Q. Were any of the fish caught in this area traded to whites?

11 A. I know we traded fish from other areas to whites, but I
12 have no information whether this was done at treaty times from
13 this area. Subsequent to the treaty during my lifetime our
14 fishermen have sold their fish from this area commercially.

15 Q. Do any Yakima fishermen fish in this area now?

16 A. Yes, several. But in recent years the numbers have decreased.

17 Q. Why has the number of fishermen decreased?

18 A. Because of the state action restricting Indian fishermen
19 and the trouble that has resulted, we have not made the necessary
20 fight for economic and time reasons to resist the State's illegal
21 action in this area as we have in other areas. The fight on
22 the Columbia River for instance has been extensive, expensive and
23 time consuming.

24 Q. What do you mean the fight has been "extensive, expensive and
25 time consuming?"

26 A. Starting in 1966 the States of Oregon and Washington started
27 a crash enforcement program against our fishermen in the Columbia
28 River who were fishing in accordance with tribal regulation.
29 Prior to that time there was an un-announced policy to not arrest
30 Yakima Indians fishing in conformity with tribal regulations
31 in most areas. This policy fluctuated from area to area depending

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1 on the interpretation of the Yakima Treaty by the county prosecutor
2 or district attorney or the applicable court. These many arrests
3 caused us to have to set up a defense for our fishermen. We
4 had to make arrangements for bail, attorneys, witnesses, etc.
5 in each of these cases. This fight in this area taxed our resources
6 and we just were not able to do the same thing to protect our
7 fishermen in the Puget Sound area.

8 Q. In any of these cases where the Yakimas were fishing in
9 conformity with tribal regulations has the state obtained a convic-
10 tion.

11 A. No, our position was sustained in every case.

12 Q. Now when you talk about tribal regulation what do you mean?

13 A. There was the pre-1953 period and the later period.

14 Q. Let's discuss the first system of tribal regulation?

15 A. Well, for example, at this time our largest off-reservation
16 fisheries were at Celilo Falls. By discussing the regulation of
17 this fishery it will show the method at other off-reservation
18 fisheries. The chief in charge that I can remember was Tommy
19 Thompson. He ran the whole show. If he was not there he would
20 appoint another leader. He would blow a whistle and we could go
21 fishing. When he blew it again we had to stop. He would fix the
22 time during the day to fish and also the daily closures. For
23 example he never allowed fishing at night or on Saturday or
24 Sunday even though we fished the year round. His regulation
25 was respected and followed. He used as the basis for regulation
26 the laws that the Creator gave us and his understanding of the fish
27 resource gained from a lifetime of study of the river and that
28 location and by instruction from previous leaders. He was a
29 Yakima Indian and later when other tribes began to fish in numbers
30 at Celilo an inter-tribal fish committee was formed to do the same
31 thing as he did. However his recommendations still carried great

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1 weight and I cannot ever remember his suggestions being ignored.

2 My father, Walter Cloud, served on that Fish Committee for
3 years.

4 Q. Now can we go to the next period?

5 A. Well, in 1953 the General Council adopted a Law and Order
6 Code which provided that the Tribal Council should thereafter
7 have the power to adopt rules or regulations for the protection
8 or conservation of the treaty fish resource. Thereafter
9 regulations have been promulgated to regulate our fisheries.
10 The latest and current regulation is Resolution T-90-66 which
11 is the last regulation in Appendix V to the Joint Biological State-
12 ment.

13 Q. Does your committee function under that resolution?

14 A. Yes. It is our duty to set fishing dates. This we
15 have done after gathering biological information, holding meetings
16 with our fishermen and after considering all available information.

17 Q. What geographical area does Resolution T-90-66 cover?

18 A. The Columbia, Yakima and Klickitat Rivers.

19 Q. What about the Puget Sound Area?

20 A. We would and did expect our fishermen to respect the regulations
21 of the tribes in this area. If they did not we would then pass a
22 regulation governing them. Frankly we had no trouble reported to
23 us and until we received complaints, the number of Yakima fishermen
24 did not justify a separate management program.

25 Q. Were any special arrangements made as regards the Klickitat
26 River?

27 A. Yes, by agreement in 1951 and later in 1957 an advisory
28 technical committee composed of one member from the tribe, one
29 member from the Bureau of Indian Affairs, one member from the Fish
30 & Wildlife Service and one member from the Washington State
31 Department of Fisheries were to determine fishing areas, type

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1 of fishing gear, number of salmon and steelhead to be taken and the
2 time of the year fishing was to be permitted. This regulation by
3 agreement ceased in 1962 and the committee has not been reactivated
4 by further agreement.

5 Q. How many years have you been a member of the Fish & Wildlife
6 Committee?

7 A. Eight years, four as Chairman.

8 Q. In regards to these duties have you attended joint compact
9 hearings of the Oregon Fish Commission and the Washington Department
10 of Fisheries which fix fishing dates on the Columbia River?

11 A. Yes.

12 Q. At these hearings are the recommendations of the
13 biologists followed?

14 A. Not consistently.

15 Q. Could you give us an example of the action of the Washington
16 Department of Fisheries being different than that of what their
17 experts said?

18 A. Yes, probably the best one is one that happened right in this
19 courtroom. On May 7, 1968, both Mr. Lasater and Mr. Wendler told
20 Judge Boldt in an injunction hearing in the case of the Department
21 v. Settler, Civil Number 3745 that the salmon run was in such jeopardy
22 that no more salmon could be harvested. It was either the next day
23 or the day after that the Director announced that the season
24 would be open for non Indian commercial fishermen.

25 Q. At the time they testified did the Yakima Tribal regulations
26 provide for a closure.

27 A. Yes.

28 Q. Are you familiar with Article 3 of The Yakima Treaty?

29 A. Yes.

30 Q. Have you been instructed on the meaning of this article and
31 the understanding of the treaty signers of this article?

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1 A. Yes.

2 Q. By whom?

3 A. Parents, grandparents, tribal chiefs and leaders.

4 Q. What were you told?

5 A. That in Article 3 reservation of off reservation food gathering
6 there was no limitation placed on this right by the treaty.

7 At treaty times, the Indians of the Yakima Nation had covered
8 large areas of land in search of food. Most all travel was for
9 this principal goal. If they were to be limited to any appreciable
10 extent they would have to limit their already meager existence.

11 I was told that this was the signers understanding and that this
12 was confirmed by the statements of Governor Stevens that they
13 were to be able to so fish at all of the places that existed
14 at the time of the Treaty.

15 Q. Were you told what the history was of the exercise of this fishing
16 right post-treaty?

17 A. Yes, again by my parents, grandparents, tribal chiefs and leaders.

18 Q. What were you told?

19 A. I was told that for many years after the treaty the Indians
20 of the Yakima Nation continued to take fish at all their usual
21 and accustomed places and there was little fishing by whites.
22 This period of fishing was like that of pre-treaty and treaty
23 times was without regulation by other than those tribes who exercised
24 dominion and control over particular fisheries.

25 Q. Are salmon and steelhead important to the livelihood of the
26 Yakima Indians?

27 A. Yes. Important and necessary to their existence.

28 Q. How many Indians who are members of the Yakima Nation rely
29 in whole or in part on fishing for their livelihood?

30 A. About 2,000. It is about the only income for 65 Yakima
31 fishermen and about 150 helpers.

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1 Q. How many salmon and steelhead do they land?

2 A. I would approximate about 80,000 salmon and about 15,000 steelhead.

3 Q. How long have you fished for a portion of your livelihood?

4 A. Considering the time I helped my dad it has been over a period
5 of 35 years. Not a continual thirty five years because of the time
6 in the service and other years I did not fish but a total period
7 in excess of 35 years.

8 Q. How would you compare the amount of landings today with those
9 in the immediate past?

10 A. The total amount of Yakima landings today are much smaller
11 than in the past. I testify as to this from my own observation
12 and from surveys taken. For example a survey taken in 1942 shows
13 the annual average Yakima family consumption of salmon to be
14 1,611 pounds. A later survey in 1957 indicated that 78% of the
15 on reservation adult male members and 32% of adult on reservation
16 females fished off reservation and landed approximately 1.7 million
17 dollars worth of salmon at 1957 prices. I would approximate
18 that to be approximately 3 million pounds of salmon and steelhead.
19 At Celilo alone the landings of salmon exceeded 2 million pounds
20 and the landings of steelhead exceeded 300,000 pounds some years.

21 Q. Has the annual run of salmon or steelhead in the Columbia
22 River increased or decreased since that period?

23 A. The run has increased since the 1942 and 1957 periods.

24 Q. If the Yakima Nation fishermen were to be unhampered by state
25 regulation, what would your recommendation to the Yakima Tribal
26 Council as to the regulation of Yakima members at usual and accustomed
27 fisheries in the Puget Sound area be?

28 A. I would recommend that the regulation be by an inter-tribal
29 committee or if that were not agreeable to the tribes in that area
30 that the regulations we pass not be less restrictive than those of

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1 Indian tribes in that area.

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STATE OF WASHINGTON,)
COUNTY OF YAKIMA.) SS.

Louis L. Cloud

LOUIS CLOUD, being first duly sworn, on oath
deposes and says: That he has given the within and
foregoing Direct Testimony, knows the contents thereof and
believes the same to be true.

Louis L. Cloud

Subscribed and sworn to before me this 16th
day of August, 1973.

James H. Roy
Notary Public in and for the
State of Washington, residing at
Yakima.

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