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Docket Entry 350 - Filed Deposition of Bill Frank Jr

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF WASHINGTON

FILED IN THE
WESTERN DISTRICT OF WASHINGTON
UNITED STATES DISTRICT COURT

AUG 24 1973

EDGAR SCOFIELD, CLERK
Deputy

THE UNITED STATES OF AMERICA,
et al.,

Plaintiffs,

vs

THE STATE OF WASHINGTON, et al.,

Defendants.

No. 9213

DEPOSITION OF BILL FRANK, JR.

The deposition of Bill Frank, Jr. was taken on
the 12th day of June, 1973, in the Federal Building, 11th and
A Streets, Tacoma, Washington, before Elinor A. Holloway,
Notary Public.

Said deposition was taken in behalf of the
Defendants by:

Earl R. McGimpsey
Assistant Attorney General
Temple of Justice
Olympia, Washington

The Plaintiffs were represented by:

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

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350

1 MR. MCGIMPSEY: This deposition
2 is being taken pursuant to agreement between Mr. Dysart and
3 myself, and in accordance with the Federal Civil Procedure.
4 I will be the sole attorney representing the Defendants at
5 the deposition.

6 MR. DYSART: Maybe I ought to say
7 one thing here, for the record, that I probably should have
8 in the case of Mr. Ikebe's deposition also, but let the
9 record show that as the representative of the Plaintiffs'
10 liaison counsel I did give notice of this deposition to all
11 Plaintiff's counsel, so all of them were notified.

12
13 Bill Frank, Jr.,

having been first duly sworn by
a Notary, deposed and testified
14 as follows:

15
16 EXAMINATION

17 BY MR. MCGIMPSEY:

18 Q Mr. Frank, would you state your full name?

19 A Bill Frank, Jr. My address?

20 Q And your address.

21 A It is Post Office Box 3174, Lacey.

22 Q Are you an enrolled member of the Nisqually Tribe?

23 A Yes.

24 Q Are you a full blood Nisqually?

25 A Yes.

1 Q And where do you reside?

2 A I live on Frank's Landing in the Nisqually Valley, along
3 the Nisqually River.

4 Q Can you tell me just a little bit about the background of
5 Frank's Landing, how you happened to live there?

6 A Well, I have lived there all my life, but my father hasn't.
7 In approximately 1916, or in through them years, the Pierce
8 County condemned the land on the Pierce County side of the
9 river that was the reservation land of the Lotke's (phonetic).
10 Now, my father was one of them, and with that money that he
11 received he bought that six acres there that we have, that
12 is known as Frank's Landing.

13 Q I see, so he bought Frank's Landing like any other person
14 would buy it with the money he received from the condemna-
15 tion?

16 A The Bureau of Indian Affairs bought it.

17 Q They approved the sale?

18 A Yes.

19 Q How many members of your family live at Frank's Landing?

20 A Oh, there is, let me see, there is about five families of
21 us now.

22 Q Are you all related, the five families?

23 A Yes.

24 Q Are there any other members of the Nisqually Tribe that live
25 at Frank's Landing, other than your family members?

1 A No, not now.

2 Q Have there in the past been other Indians, or other Nisqually
3 tribal members that have lived there?

4 A No, no, not -- there isn't that much land for anybody to
5 be living there.

6 Q How much land are we talking about?

7 A Well, it originally was six acres there, approximately, and
8 being as the river has taken maybe two acres we are talking
9 about maybe four acres or so.

10 Q What do you do for a living?

11 A I am fishing now.

12 Q Do you fish full time?

13 A Yes.

14 Q And what do the other family members that live at Frank's
15 Landing do?

16 A We have a Smoke Shop at Frank's Landing, and it is a
17 business that we, that is how we make our money now.

18 Q Besides fishing and the Smoke Shop is there any other --

19 A Yes, we have a fish processing and selling business at
20 certain times. It just depends whether we have got the
21 financing to go into it or not and last year we didn't have
22 anything like that. We were buying fish and selling them
23 from other Indians, Nisqually Indians.

24 Q You were buying fish from other Indians and selling them?

25 A Yes, other tribes.

1 Q Do you process these fish that you bought?

2 A We did process them, and we had a more or less of a shipment
3 back east, you know.

4 Q Now, when you say you processed them, what did you do?

5 A Well, we smoked a lot of them and sold them, and we boxed
6 them, iced them, and put them on an airplane and shipped
7 them back east for a better price. Now, this was to give
8 the Indian a better price for his salmon and to make the
9 other fish buyers come up on their price.

10 Q And when you say "process" you don't mean canning?

11 A No, no, we haven't done any canning.

12 Q Now, when you fish, what months of the year do you fish?

13 A Oh, used to be after the 4th of July, but now it starts
14 toward the middle, not the middle, but the first of August,
15 up until around, there is a little in between there in
16 August and September where the change, the chinook salmon
17 changed into the silver salmon; the chinooks go out and the
18 silvers start moving in real slow, then from there we fish
19 up until the steelhead start coming into the river about,
20 in the early December months.

21 Q I see.

22 A And then we go on into the chum salmon, the dog salmon, and
23 we fish them up until April or -- I mean, you know, we fish
24 the dogs until they go out and the steelhead are usually
25 in the river a little bit longer than the dogs.

1 Q Are you fishing steelhead also?

2 A Yes.

3 Q And you fish those with nets?

4 A Yes.

5 Q The dog salmon you are referring to are chum?

6 A Yes.

7 Q Are you employed in any way during those months when you are
8 not fishing?

9 A No, not now. I used to be a lineman, and in the '60's and
10 the '70's, but the last few years now I haven't.

11 Q You say "a lineman." Could you explain what a lineman is?

12 A I used to build power lines, construction power lines. I
13 belonged to the union up in Seattle.

14 Q Is there a reason for your not having pursued that?

15 A Well, it was just more or less seasonal work, too, you know.
16 They have got a contract, the government got a contract,
17 and there was enough work to go out of the union, and they
18 would send you out, and your job wasn't all year round, it
19 was just, maybe, three or four months at a time, whatever
20 was bid on the job.

21 Q Are you familiar with the Nisqually fishing regulations?

22 A Yes, just what Hal, our chairman, had told you, just
23 previously.

24 Q Are you a member of the Fish Committee?

25 A Yes.

1 Q How often does the Fish Committee meet?

2 A Well, we have been here in the last several weeks or months
3 we have been trying to get together about once or twice a
4 week, too, for this case, one of the reasons and for the
5 United States versus Washington, and some other regulations
6 on the salmon fishery this coming year.

7 Q How were those regulations enforced at Frank's Landing?

8 A Well, way back in about 19 -- all I could go is maybe in
9 the early '50's and along in through the 1950's, other than
10 in through the early '60's, fishing regulations were more
11 or less, I would just say by honesty, and a few times in
12 them years we had fish patrolmen, you know, that patrolled
13 the river and, you know, just made sure that your nets were
14 pulled out on the weekend. It was a Friday evening pull
15 out, and then a Sunday night put back in, and then I think
16 maybe it was Monday morning sometimes to put your net in,
17 but it was a few of them years, now, it depends whether the
18 tribe had the money to pay a couple of patrolmen, you know,
19 to patrol the river, just to make sure that they had had
20 their nets out. In them few years the Nisqually Tribe
21 didn't have much of any money. They don't yet, but --

22 Q Do you know if there was ever a tax collected on the fish
23 that were caught?

24 A Yes, we had a tax. I think it was a five per cent tax on
25 salmon. Now, this was mostly on chum salmon, the dog

1 salmon, because they run up the Nisqually the most of
2 anything. I mean, you know, they run up by the tons, you
3 know, sometimes, or the thousands.

4 Q Is this tax still in effect?

5 A Yes, it was in effect last year. The way it has been work-
6 ing, as far as I know now is there is only maybe three
7 buyers, I think there was three buyers this last year, and
8 I believe they paid their tax. I haven't looked into it,
9 but it is usually an agreement that they --

10 Q The buyers would pay the tax?

11 A Yes, they take the tax out of the fish when --

12 Q Maybe I asked you this before, but how many of your family
13 members fish at Frank's Landing?

14 A Let me see, there have been, there could be maybe a half
15 a dozen or more. Now, a lot of them aren't full time
16 fishing, you know.

17 Q Of those half dozen, how many are full time fishermen be-
18 sides yourself?

19 A Well, there is about four, and this is a seasonal thing, too,
20 I mean, when you say full time fishermen, the chinook
21 salmon in the month of August just hasn't been a full time
22 fishery that a person could make, you know, just go out
23 and fish and make a pretty good living, you know, something
24 reasonable to support his family, and the silver salmon
25 which come in a little bit later, some guys wouldn't even

1 bother to go fishing for those, you know, to make a living
2 on. So full time, what I talk about a full time fishermen
3 would be fishing the steelhead and the chum salmon and
4 possibly the silver salmon.

5 Q Now, are steelhead fished incidently to the chum, or are
6 they fished for their own value?

7 A Well, like I said in the early December we have been catch-
8 ing all during this fishery, we changed, different meshes
9 on the gill net, you know, like we go to a higher mesh for
10 the chinook salmon and lower mesh and so on, and so forth,
11 for every individual salmon that is coming up the river,
12 which is only four, so the steelhead salmon are a smaller
13 meshed net, would be more or less along the silver salmon
14 in that little, like a six and a half or a six and a quarter
15 would just take, for instance, but we do fish steelhead
16 commercially, and in the month, the early month of December.

17 Q Where do you sell the steelhead?

18 A Our fish buyers are there usually. Now, I don't know
19 whether they have got an agreement with the State Game
20 Department or what, but they usually box their steelhead
21 and whatever regulation that the Game Department has set
22 up for them to sell the steelhead.

23 Q They do this on the reservation?

24 A Yes, usually, yes. Like in the early '60's now, they have
25 had a lot of Court cases with the Game Department in

1 selling steelhead, and the Indians have had Court cases,
2 and now I believe the State Game Department knows that they
3 are buying steelhead.

4 Q Do you know what your earnings were from fishing last year?
5 A No, for the overall year?
6 Q Yes.
7 A No.
8 Q I guess I should say season?
9 A Yes, for the season. No, I wouldn't. Approximately, now --
10 Q Okay, approximately.
11 A Oh, I don't know, it would be maybe \$7,000. Now, this is
12 again is seasonal, because sometimes -- now, this year of
13 all years the salmon were so high, which has never --
14 Q The price?
15 A The price of salmon was so high that, you know, it never
16 has been that high.
17 Q Has the price been gradually going up over the years?
18 A Well, on the chum salmon, they have took a great big high
19 jump this year, I mean. The last few years they haven't
20 usually, they just can them for cat food, dog food, or
21 something, you know; that is what they tell us. I don't
22 know, but we have been given a good price on the dog salmon
23 for what we could make a nickel over a pound or something
24 to bother buying them, but, you know, like I say, again,
25 maybe this year the price says will go way down and you

1 wouldn't make as much money.

2 Q Do you know how much you made the year before, approximately?

3 A No, I imagine it was about the same. It might have been a
4 little less, the price the year before, and like fishing,
5 when I get involved in a processing thing it takes a lot of
6 my time too, so then I wouldn't have as much time as I would
7 to be fishing out there.

8 Q Now, when you say \$7,000, was that including earnings that
9 you made off of your processing, or was that just for
10 fishing?

11 A I would say that was from the fishing.

12 Q And this year you didn't fish as much as you had fished the
13 previous year because of the processing?

14 A No, that would be within the last year and the year before.

15 Q This past year?

16 A This past year, yes.

17 Q Now, do other family members also earn a similar amount?

18 A No.

19 Q Don't they fish as heavily, or what?

20 A Well, they, you know, just more or less depends on the set
21 ground. If you have got a good set ground you usually make
22 a little bit better than the rest of the people do, and
23 then if you have the time to fish steady, fish for an
24 income. To make a good living you can't be harassed on the
25 river by the Fisheries or the Game Department all the time,

1 which in the early '60's now seemed like I was in Court
2 more than I was on the river, and in fact I still am even
3 this year in '73, but that has a lot to do with your overall
4 money you are making on the river and your salmon. You
5 can't fish if you don't have a boat which is confiscated,
6 so called, by the State, and never given back to you.

7 Q Yes.

8 A And all your nets and stuff, so if you don't have nets to
9 put them right back into the river and the confiscation,
10 like that, you miss three or four days, and if that three
11 or four days would be maybe the bulk of the run that could
12 hurt your income for the year, or the season.

13 Q Did you have any nets confiscated during this past year?

14 A Yes, I have had dozens of nets taken this last year.

15 Q And you know by whom?

16 A Well, mostly by the State Game Department.

17 Q This was during the steelhead run?

18 A Yes, you see in the month of November, the end of November,
19 the first of December, the State Fisheries turns their
20 river over to the State Game Department. Then the State
21 Game Department takes a little bit more harder line on the
22 Indian fishery. Although the chum salmon are running the
23 same time and the Game is only claiming the steelhead, they
24 also confiscate every chum salmon that they get, too, so --

25 Q Have any Indians, other than your family members, fished

1 Frank's Landing in the past five years?

2 A Let me see. We have had dozens of protest fishery at
3 Frank's Landing and different locations for the reason of
4 not letting the State of Washington more or less restrict
5 us to the reservation fishery, and it was all fished under
6 the Medicine Creek Treaty at our usual and accustomed
7 fishing grounds. There has been dozens of Indians arrested
8 that weren't Nisqually Indians and don't claim a Nisqually
9 right, but it was more or less a protest fishery.

10 Q So these Indians that were arrested protesting, they weren't
11 really claiming to be Nisquallys exercising Nisqually rights?

12 A No.

13 Q They were just making a protest?

14 A Yes.

15 Q Besides protest fishery, were there any other non-family
16 members that fished at Frank's Landing?

17 A No.

18 Q Have you ever fished on an area other than the area adjacent
19 to Frank's Landing?

20 A Oh, yes, I have fished up river from Frank's Landing. That
21 is when I am not going to jail, or it has been confiscated.
22 You see, Frank's Landing hasn't got a real good fishery
23 there. It is, like our chairman was telling you, that you
24 have got to have, when you set a gill net, you have got to
25 have a back water coming back up the river to where it would

1 set good, you know, and I mean swift water. You can't just
2 set a net out in swift water and expect to catch any fish,
3 and Frank's Landing isn't set up with some real good eddies
4 that we call, you know, eddies is where you put a thirty
5 foot fishery net or a sixty foot or a fifty foot net, but
6 like from the reservation down to the mouth there is some
7 better eddies, and I do fish on several of them spots now.

8 Q Now, do your family members have your sites picked out and
9 other family members, or other Indians respect your sites,
10 or how does that work?

11 A Yes, over, you know, over the years of fishing -- like I
12 don't know, as long as I can remember they have had their
13 certain areas fished out, you know, at certain fishing sites,
14 and again you are talking about the Nisqually River changes
15 every year, you know. I mean, some sand moves over here
16 and some sand moves back or to the side, and the rock beds
17 move all over the river, you know, and so maybe you would
18 lose your fishing site through nature, you know, but I
19 don't think you would lose them to any other fishermen.

20 Q Are you familiar with historical fishing sites, other than
21 those at Frank's Landing that you presently are using?

22 A Well, I have fished out in the bay, you know, which Indians
23 had claimed fishing rights other than, you know, would be
24 more or less out from the mouth of the Nisqually River, but
25 nobody has ever fished out there over the last, maybe six

1 years or five years, but the only historical site is, you
2 know, below Frank's Landing or in that area, which many
3 years ago there was a fish trap just below Frank's Landing
4 which was -- my dad remembers that, you know, where Indians
5 had come and got fish now and opened the trap.

6 Q Now, this trap that you remember, was that some particular
7 individual Indian's trap?

8 A Yes, it was an Indian's trap.

9 Q Do you know whose?

10 A No, I don't.

11 Q Was it a community trap?

12 A It was more or less a community trap. I mean, the Indians
13 at that time would just come and take whatever salmon they
14 wanted now and just open, the trap was always open, we would
15 say, or they would close the trap and get some salmon in-
16 side the trap and then take whatever they wanted, and then
17 release the rest to go on up, you know, and open the trap.

18 Q What do you feel about a trap fishery now? Would you think
19 that would be a preferable way to fish than the way you
20 presently are fishing for your family and the tribe?

21 A Well, probably the trap fishery would be the only way you
22 could ever control a fishery.

23 Q Well, you heard Mr. Ikebe's testimony. Do you agree with
24 him as far as fishing being an individual effort now by the
25 members of the tribe?

1 A You mean --

2 Q The fishing sites, as I understand them now, are operated
3 by individual Indians; is that correct?

4 A Yes.

5 Q And although they may share some of their fish with other
6 Indians, it is not a common enterprise, is it? Each
7 fisherman earns the amount of money that he catches now?

8 A Usually they are individual fishermen now.

9 Q If you had a trap do you have any idea how you would
10 divide up, who gets what fish out of that trap?

11 A I don't know. I understand they have some traps up north
12 there, but I think it is a tribal owned trap, you know,
13 where the tribe controls it, and I don't even know how
14 they split the money up or whether they, whether they even
15 split it up or the tribe uses it or what.

16 Q Would you be willing to give your fishery, as you presently
17 exercise it, and go to a trap fishery and take a share of
18 the trap?

19 A Well, I don't know. I don't know how they work, you know,
20 and, you know, a guy would have to like a trap maybe could
21 be, could hurt the river. I think right now that the
22 Nisqually River has got one of the best rivers in the State
23 or country.

24 Q How could a trap hurt the river?

25 A Well, now, if it wasn't designed right or whatever, I don't

1 know how they work, just what I hear and what I read, but,
2 of course, 100 years ago it never hurt the river, but there
3 is so many different things on the river now, like the dams,
4 the lowering of the water, the timber, you know.

5 Q Flooding down the river?

6 A Yes, there is so many other things that maybe you would
7 have to take into consideration when you put a trap in.
8 Maybe the way we are fishing now would be a better way to
9 fish, you know. I don't know, it is just, you wouldn't be
10 speaking of just putting the trap in for this year, you
11 would be thinking of 50 or 100 years from now. You don't
12 know the whole change of everything, what it would be in
13 this fishery resource.

14 Q Have you ever seen floods on the river?

15 A Oh, yes.

16 Q If you were going to put in a trap that would be pretty
17 permanent and catch all the fish going up, would those
18 floods be pretty hard on that kind of a trap?

19 A I don't know how, I would imagine a guy could probably
20 maybe design a trap for the floods. There is logs and
21 everything coming down, log jams, whole big trees, and I
22 don't know again what kind of a trap a guy would design.
23 I mean, the salmon most generally, when there is a big
24 flood at one point or another, I don't think they will
25 move too much at a big flood, you know, like I have seen

1 big log jams and different debris coming down the river. I
2 think that they would move when it starts going down or in
3 the early stages of it coming up, but it has been my
4 experience that they don't move now at a high flood stage.

5 Q Do you have any idea how you would decide who gets what
6 salmon out of the trap as far as your tribe goes, or has
7 your tribe not --

8 A I don't think they have ever discussed any trap or anything.
9 There has been traps on different creeks, a long time ago
10 on the old reservation, but since then I don't think there
11 has ever been anymore traps except just a gill net fishery.

12 Q And as far as your recollection goes back, has the fishery
13 always been this kind of an individualized effort?

14 A Yes.

15 Q By individual Indians?

16 A (Nods head)

17 MR. MCGIMPSEY: That is all the
18 questions I have.

19

20 EXAMINATION BY MR. DYSART:

21 Q Just to clarify a few points here, Bill, you said that you
22 have a Smoke Shop on Frank's Landing. Is that a tobacco
23 type shop? You are not talking about smoked fish?

24 A Yes, it is a tobacco, although we did have, you know, we
25 had that processing thing that we did have smoked fish for

1 sale, too, at the same tobacco shop.

2 Q Now, you mentioned about fishing the dog salmon and the
3 steelhead. Well, first, do you have any idea as to what
4 percentage of your fishing take is represented by the dog
5 or chum salmon out of the total year's take? How important
6 is the chum salmon to your total year's fishery?

7 A Well, in the overall fishery?

8 Q Yes.

9 A I think it is really, the chum salmon are probably the most
10 important one of the four species we have got in the river.

11 Q Can you give any percentage, either in terms of total
12 quantity of fish or total monetary value of fish, that the
13 chum salmon represent out of your total yearly fishery?

14 A Gee, I don't know how, No, I can't.

15 Q But you think it is the most important single species?

16 A Yes, I would think that, because the reason why I would
17 say that is that because the water would be right, and
18 there is a lot of different things, you know, the winter,
19 and the water would be up higher, and the chum salmon,
20 there is no, there is no fishery out in the Puget Sound or
21 out into the high seas on this chum salmon that comes
22 through the Nisqually River at that time of the year, and
23 that is one of the reasons why I would have to say that it
24 was, it would be the most important salmon that comes up
25 the Nisqually River, because all the rest of the salmon

1 are fished by non-Indians, which are regulated by the State
2 of Washington out in the Puget Sound before they ever get
3 to the Nisqually River, and it seems like they don't ever
4 allow enough salmon to get to that fishery, that Indian
5 fishery that we are talking about on the Nisqually River,
6 with the exception of them dog salmon or chum salmon in the
7 month of January or the latter part of December, and which
8 there is no fishery for those. That is why I think that it
9 would be the most important one of the Nisqually's --

10 Q You spoke of the five per cent tax, and I believe you said
11 it was mostly on chum salmon, Do you know why the tax isn't
12 applied equally on other species?

13 A Well, in the month of August and the chinook salmon, the
14 Indians -- there is a big fishery going on in the State of
15 Washington, and salmon is usually pretty high, and you can
16 deliver your salmon to Tacoma, Olympia, to a fish market,
17 and you are not, you don't have one buyer to buy all your
18 salmon to where he can take a five per cent on it. Now,
19 in the month of, latter part of December, January and
20 February, we usually have, like I said, there was three
21 buyers this year, and you can't, the chum salmon, you can't
22 take it to Tacoma or the fisheries that you can with the
23 silver, and the steelhead, they are all a bright salmon,
24 and real nice red meat in them. That is the steelhead,
25 the silvers and the chinook are a bright salmon and the

1 markets, when you sell them in the fresh markets, they are
2 probably rated as one of the better salmon, and where a
3 chum salmon is a calico color with a pink meat, and most
4 generally you can't sell it over the counter, so therefore,
5 the canneries will buy them from a fish buyer, and at that
6 time of the year you don't usually generally have more than
7 three fish buyers, and that is why you can control, with
8 them three fish buyers, the tribe can collect their five
9 per cent tax.

10 Q Are any of these fish buyers members of the tribe?

11 A I think, yes, there is one. I believe there was one up
12 there this year.

13 Q One who is a member of the tribe?

14 A Yes, she was buying this year. Of course, I have bought,
15 but like I said we didn't buy this year.

16 Q Are the other two Indians or non-Indians?

17 A Yes, they are not, non-Indians.

18 Q Non-Indians. Now, Mr. McGimpsey was asking you earlier
19 about how many of your family fish, and I think his ques-
20 tion referred to Frank's Landing. I think you clarified
21 that a little bit later when you talked about the area, but
22 let me ask how many people fish right off the landing
23 property itself, that is the four acres of Frank's Landing?

24 A Let me see, well, there isn't any more than, I don't think
25 any more than three or four, you know. We are talking

1 about maybe seven or eight hundred feet along the river
2 bank.

3 Q Are three or four --

4 A Yes, would be three or four.

5 Q -- net sites simultaneously operated within that area?

6 A Yes, there would be across the river on this side and through
7 that maybe one thousand feet area there, or so, whatever it
8 is; but like I said, you know, it isn't a good set ground
9 or anything.

10 Q Do you have any idea as to how many, what you would consider,
11 good set locations there are in the Nisqually River down-
12 stream from the railroad bridge, which is the boundary of
13 the State open area, the bridge that Mr. Ikebe was referring
14 to as the boundary of the State open area, downstream from
15 that area that is not within the State open area?

16 A Well, I would say from where you are saying, the railroad
17 bridge, there would be about thirteen good set grounds.

18 Q Thirteen good set --

19 A Yes.

20 Q -- grounds, you say, or sites?

21 A Yes, or sites, you know, where you could fish, put in a net
22 and it would be in an eddy, you know, where it would be a
23 good site to catch salmon.

24 Q Are you using "site" in the sense of an individual net site?

25 A Yes.

1 Q It would be one net per site?

2 A Yes.

3 Q So that that means thirteen locations?

4 A Yes.

5 Q How many river miles does that area encompass from the
6 railroad bridge to the mouth?

7 A That could be about, maybe, the way the river flows it
8 would be maybe a mile and a quarter, mile and a half, or
9 just -- maybe it could be a little further, you know, from
10 the railroad bridge to the mouth of the river.

11 Q Now, as I understand the area between the railroad bridge
12 and the reservation boundary that is open under the State
13 regulation at certain times of the year, is about a mile
14 and a half long; is that right?

15 A Yes, it would be maybe a mile.

16 Q Now, do you have any idea how many good set net sites there
17 are in that area?

18 A There isn't none.

19 Q None?

20 A No.

21 Q Do you have any idea what percentage of the fishing by the
22 Nisqually Indians today is drift net as compared with set
23 net; how is the breakdown between drift and set net?

24 A I believe it could just about go to, oh, maybe half, now.
25 Maybe somebody at one time, you know, carries a drift net

1 and drifts or something, but they don't make it a practice
2 of drifting, you know. They have got their set nets, you
3 know, and they don't really put that much of their fishery,
4 you know -- but it could be up as far as a half of the
5 members, I mean the people that are fishing on the Nisqually.
6 Now there isn't no fishery from what we are talking about,
7 no drift fishery below the, I mean, the railroad bridge in
8 that mile and a half, you know.

9 Q So the area below the bridge is entirely a set net --

10 A It is entirely a set net. There is no drift fishery whatso-
11 ever in through there.

12 Q Approximately how long are the individual drifts?

13 A Well, let me see, probably the longest one would be, I don't
14 even think it would be a quarter of a mile. It would be
15 maybe six hundred feet or so.

16 Q And how about the shortest one?

17 A The shortest ones are one hundred and fifty feet, would be
18 just throwing your net in and pulling it back out, more or
19 less, and I have drifted on some of those.

20 Q You gave a figure of about \$7,000 as your estimate of your
21 seasonal income. This was last year, as I understand?

22 A UmHum.

23 Q Is that a gross figure or a net?

24 A Well, that would be a gross figure, you know, like again I
25 say last year I bought approximately three boats and three

1 motors, and that could take easily 12, \$1,300 right there,
2 not counting the nets, the stuff that had been confiscated,
3 and it would be a gross.

4 Q All right, counting your full expense and all of the boats
5 and all of that that you have talked about, do you have
6 any estimate as to what your costs are for a year's fishery?

7 A Well, if you are speaking of, again I am speaking about
8 losing so much gear, and then buying new gear over again,
9 and a lot of times it isn't new gear, it is used gear, and
10 if we are talking about losing that time that you are, like I
11 say, they confiscate my net and I lose a couple of days in
12 getting the net back into the river again for my fishery,
13 you know, I don't know how a guy would ever -- you would
14 just have to take what he was making on that certain net
15 per night, and usually our fishery is at night, and we pull
16 our net out in the day time, because for the reason the
17 sportsmen pull them in and tear them up, would pull them
18 in or tear them up or haul them away or turn them loose,
19 everything, or Game will confiscate them, but in the last
20 few years now we have never, just in the last I would say
21 two years the State Fisheries Department more or less has
22 to, they used to have, you would say hard line on the
23 fishery along with the Game Department, but in the last
24 couple of years now they have more or less taken a little
25 easier line on the fishery, and saying that, you know, we

1 do have a fishery, but the Game is still taking the hard
2 line and come December, the first of each year when the
3 Game takes over the fishery then we usually are losing more
4 gear into that chum run and steelhead run, and so, you know,
5 maybe a guy would get involved with half of his earnings in
6 -- like I take \$7,000. You can easily spend \$3,000 of that
7 just getting your gear back into the river again.

8 Q Now, if we can exclude for the moment the costs that are
9 associated with gear that is officially confiscated, stolen,
10 do you have any idea as to what your costs would be in
11 operating a normal fishery if you could operate it without
12 that other type of interference?

13 A Well, the cost would be way down, like you could own a
14 boat and motor for years. If you invested this year in
15 good nets and good boats and good motors, say, and I don't
16 even know, you would just have maybe a cost of, not count-
17 ing what you would begin with, buying good gear, would be
18 maybe a couple hundred dollars in nets, buying new gill nets.
19 You would never have much more, you wouldn't have to buy
20 any more corks, you wouldn't have to buy any more lead line,
21 being as they have got some good lead line out and every-
22 thing. Now, the only thing you would have to buy would be
23 a gill net, your net, which would be tore up by the salmon
24 over the years and that would be the only thing you would
25 have to buy, and your gas or whatever you spent.

1 Q Do you have any idea how much your fuel and maintenance
2 on your boat would run?

3 A No, I don't have any idea. Now, a guy -- just depends
4 where you go, now, how big your motor is. Different
5 fishermen, you know, may use your boat or something, go
6 look at their nets, too, or something.

7 Q How much net damage or replacement is required as a result
8 of debris or other types of non-man caused damage?

9 A This last year I think we had three or four high waters,
10 not real high, you know, and usually a person that has been
11 fishing on that river all his life can tell when the high
12 water is coming, and you usually pull your net out, and
13 not unless, you know, they just -- I have seen some high
14 waters where they have taken all the nets, you know, and
15 you lose all your nets, but like over, say, over each year
16 we will take on the high water, and the logs and the debris
17 that comes down, you say you lose two nets or so per
18 fisherman, which wouldn't amount to too much.

19 Q What sized mesh do you use for taking chum salmon, dogs?

20 A They are usually around six and a half mesh, from six and
21 a quarter to six and a half. Each fisherman is a little
22 bit different, they hang their nets different, and you
23 would, I mean, think some of them may use as high as seven
24 mesh, you know. Usually around six and a quarter and up to
25 say, seven.

1 Q What sized mesh would you use for catching steelhead?

2 A Usually about six and a quarter.

3 Q During the time that both species are in the river at the
4 same time, what percentage of your catch would you say is
5 dog salmon and what percentage is steelhead?

6 A Well, I usually -- let's just take my net, if I went up
7 there say Christmas Day, the 25th of December, in my net I
8 would catch maybe fifty dogs and maybe out of that fifty
9 dogs I would maybe have seven or six steelhead, six or
10 seven steelhead. You see, when the dogs are running it is
11 such an enormous bunch of salmon coming up the river they
12 will fill your net, and the steelhead will usually turn
13 around and leave, I mean, with all this going on in your
14 net; but like a percentage, you will get maybe six out of
15 fifty. You catch fifty chum, maybe you have got -- I am
16 not saying this is everywhere, it is just in, say, maybe,
17 a dozen real good set places, you know, where it is deep
18 and the water is just right and everything. Now, you can't
19 get that many dogs by just forcing the net out in the river.
20 It has got to be an eddy where there is a good set.

21 Q Do the steelhead and the dogs run through approximately the
22 same portion of the river, that is as between proximity to
23 the shore or depth of passage through the river?

24 A Well, there again I think if the water was right and they
25 were moving up the river, I am pretty sure they would be

1 staying on the main channel and probably the deepest part
2 and probably the swiftest part.

3 Q By "they", which do you mean?

4 A Well, I would say the steelhead.

5 Q The steelhead?

6 A Now, the chum salmon you can usually catch them along the
7 shore, you know, the most; and not unless they are really
8 on the move to go on up the river -- but most generally
9 the dog salmon are along the bank and steelhead, like I
10 say, I think if they were on the move they would stick to
11 the main channel of the water.

12 Q You spoke of using nets from 30, 50, and 60 feet lengths
13 in the eddies. What portion of the river would be
14 represented by this? How much river would be beyond the
15 net at that location?

16 A Well, let me see. That would take over maybe a third of
17 the river. It depends on, it couldn't never go much over
18 a third because the water is coming, you know, you could
19 take a 60 foot net and although your river is 100 foot wide
20 you could never take a 60 foot net and just leave 40 feet
21 open. You could -- when you are talking about something
22 like 50 or 60 feet, most of that would be going down the
23 river, you know, where an eddy is coming up and, you know,
24 you would be sitting here. You wouldn't be sitting straight
25 out across the river, you would be setting your net at an

1 angle more down the river. The end where you would leave
2 your end anchored would be more or less, it wouldn't be
3 straight down, but it would be laying in this eddy, what-
4 ever way that eddy would form in there with your nets, you
5 know.

6 Q Now, when Mr. McGimpsey was asking you about this trap that
7 existed a number of years ago, whether it was a community
8 trap or not, you said the trap was always open. Will you
9 explain what you meant by that. Does it mean it was open
10 to anybody to come and use, or that it was open as far as
11 fish passage was concerned. What do you mean by that?

12 A It was open. The fish passage, I don't know how, you know,
13 like I believe way back when the fish traps were going and
14 just what my dad has told me, you know, like the Puyallup
15 Indians or any of the bands of Indians along, I think that
16 fish trap was open to them, anybody. Now, that was in the
17 area, you know, like along the sound. You know there was
18 a number of Indians along the sound. I think they maybe
19 got to eat out of that trap. The Puyallup Indians -- at a
20 certain time the Puyallup River salmon fishery was running
21 when the Nisqually River wasn't, and I believe the
22 Nisquallys would either trade or have salmon, you know, like
23 we used to have, you know, there used to be a lot of
24 ceremonial things going on, and it seemed like every one of
25 them they used to have salmon at that time along with deer

1 meat and so on and so forth.

2 Q Did you ever see the trap yourself?

3 A No.

4 Q This was before your time?

5 A Yes, oh, yes.

6 Q Your knowledge of the trap is what you have gained from --

7 A Yes.

8 Q -- your father telling you?

9 A UmHum.

10 MR. DYSART: I think that is all

11 I have.

12

13 RE-EXAMINATION BY MR. MCGIMPSEY:

14 Q Could you draw a map of the Nisqually River for me?

15 A UmHum.

16 Q And show on it the reservation and the railroad bridge and
17 where Frank's Landing is and where the mouth of the river
18 is?

19 A Okay, yes. What I will do is I will draw the reservation
20 more or less a straight line, and then I will bring down
21 from the mouth.

22 Q From the reservation?

23 A Down past Frank's Landing, and let's see --

24 MR. MCGIMPSEY: Off the record.

25 (Off the record)

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MR. MCGIMPSEY: Let's mark this
as Deposition Exhibit one.

(Chart marked as Deposition Exhibit one)

Q Referring to what has been marked as Deposition Exhibit one, would you just describe what you have drawn?

A This is just kind of a roughly drawn, this is the upper reservation line and this is the upper reservation line, this is the lower reservation line.

Q This is the upper reservation? The lower reservation lines cross the river, and this wiggly line down through the center of the page, lengthwise, is the river?

A Yes, this is all river, this is all military over here and this is Pierce County and Thurston County.

MR. DYSART: He is moving from the top to the bottom.

THE WITNESS: This is the sound. I should have put the sound out there, but anyhow this is the Indian Reservation now. This is the Nisqually Indian Reservation. Then moving down the river we come into the railroad bridge.

Q (By Mr. McGimpsey) Could you stop just a minute. Why don't you mark the direction of north on there and then we can talk in terms of directions. It might be easier for us.

A Let's see, this would be --

1 Q You don't have to be real exact, just north would be kind
2 of toward Tacoma?

3 A North would be toward Tacoma, so let's just --

4 Q Put a little arrow. Okay, now you have a north-south line
5 mark. The river flows in a westerly direction; is that
6 correct?

7 A Yes, well, call it that way, yes.

8 Q Fine.

9 A So, now, going down the river from the reservation, and we
10 will come to the railroad bridge now. This is the railroad
11 bridge where a little earlier I was talking about a fishery
12 from the reservation to the railroad bridge.

13 Q An off reservation fishery?

14 A An off reservation fishery. Now, this takes in coming down
15 from the railroad bridge on the Nisqually River, you would
16 take in Frank's Landing, which is, we had been talking about
17 earlier is maybe a half a mile or so from the railroad
18 bridge down to Frank's Landing.

19 Q How far is it from the reservation land to the railroad
20 bridge?

21 A It couldn't be much over a mile. I would say about a mile
22 or less, and so --

23 MR. DYSART: I think we ought to
24 indicate then, from what he said, that the map is not to
25 scale.

1 Q The map is not to scale?

2 A No, that is for sure.

3 Q Fine.

4 A Now then, what did you want to know in this area here?

5 Q I just wanted you to describe generally. You have indicated
6 on this number five, that would be interstate 5?

7 A Okay, and the old 99 Highway that is up from Frank's Landing
8 and the railroad. I don't know, Union Pacific or something.

9 Q Now, in the area that is between the upper reservation line
10 and the lower reservation line, how many set nets are there
11 in that area, do you know?

12 A I don't know, I couldn't very well answer that, because I
13 fish out of here now, you know. This body of water changes
14 a lot more than this body of water down here.

15 Q The water at the reservation changes more than it does down
16 at Frank's Landing?

17 A Switches around more, so I couldn't very well answer how
18 many --

19 Q You indicated that there were thirteen set net sites in
20 that area downstream of the railroad bridge. Could you
21 just indicate on your map, or tell us on your map, what
22 area you were talking about where these thirteen sites
23 would be?

24 A Okay, there would be one right here. It would go kind of
25 under the bridge. There would be one below the railroad

1 bridge and one across the railroad bridge.

2 Q Now, these are lines that you are marking in?

3 A Yes, the lines mean a set net.

4 Q One of our problems is that we have to be able to verbalize
5 what you are drawing so that she can record it.

6 A Okay, these lines would mean a set net. Now that would be
7 three at the railroad bridge, and we go down here on the
8 old U. S. 99 Highway and you have one above the highway
9 bridge, one more or less directly across from that set
10 above the old U. S. Highway bridge. Then you go below the
11 highway bridge and you have one here below the highway
12 bridge on the Pierce County side, and one on the Thurston
13 County side, directly across from the other net. Then we
14 go down to -- could be some little sets along here, but
15 they are not -- now we are talking about --

16 Q Along here you are referring to, just east of Frank's
17 Landing?

18 A Yes, and so we go down into Frank's Landing now, and we
19 have one on the Pierce County side of Frank's Landing just
20 below the line of Frank's Landing boundary, and one kind of
21 more or less kitty-corner across from the Thurston County
22 side of Frank's Landing. Then we have -- let me see, we
23 would have, I don't know, we are talking about, more or less,
24 the ones that would be good fishery, you know.

25 Q Yes.

1 A As good places to set, and we would have to move down
2 below toward the mouth of the river now, below U. S.
3 Highway 5, and we would go down there, and at a sharp bend
4 on the Thurston County side would be one, would be one set,
5 more or less at an angle downstream would be another set,
6 and then --

7 MR. DYSART: This last set that
8 you have mentioned, is on the Pierce County side?

9 THE WITNESS: That would be on
10 the Pierce County side, right. Coming back to the Thurston
11 County side would be another set. Then moving -- now,,
12 these sets would be maybe 200, 300 feet apart. I mean, I
13 am talking about each. You are seeing three lines that I
14 indicated that are set nets.

15 Q (By Mr. McGimpsey) Below the U. S. Highway?

16 A They would all be maybe 200 feet from each other, you know,
17 like this.

18 Q Yes.

19 A So then we would go down to a water break that lays along
20 the Nisqually River on the Thurston County side, and there
21 would be another set along there. Now, nobody sets -- if
22 we had a little more paper we would go out to the mouth,
23 but we don't, nobody sets down a quarter of a mile from the
24 mouth of the river, because there is so much seaweed coming
25 up in there and they move in with that tide, and I have sat

1 down there and I have watched my net go clean out of sight,
2 and you pull it up and it is nothing but seaweeds. That is
3 the general outlook of the --

4 Q Fine. The thirteen sites that you were referring to as
5 below the bridge would be west of the bridge and toward the
6 mouth of the river, except for that last quarter mile. Is
7 that approximately right?

8 A Yes.

9 Q You have indicated those set net sites by short little dark
10 lines on the river?

11 A Yes.

12 Q In your diagram --

13 MR. DYSART: Earl, could we ask
14 him what he means? He said a water break down there. Would
15 you describe that?

16 THE WITNESS: That would be just
17 way back in the latter part of the 1930's, the State come
18 down and put, what we called them, water breaks, so the river
19 couldn't eat into the bank.

20 Q (Mr. McGimpsey) This would be some kind of a concrete
21 abutment?

22 A Pilings, regular pilings. They are mostly all rotted out
23 now and gone.

24 Q Now, you also indicated that there were no set nets in a
25 certain area. Would you show us on the map where that is,

1 where there weren't any set nets?

2 A I said that the open fishery above the railroad bridge, what
3 the State has gave to, I mean has opened, this little
4 length in area which would be maybe a mile from the lower
5 reservation line to the railroad bridge, there is sets in
6 through there, but there isn't any sets that would match
7 these eddies that I call, you know, where there are nice,
8 where you could get a nice net, you know. Now, there is
9 eddies along through here. Now, this open fishery that we
10 are talking about, you know, nobody, you know, even when
11 they first opened that fishery I don't think there was over
12 two or three guys fishing in that area in through here, but
13 there is some sets along the bank, like ten, fifteen foot
14 net, you know, that you could throw out.

15 Q You have not indicated the sets in that area on your map?

16 A No, no.

17 Q Now, which of these sets that you have indicated on your
18 map, which are the ones that your family controls?

19 A Well, well, well now, I have been setting here below the
20 old U. S. 99 Highway bridge and on the Pierce County side,
21 and right down here on Frank's Landing, and here my nephew
22 sets across on the Pierce County side here, Frank's Landing,
23 and up here above the old Highway 99 on the Pierce County
24 side. Then my brother-in-law, now he fishes down here
25 below U. S. Highway 5 on the Thurston County side, and has

1 a net across the river, kind of downstream.

2 Q Down or upstream?

3 A Well, this would be his here.

4 Q Oh, I see.

5 A It would be downstream. I have got the wrong mark.

6 Q So he has the first two sites?

7 A West of the U. S. Interstate 5. There is different sets

8 along through here, you know, but they are not --

9 Q Does your family control the sets up by the railroad bridge?

10 A I think the Wells' has been fishing in through there and

11 different other people.

12 Q Now, the other members of the tribe that fish off the

13 reservation, do they fish in this open area, or do they fish

14 down in your area?

15 A The ones that are fishing off the reservation?

16 Q Off the reservation.

17 A Yes, it is usually through the railroad bridge down through

18 here to the mouth of the river.

19 Q But I take it since you or your family control most of these

20 set sites, do they have set sites, those other tribal

21 members?

22 A Oh, yes, yes.

23 Q They would have other set sites then these. These are just

24 the good set sites?

25 A Yes, these are more or less the ones that, like the back

1 water comes up, good eddies, you know. There is different
2 little sets all along the river, you know, but they are not,
3 maybe ten foot net or something.

4 Q Does your family control the good net sites just simply
5 because you have been in there first, so to speak?

6 A No, these set sites here have been fished by a lot of
7 fishermen.

8 Q Oh, I see.

9 A But, you see, over the last, like in the early '60's, you
10 know, you might have a fishery down here in this area below
11 the railroad bridge to the mouth of the Nisqually River,
12 but you know, you are being harassed, throwed in jail, and
13 you are losing all your gear, you know, and so people just
14 don't go down there and fish anymore, you know. I imagine
15 if there was a fishery open there, you know, a controlled
16 fishery, it would be -- now, there would be fishermen
17 fishing all through maybe this area or something, but being
18 you are locked up every time you set a net out here, why
19 nobody likes to get locked up.

20 Q During the last couple years, at least during the silver-
21 chinook runs, has there been any increased fishing activity,
22 in other words, a greater number of tribal members coming
23 down and fishing in the area below the railroad bridge?

24 A No, this area right here at the railroad bridge and up to
25 the reservation line, they are just the same ones that I

1 have marked. There might have been one or two nets up in
2 this open area.

3 Q In this area below the railroad bridge, during the chinook
4 and silver runs, were there any more fishermen in the past
5 couple years than previously?

6 A No, no, the fishermen, you know, even though the State of
7 Washington opened this little fishery up here, there is,
8 hardly anybody ever changes. I mean, it is just over --

9 Q Has the Fisheries Department, as opposed to the Game
10 Department, has Fisheries been harassing you in your set
11 locations below the railroad bridge in the last couple of
12 years?

13 A No, no, let me see. I believe every year we have some kind
14 of an encounter with the Fisheries Department, but over the
15 last two years they have been, it has been getting less and
16 less, until, like December 1st, when the Game comes in.

17 Q Is it your estimation of your costs that if there weren't
18 harassment by State officials in confiscating gear, that it
19 would amount to several hundred dollars for the gasoline
20 and net replacements and maintenance of your boat?

21 A Yes, that would probably be about right.

22 Q Do you have any idea about how your income compares with
23 other fishermen in your tribe, whether it is more or less,
24 or whether it is typical of men who are fishing full time?

25 A I wouldn't have no idea.

1 Q From your income, this would be from the commercial sale?
2 A Yes.
3 Q Then would you also use fish for your personal use?
4 A Oh, yes, we, you know, we usually hang quite a bit of fish
5 to smoke, you know. We haven't been canning any.
6 Q How often do you eat fish a week?
7 A Well, usually at least once or twice.
8 Q How many pounds of fish per person would eat, do you think?
9 A Oh, I don't know, maybe half a pound.
10 Q Half of pound per person?
11 A Yes.
12 Q And would this be once a week for the whole year, or --
13 A Well, no.
14 Q Just during the fishing season, or what?
15 A Certain, you know, like well, I did have some Columbia River
16 salmon that some of the Indian people had brought up and
17 we had some of those. That is the spring fishery, but more
18 or less in our area now, there is no salmon, not unless you
19 go to the market and buy it.
20 Q Do you preserve salmon, smoke it or preserve it for your
21 own personal use?
22 A Yes, we have frozen a lot of salmon and we smoke quite a
23 bit.
24 Q Would it be fair to say that you eat once a week half of a
25 pound to a person? Would it be fair to say that maybe a

1 half of pound per person a week all year long would be a
2 fair average of personal consumption of fish, 52 weeks a
3 year?

4 A I don't know, you know, like I never did figure it out. We
5 would get a fish and we would just eat it.

6 Q About once a week is what you do?

7 A Yes.

8 Q Is there any time during the year when you just don't eat
9 fish?

10 A Oh, yes, like now, you know, this time of year, like you
11 know, we don't eat as much -- fresh salmon we are talking
12 about?

13 Q How about your smoked salmon?

14 A Oh, yes, we eat that all the time when we have got it, you
15 know.

16 Q So it would be fair to say a half of pound per person a week
17 all year long, either smoked or fresh or frozen?

18 A Maybe a pound or so.

19 Q A pound?

20 A Yes.

21 MR. McGIMPSEY: Okay, that is all.

22
23 (Witness Excused)

24 
25 (Signature of Witness)

Deposition Ex 1

Upper Res. Line

Res. Line

N ← → S

R.R.

Old US 99 Hwy.

FRANKS Landing

← US # 5 →

Olympia →

TACOMA ←

