

9-4-1973

**Docket Entry 361 - Filed Memorandum of Plaintiff United States  
on defendants objections to Plaintiff's exhibits PL-5, PL-48, and  
PL-54**

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA, )  
Plaintiff, )

QUINULT TRIBE OF INDIANS on its own behalf )  
and on behalf of the QUEETS BAND OF INDIANS: )  
MAKAH INDIAN TRIBE; LUMMI INDIAN TRIBE: HOH )  
TRIBE OF INDIANS; MUCKLESHOOT INDIAN TRIBE; )  
SQUAXIN ISLAND TRIBE OF INDIANS; SAUK- )  
SUIATTLE INDIAN TRIBE; SKOKOMISH INDIAN )  
TRIBE; CONFEDERATED TRIBES AND BANDS OF THE )  
YAKIMA INDIAN NATION; UPPER SKAGIT RIVER )  
TRIBE; STILLAGUAMISH TRIBE OF INDIANS; and )  
QUILEUTE INDIAN TRIBE; )

Intervenor-Plaintiffs, )

v. )

STATE OF WASHINGTON, )  
Defendant, )

THOR C. TOLLEFSON, Director, Washington )  
State Department of Fisheries; CARL CROUSE, )  
Director, Washington Department of Game; )  
and WASHINGTON STATE GAME COMMISSION; and )  
WASHINGTON REEF NET OWNERS ASSOCIATION, )

Intervenor-Defendants. )

CIVIL NO. 9213

MEMORANDUM OF PLAINTIFF  
UNITED STATES ON DEFEND-  
ANTS' OBJECTIONS TO  
PLAINTIFFS' EXHIBITS  
PL-5, PL-48, AND PL-54

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1 Defendants have objected to the admissibility of offered authentic  
2 exhibits Pl 5, Pl 48 and Pl 54.

3 Offered Exhibit Pl 48 is a request of the Commissioner of Indian  
4 Affairs for advice from the Solicitor as to how the Bureau of Indian  
5 Affairs should interpret and administer a regulation of the Secretary  
6 of the Interior pertaining to the administration of Indian affairs  
7 (specifically 25 C.F.R. Part 256 relating to off reservation treaty  
8 fishing rights, which is Exhibit USA 46(c) in this case). Offered  
9 Exhibit Pl 5 is the formal opinion which the Solicitor's Office issued  
10 in response to that request. Together they constitute a recitation of  
11 the way the administrative agency has been applying the regulation and  
12 the interpretation which the supervising Executive Department over that  
13 agency placed on how the regulation should be applied. They also recite  
14 the position which the Department charged by Congress with the admini-  
15 stration of Indian Affairs (25 USC § 2) has taken as to the status of  
16 one of the Indian tribes whose relations with the United States are  
17 under its primary jurisdiction. The tribe involved is one of the  
18 plaintiff tribes in this case.

19 Offered Exhibit Pl 54 is an opinion of the Solicitor of the  
20 Department of the Interior to guide the actions of the administrative  
21 agency in its administration of Indian Affairs, specifically in  
22 advising and carrying out its trust responsibilities toward Indian  
23 Tribes in the protection and administration of their off reservation  
24 treaty fishing rights.

25 While these administrative interpretations of federal treaties,  
26 statutes and regulations are not binding on this Court, they are  
27 entitled to "great deference." Udall v. Tallman, 380 U.S. 1, rehearing  
28 denied 380 U.S. 989 (1965). Obviously to enable either this or an  
29 appellate court to give such deference, these interpretations must be  
30 before the court.

31  
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1 Congress has provided that:

2 "The Commissioner of Indian Affairs shall, under the  
3 direction of the Secretary of the Interior, and agree-  
4 ably to such regulations as the President may prescribe,  
5 have the management of all Indian affairs and of all  
6 matters arising out of Indian relations. 25 U.S.C. 2.  
7 1/

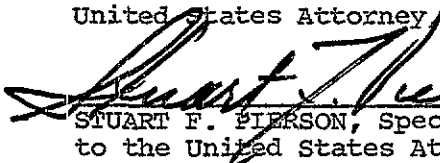
8 As previously noted the United States Supreme Court has held it  
9 "shows great deference" to the interpretation given a statute by the  
10 officer or agency charged with its administration and even more so in  
11 the case of the interpretation of an administrative regulation.

12 When faced with a problem of statutory construction,  
13 this Court shows great deference to the interpretation given  
14 the statute by officers or agency charged with its admini-  
15 stration. 'To sustain the Commission's application of this  
16 statutory term, we need not find that its construction is  
17 the only reasonable one, or even that it is the result we  
18 would have reached had the question arisen in the first  
19 instance in judicial proceedings.' Unemployment Comm'n  
20 v. Aragon, 329 U.S. 143, 153, 91 L.Ed. 136, 145, 67 S.Ct.  
21 245. See also, e.g., Gray v. Powell, 314 U.S. 402, 86 L.Ed.  
22 301, 62 S.Ct. 326; Universal Battery Co. v. United States,  
23 281 U.S. 580, 583, 74 L.Ed. 1051, 1054, 50 S.Ct. 422.  
24 'Particularly is this respect due when the administrative  
25 practice at stake "involves a contemporaneous construction  
26 of a statute by the men charged with the responsibility of  
27 setting its machinery in motion, of making the parts work  
28 efficiently and smoothly while they are yet untried and new."  
29 Power Reactor Co. v. International Union of Electrical,  
30 etc. 367 U.S. 396, 408, 6 L.Ed.2d 924, 932, 81 S.Ct. 1529.  
31 When the construction of an administrative regulation rather  
32 than a statute is in issue, deference is even more clearly  
in order. Udall v. Tallman, supra, 380 U.S. 1, 16.

See also cases cited at pages 226-227 of offered Exhibit Pl 5.

DATED this 4th day of September, 1973.

STAN PITKIN  
United States Attorney

  
STUART F. PIERSON, Special Assistant  
to the United States Attorney

1/ By Reorganization Plan No. 3 of 1950 all functions and authorities of  
all offices and agencies of the Department of the Interior were transfer-  
red to the Secretary of the Interior subject to redelegation by him,  
64 Stat. 1262, 5 U.S.C. Appendix. The Secretary has delegated responsi-  
bility for Indian affairs to the Commissioner of Indian Affairs (Secretary  
Order 2508 (10 BIA Manual 2-1) (as temporarily superseded by Secretary's  
Order 2950, as amended) and for legal matters to the Solicitor (210  
Department of the Interior Manual, Chapter 2), in each case subject to  
wide authority for redelegation.

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