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Docket Entry 363 - Filed Deposition of Lena Smith

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

THE UNITED STATES OF AMERICA,
et al.,

Plaintiff,

vs

THE STATE OF WASHINGTON, et al.,

Defendant.

No. 9213

ST. CLERK
JUN 29 10 AM '73
FEDERAL DISTRICT COURT
TACOMA, WASHINGTON

DEPOSITION OF LENA SMITH

The deposition of Lena Smith was taken on the
28th day of June, 1973, in the Federal Building, 11th and A
Streets, Tacoma, Washington, before Lloyd H. Holloway, Notary
Public.

Said deposition was taken in behalf of the
Defendant by:

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

The Plaintiff was represented by:

George D. Dysart
Assistant Regional Solicitor
U. S. Department of the Interior
1002 N. E. Holladay Street
P. O. Box 3621
Portland, Oregon

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David H. Getches
Native American Rights Fund
1506 Broadway
Boulder, Colorado

Michael Taylor
Legal Services Center
104½ Cherry Street
Seattle, Washington

MR. MCGIMPSEY: My name is Earl McGimpsey and I am an attorney for the Department of Fisheries and represent the Defendants in this law suit. Are you familiar with the law suit, do you know what it is about?

THE WITNESS: Not much.

MR. MCGIMPSEY: The law suit is a suit by the United States and the Stillaguamish Tribe and several other Indian tribes against the State of Washington and the Departments of Fisheries and Game and the Indians are alleging that the State and its Departments are depriving them of their treaty fishing rights and I believe you will be called as a witness to testify what you know about your tribe's fishing rights and how your tribe fished and that is what I am going to be asking you questions about today. If you don't understand my question, just tell me and I will try to ask another question, and if you don't know the answer to my question, just tell me so, because you are not expected to know the answer to any particular question.

Let the record show that this deposition is being

1 taken pursuant to notice and in accordance with an agreement
2 between Mr. Getches and myself, and in accordance with the
3 Federal Rules of Civil Procedure.
4

5 EXAMINATION BY MR. MCGIMPSEY:

6 Q Mrs. Smith, would you state your full name?

7 A My name is Lena Patrick Smith. My maiden name is Patrick.

8 Q Where do you live?

9 A Well, I live in Neah Bay now.

10 Q How long have you lived there?

11 A Thirty-six years.

12 Q That is on the Makah Reservation?

13 A Pardon?

14 Q That is on the Makah Reservation?

15 A Yes.

16 Q Where did you live prior to moving to Neah Bay?

17 A I lived in Tulalip.

18 Q Would that be on the reservation?

19 A I moved from Stillaguamish to Tulalip so my little boy
20 could go to school.

21 Q When did you move from Stillaguamish to Tulalip?

22 A I think I moved there someplace in the '30's anyway.

23 Q Before you moved to Tulalip, did you always live in
24 Stillaguamish?

25 A I used to go back there because my grandfather lived there

1 my mother and aunt and grandmother.

2 Q Are you familiar at all with the present tribal organiza-
3 tion of the Stillaguamish Tribe, who its officers are?

4 A Yes.

5 Q Do you know anything about fishing regulations of the
6 tribal council?

7 A No.

8 Q Do you know anything about modern day fishing by tribal
9 members?

10 A You mean when the tribe is fishing?

11 Q Right, do you know who the modern day fishermen are and
12 how they fish?

13 A Well, when I first come to know myself, I seen my grand-
14 father with a bark net made out of cedar bark and the limbs
15 made out of rope and sometimes you go along and the deep
16 holes, the eddy, and kind of not too deep then they put
17 that in there where there is a whole bunch of fish and then
18 the scoop it up.

19 Q This is your grandfather that you observed?

20 A Pardon?

21 Q Was this your grandfather that you were describing?

22 A Yes, that is the only part I seen was this Indian net, but
23 there was somewheres long, about 25 long.

24 Q Did you, yourself, ever fish?

25 A Yes.

1 Q What did you use?
2 A I learned how to spear fish.
3 Q Did you ever fish with anything other than a spear?
4 A Well, I hooked them, too.
5 Q This would be a hook and line?
6 A No.
7 Q A gaff?
8 A A gaff made out of a bone.
9 Q Other than a spear and gaff, did you ever fish by any other
10 method?
11 A I set my grandfather's net, too.
12 Q How long ago was it that you fished?
13 A Since I got away from Stillaguamish.
14 Q Did you fish in the Stillaguamish River?
15 A Yes.
16 Q Do you know, is that where your grandfather fished?
17 A Yes, I suppose my grandfather was fishing.
18 Q Do you know if your grandfather fished in any other river
19 than the Stillaguamish?
20 A Yes.
21 Q What rivers did he fish in?
22 A I don't know the name of the rivers where he used to go
23 to get the different kinds of fish, the sockeye and blue-
24 back, and he would go to a certain river and lake. There
25 is one that goes to Cavanaugh Lake for sockeye, he used to

1 go up there.

2 Q What was the name of the lake?

3 A Cavanaugh Lake.

4 Q Are there any other places where your grandfather would

5 fish?

6 A He used to go clear down to Stanwood. He would camp in

7 places. When he gets fish he would cook them and my

8 grandmother used to butcher and hang it up and smoke it.

9 Q How old are you, Mrs. Smith?

10 A Well, I am 64 and going on 65.

11 Q Did you help your grandfather when you were a girl?

12 A You mean my grandfather?

13 Q Yes.

14 A Yes, I helped my grandfather until 1935, until he died.

15 Q Did he fish up until the time he died this was?

16 A No, he had to get away from the Stillaguamish because he

17 got too old and besides, it was kind of getting tough on

18 him because the fish commissioner was stopping him.

19 Q When we were talking about the way your grandfather fished,

20 are we talking about the early 1900's?

21 A This is when I was a little girl.

22 Q So it would be about the time you were a little girl?

23 A He would go with those Indian nets and he used to buy the

24 linen nets from Seattle and Victoria, B. C.

25 Q And he used the linen nets?

1 A Yes, that's the only kind of nets he had.

2 Q Do you have any knowledge of any other fishermen, other
3 than your grandfather?

4 A No, I don't know.

5 Q How important was fish in your diet, how much did you eat
6 as a little girl?

7 A Grandfather used to catch about hundred to five hundred
8 that would have to last us all winter. Dry fish and dried
9 meat enough to last us all winter and he never fished
10 after that, after he gets his limit he don't fish anymore.

11 Q Did he fish just for fish for food for his family?

12 A Just for food.

13 Q He didn't sell his fish to fish buyers?

14 A No, there was no white people around.

15 Q What other food did you eat besides fish?

16 A Well, Grandfather used to plant potatoès, carrots and all
17 vegetables and things like that.

18 Q Did he hunt game?

19 A Yes, deer, bear, mountain goat.

20 Q Was the game a major part of the diet that you ate?

21 A I don't know, but we would have to have our meat, too.

22 Q For example, when you were a little girl, how often would
23 you have fish a week?

24 A We eat the fish when it is fresh until it is finished, then
25 he don't catch anymore. Sometimes you can't catch fish all

1 the time, just once in a while. He don't plug the river
2 or anything, he just fished in the eddy place, that's all.
3 The Stillaguamish River is a wide river.

4 Q Are you aware of any, and this question is not meant to
5 limit the legal rights you people are claiming, but are
6 you aware of any laws of the State or regulations of the
7 State, that interferred with the right of your people to
8 fish?

9 A Well, it was kind of getting kind of strong when grand-
10 father used to go out and set nets, but he was to ask the
11 fish commissioner if he could set his nets just for food
12 purposes.

13 Q And what did the fish commissioner say?

14 A And the fish commissioner said go ahead. He was the Chief
15 of the tribe and he had respect for him.

16 Q Did your grandfather tell you any stories about how life
17 was at treaty times?

18 A My grandmother was way older than my grandfather. I think
19 she was about ten years old when Governor Stevens came.

20 Q What did she tell you?

21 A She told me that she sat there with all their wives. Some
22 of them had a lot of wives, you know, five or ten, even
23 my grandfather had two wives. Grandfather's two wives got
24 killed by another tribe, another tribe killed them.

25 Q Another tribe killed them, what was the fight about, do

1 you know?

2 A This Chief was awful mean and they were coming down the
3 Stillaguamish River and they were going to go up to
4 Snoqualmie because grandfather was from Snoqualmie and
5 his father was bringing dried blackberries and dried fish
6 and dried meat and he had a canoe full of that and he was
7 bringing it to his relatives up there and that is when
8 this man killed them and took all of that stuff away from
9 them.

10 Q Are there any other tribal members of the Stillaguamish
11 Tribe that live with you in Neah Bay?

12 A I don't believe there is any.

13 Q You have been away from your other tribal members since
14 you have lived in Neah Bay, is that right?

15 A I go back up there and walk around and visit.

16 Q Other than visiting the other tribes, you have not lived
17 there?

18 A No, he does a little fishing, too.

19 Q Is this your husband that does a lot of fishing?

20 A Yes.

21 Q And he fishes at Neah Bay?

22 A UmHum.

23 Q How does he fish?

24 A He's got nets and he's got a boat.

25 Q Does he fish on the ocean?

1 A Yes.

2 MR. MCGIMPSEY: That's all the
3 questions I have.

4
5 EXAMINATION BY MR. DYSART:

6 Q Mrs. Smith, Mr. McGimpsey asked you a moment ago if your husband
7 fished in the ocean, is it in Neah Bay or the straits, do
8 you know where his fishing is?

9 A Where he fishes, that's Indian fishing grounds.

10 Q Is it inside the Straits of Juan de Fuca?

11 A Three miles out in the ocean.

12 Q Was your grandfather living on allotted land that would
13 be administered by the government?

14 A I don't know how -- he had land. The white man gave him
15 a \$1000 for it. All them lands up there, they are just
16 mixed up, you have to have papers before you can sell it.
17 I heard there was no papers for it. They would buy and
18 sell and buy and sell and now I hear there is a Japanese
19 that owns it, that's Indian land.

20 Q Did he have to go to the Bureau of Indian Affairs to sell
21 the land?

22 A No, I don't think so. I don't know, that is before my
23 time.

24 Q Do you have any idea how many Stillaguamish Indians were
25 fishing in the Stillaguamish River at the time you were a

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little girl, when your grandfather was fishing?

A Mostly I used to see grandfather spear, even across the river we would spear them, a long handled spear. He puts these deer horns that he makes a spear. He would get a fish every time. That is the way he fished, he didn't have no net.

MR. DYSART: I have no further questions.

MR. GETCHES: I have no questions.

(Witness Excused)

Lena Smith

(Signature of Witness)

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I, LENA SMITH, swear that the above in the truth,
the whole truth, nothing but the truth, so help me God.

Lena Smith
(Signature of Witness)

Subscribed and sworn to in my presence this
24th day of August, 1973.

Kathryn C. Maddock
Notary Public in and for the State
of Washington, residing at Tacoma.

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C E R T I F I C A T E

STATE OF WASHINGTON.) I, LLOYD H. HOLLOWAY, Notary Public
) ss. in and for the State of Washington,
County of Pierce) residing at Tacoma in said County
) and State, do hereby certify:

That the foregoing deposition of LENA SMITH was taken before me and completed on the 28th day of June, 1973, and thereafter transcribed under my direction; that the deposition is a full, true and correct transcript of the testimony of said witness, including all questions, answers, objections, motions, and exceptions;

That I am not a relative, employee, attorney or counsel of any party to this action, or a relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the deposition of said witness and promptly delivering the same to the Clerk of the above-entitled Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 13th day of July, 1973.

Lloyd H. Holloway

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