

In the Supreme Court of the United States

October Term, 1976

No. 67, Original

STATE OF IDAHO, ex rel. CECIL D. ANDRUS, Governor;
WAYNE L. KIDWELL, Attorney General; JOSEPH C. GREENLEY,
Director, Department of Fish and Game,
Plaintiff,

v.

STATE OF OREGON, STATE OF WASHINGTON,
Defendants.

DEFENDANT STATE OF OREGON'S
MOTION TO DISMISS AND
BRIEF IN SUPPORT OF MOTION TO DISMISS

JAMES A. REDDEN
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CITATIONS

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STATE OF OREGON, STATE OF WASHINGTON,
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MOTION TO DISMISS

I

Defendant State of Oregon moves to dismiss plaintiff's complaint on the grounds that plaintiff has failed to state a claim upon which relief can be granted, for the following reasons:

(1) This Court should abstain from exercising its original jurisdiction until the State of Idaho makes a showing that the allocation of fish recently agreed upon in the case of *United States v. Oregon*, Civil No. 68-513, United States District Court for the District of Oregon, is inequitable, or that the United States District Court for the District of Oregon is an inadequate forum for the State of Idaho to voice its objections.

(2) The issues raised by plaintiff's complaint are not ripe for adjudication at the present time.

(3) The State of Idaho is not a proper plaintiff in this case.

II

In the alternative, defendant State of Oregon moves to stay proceedings in this action for a period of not less than three years, for the reason that the recent allocation of Columbia River anadromous fish agreed to in the case of *United States v. Oregon*, Civil No. 68-513, in the United States District Court for the District of Oregon, provides the State of Idaho a substantial allocation of fish. The experience of the next three years may indicate that the present litigation is unnecessary.

In support of the above motion defendant State of Oregon will rely upon the attached brief.

Respectfully submitted,

151 James A. Redden

JAMES A. REDDEN

Attorney General of Oregon

W. MICHAEL GILLETTE

Solicitor General

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BEVERLY B. HALL

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STATE OF OREGON, STATE OF WASHINGTON,
Defendants.

BRIEF IN SUPPORT OF MOTION TO DISMISS

I

The Factual Background

The State of Idaho has filed this action against the states of Oregon and Washington, demanding an allocation of those anadromous fish in the Columbia River which it claims originate in the State of Idaho.

Paragraph 9 of plaintiff's complaint specifies that the principal runs of anadromous fish which concern plaintiff are upriver spring chinook salmon, summer chinook salmon and Group A and B summer steelhead trout. Plaintiff further claims that defendants' management and regulation of the commercial fishery has failed to recognize and make provisions for escape-

ment of an equitable portion of the aforesaid anadromous fish into the State of Idaho. (Complaint, paragraph 14.) Plaintiff's complaint likewise implies that a large portion of the anadromous fish in question are reared at eleven hatcheries located within the State of Idaho. Idaho admits that it has no commercial fishery, but claims that defendants' practices are endangering the sport fishery which Idaho residents and tourists utilize for recreational pleasure.

This Court held, — U.S. —, that it has original and exclusive jurisdiction of this case to the extent that the complaint prays that the Court declare that the State of Idaho is entitled to an equitable portion of the upriver anadromous fishery of the Columbia River Basin and that the Court determine Idaho's equitable portion thereof. This Court further noted that its order is "not a judgment that the Bill of Complaint, to the extent that permission to file is granted, states a claim upon which relief can be granted."

Since that decision, events have occurred which have altered the facts set forth in Idaho's complaint, and have convinced defendant State of Oregon that this motion to dismiss is appropriate.

On February 28, 1977, the United States District Court for the District of Oregon signed an order in *United States v. Oregon, Washington, et al*, Civil No. 68-513, approving a plan for managing fisheries on

stocks originating from the Columbia River and its tributaries above Bonneville Dam. The motion, order, and management plan are attached hereto as Appendix A. This order brings to an end nearly ten years of litigation between the United States, the States of Oregon and Washington, and the Columbia River Treaty Indian Tribes over the allocation of upriver anadromous fish in the Columbia River system. Negotiations culminating in the adoption of this plan took approximately six months, during which defendant State of Oregon was the principal negotiator for the parties defendant. Although the State of Idaho is not a party to this litigation, defendant State of Oregon consulted with the State of Idaho concerning the provisions of the management plan and used its best efforts to ensure that the State of Idaho received an equitable portion of the upriver anadromous fish, all as more fully set forth in the affidavit of Beverly B. Hall, attached hereto as Appendix B.

Briefly, the plan provides for needed escapement first, and for an allocation of harvestable fish as a second priority. Minimum escapement goals of fish destined to reach the State of Idaho are 30,000 spring chinook and 30,000 summer steelhead reaching the waters above Lower Granite Dam, the last of eight dams on the Columbia and Snake River system. Under the terms of this agreement, the Snake River Sport

fishery will have the first priority among non-treaty users on small but harvestable runs of spring chinook and summer steelhead. For example, on a run of spring chinook of between 120,000 and 150,000 fish, the Oregon and Washington non-treaty commercial fisheries are prohibited and their sport fisheries are limited to the Snake River system, where Idaho would be the primary beneficiary. This means that when runs of spring chinook are small, no non-treaty fishery would be allowed on the Columbia River below McNary Dam. Under average river conditions, 150,000 fish at Bonneville Dam would generally provide 37,500 fish over Lower Granite Dam, leaving 7,500 fish available for sports catch in the Snake River system, as set forth in the affidavit of Burnell Bohn, attached hereto as Appendix C. In the event that passage conditions over the Columbia-Snake River dams are improved, additional fish may survive over Lower Granite Dam.

The plan's management goal is to maintain a minimum average run size of 250,000 upriver spring chinook salmon, which is well within the average run size in recent years.

With respect to summer steelhead, there will be no target commercial fisheries on summer steelhead, Indian or non-Indian. Steelhead is a game fish in both Oregon and Washington, and planned harvest of

summer steelhead will be limited to sports catch. Both treaty and non-treaty commercial fisheries will be required to use a minimum mesh of eight inches in diameter to limit the incidental catch of steelhead during those commercial seasons when steelhead may be commingled with the larger chinook salmon. Moreover, only on healthy runs in excess of 150,000 fish will there be any mainstem Columbia River sports harvest on summer steelhead, permitting additional summer steelhead to escape into the State of Idaho.

The primary reason for reduced runs into the State of Idaho in recent years has been the large loss of spring chinook and summer steelhead at Columbia and Snake River dams. Juvenile salmon and steelhead emigrating from Idaho waters must pass eight dams to reach the ocean, and then the returning adults must negotiate these same eight dams to reach spawning areas. Without any fishing activity at all, large numbers of migrating fish will not survive to spawn. For example, it is estimated that 95% of downstream migrants emigrating from the Snake River were lost prior to reaching The Dalles Dam in 1973. The plan pledges the efforts of all parties to improve dam passage conditions and to enhance upriver runs, all of which will inure to Idaho's benefit.

A second factor which has arisen since Idaho's complaint was filed, and which must be taken into

consideration with respect to this motion to dismiss, is the widespread drought now occurring throughout the western United States, which is particularly severe in the Pacific Northwest. It is estimated that even with spring rainfall reaching normal or higher than normal levels, the Pacific Northwest will have received, at most, approximately 25% of its normal annual precipitation by June 1. The National Weather Service River Forecast Center has recently estimated that runoff in the Columbia River, measured at The Dalles Dam, will be the lowest in the past 100 years (Oregonian, March 8, 1977, p.1). The results of the drought are already being felt by anadromous fish as shrunken rivers make upstream fish passage difficult. Unless conditions improve substantially by summer, which is not contemplated presently, additional losses must be anticipated. The result may be such a depletion of anadromous fish runs that the survival of the species will mandate a moratorium on all fishing efforts for the next few years.

II

Idaho's Complaint Should Be Dismissed

Based upon the above facts defendant submits that Idaho has failed to state a claim upon which relief can be granted and its complaint should be dismissed.

Idaho is already receiving the equitable allocation of anadromous fish which it seeks, as a result of the

recent agreement in *United States v. Oregon, supra*. Whether or not this proves to be sufficient can only be determined by viewing the operation of the plan over the next three to five years, which will permit one or more cycles of anadromous fish to make their passage up and down the river systems.

The State of Oregon would welcome participation by the State of Idaho in the ongoing case of *United States v. Oregon and Washington* now before the United States District Court for the District of Oregon. The District Court is the proper forum to hear the claims made by the State of Idaho, as that Court has been dealing with the management and allocation of upriver anadromous fish in the Columbia River for the past nine years. This Court should abstain from exercising its original jurisdiction until the State of Idaho makes a clear showing that the allocation of fish recently agreed upon in *United States v. Oregon* is inequitable to the State of Idaho, or that the United States District Court for the District of Oregon does not provide an adequate forum for the State of Idaho to voice its concerns and objections.

Idaho's claim is not ripe for adjudication at the present time, both for this reason and for the reason that the effects of the present and widespread drought in the Pacific Northwest are as yet unknown.

Moreover, the State of Idaho is not a proper

plaintiff in this case. Free swimming fish, once released into the waters of an interstate river system, become *ferae naturae*, incapable of being owned by anyone until actually reduced to possession. The Court has already held, in *Missouri v. Holland*, 252 US 416 (1920) that the federal government may not, pursuant to an international treaty, exercise some control over migratory birds when they were located within a State's borders.

As was held in *Tlinget and Haida Indians v. United States*, 389 F2d 778, 785 (Ct Cl 1968):

"Since the primordial decision in *Geer v. Connecticut*, 161 US 519, 16 S Ct 600, 40 L Ed 793 (1896), it has been uniformly held that there is no property right in any private citizen or group to wild game or to freely-swimming migratory fish in navigable waters. Fish are *ferae naturae*, capable of ownership only by possession and control. No citizen has any right to the fish nor to exclude any other citizen from an equal opportunity to exercise his right to possession. *Shively v. Bowlby*, 152 US 1, 14 S Ct 548, 38 L Ed 331 (1894). This court has repeatedly adhered to that rule of law. *Aleut Community of St. Paul v. United States*, 117 F Supp 427, 431, 127 Ct Cl 328, 334 (1954). *Cf. Bishop v. United States*, 126 F Supp 449, 130 Ct Cl 198 (1954) Cert denied, 349 US 955, 99 L Ed 1279, 75 S Ct 884 (1955); *Fleming v. United States*, 352 F2d 533, 173 Ct Cl 426 (1965)."

This argument would appear to apply with equal force to Idaho's claim to ownership of anadromous fish. Moreover, a substantial number of the hatcheries

within the State of Idaho are funded with federal monies, and are presumably intended for the benefit of all of the people through whose territory the rivers flow, and not exclusively for residents of the State of Idaho.

III

These Proceedings Should Be Stayed

In the alternative, the State of Oregon has moved to stay proceedings in this action for a period of not less than three years, to provide sufficient time to determine whether the recent allocation of Columbia River anadromous fish ordered by the Court in *United States v. Oregon, supra*, provides the State of Idaho with an equitable allocation of fish, and to determine the impact of the present drought on the anadromous fishery. Persistent and widespread drought may well result in the destruction of such substantial portions of the anadromous fishery that any allocation ordered by any Court will be moot, for the reason that there will be insufficient numbers of anadromous fish to permit any harvest for several years in the future. A stay is necessary to determine whether these events will occur.

A stay of not less than three years duration would also permit all parties to assess the impact of the management plan on Idaho's claims and to discuss the feasibility of Idaho's intervention in *United States v.*

Oregon and Washington, supra, where all other user groups are currently trying to arrive at an equitable solution to the allocation question.

Respectfully submitted,

JAMES A. REDDEN
Attorney General of Oregon

W. MICHAEL GILLETTE
Solicitor General

RAYMOND P. UNDERWOOD

BEVERLY B. HALL

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Counsel for Defendant
State of Oregon

APPENDIX A
A PLAN FOR MANAGING FISHERIES
ON STOCKS ORIGINATING FROM THE
COLUMBIA RIVER AND ITS
TRIBUTARIES ABOVE BONNEVILLE DAM

The purpose of the plan shall be to maintain, perpetuate and enhance anadromous fish and other fish stocks originating in the Columbia River and tributaries above Bonneville Dam for the benefit of present and future generations, and to insure that the Nez Perce Tribe of Idaho, Confederated Tribes of the Umatilla Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakima Indian Nation, hereinafter called Tribes, having the right to fish based on a treaty with the United States are accorded the opportunity for their fair share of harvest, and to provide for a fair share of the harvest by nontreaty user groups.

This plan is based upon the unique circumstances relating to the Columbia River system and the parties hereto and does not necessarily have application in other fisheries.

The parties also recognize the substantial management problems resulting from the ocean harvest of mixed stocks of anadromous fish originating from the upper Columbia River and its tributaries and the wastage resulting from fishing on immature stocks.

The parties will continue joint efforts to collect and gather data on this fishery and to reduce inefficient and wasteful harvest methods.

Due to environmental factors totally unrelated to the treaty or nontreaty fisheries, there has been a continual decline of some runs of anadromous fish in the Columbia River system. This trend could deprive not only the treaty Indians, but also other user groups of the opportunity to harvest anadromous fish. The parties pledge to work cooperatively to maintain the present production of each run, rehabilitate runs to their maximum potential and to work towards the enhancement and development of larger and additional runs where biologically and economically feasible.

(1) The managing fishery agencies shall make every effort to allocate the available harvest as prescribed in this agreement on an annual basis. However, because run size cannot always be accurately calculated until some lower fishery has taken place, annual adjustment of the sharing formulas for each species may be required to provide the appropriate shares between treaty and nontreaty users. If treaty and nontreaty users are not provided the opportunity to harvest their fair share of any given run as provided for in this plan, every effort shall be made to make up such deficiencies during the next succeeding run of the same race. Overall adjustments shall be made within a 5-year time frame.

(2) The treaty Indian tribes and state and federal agencies shall diligently pursue and promote through cooperative efforts the upriver maintenance and enhancement of fish habitat and hatchery rearing programs, and so far as practicable, maintain present production of each run and to rehabilitate runs to their maximum potential.

(3) Hatchery salmon and steelhead released to maintain or restore runs above Bonneville Dam shall be shared pursuant to this plan.

(4) A technical advisory committee shall be established to develop and analyze data pertinent to this agreement, including but not limited to the following: calculated run size for all species of fish, ocean catches, escapement goals, catch allocation and adjustments, dam loss, habitat restoration, and hatchery rearing programs. Such a committee shall make recommendations to the managing fishery agencies to assure that the allocations in this agreement are realized. Members shall be qualified fishery scientists familiar with technical management problems on the Columbia River. The committee shall be comprised of representatives named by each of the three states, Oregon, Washington, Idaho, National Marine Fisheries Service, U. S. Fish and Wildlife Service and each of the Indian Tribes.

(5) Each party shall develop a catch record pro-

gram that utilizes reliable statistical methods and effective enforcement procedures as developed by the committee. Indian tribes shall report on appropriate state forms for each species ceremonial, subsistence and any other catch not sold to state-licensed buyers. The states shall report and make available to all interested parties treaty and nontreaty sport and commercial catch for each species. All the above reports shall be made within an agreed-upon time schedule.

(6) The states agree to enact or recommend for enactment by the Pacific Fisheries Management Council appropriate conservation regulations for the ocean fishery that will assure an efficient utilization of stocks and will provide for adequate escapement of mature fish into the Columbia River to achieve the goals and purposes of this plan. Marine regulations should attempt to harvest mature fish and reduce waste.

(7) Fish escapement totals, dam loss estimates, or other technical aspects of this agreement may be modified by mutual agreement to reflect current data. In the event that significant management problems arise from this agreement that cannot be resolved by mutual agreement, the parties agree to submit the issues to federal court for determination. In any event,

the Court shall retain jurisdiction over the case of *U. S. v. Oregon*, Civil 68-513, (D.C. Or).

(8) The sharing formulas as set forth in this plan are based upon the premise that the marine area catches in U. S. controlled waters of fish originating above Bonneville Dam, other than fall chinook and coho runs, will be regulated by PFMC so as to be essentially de minimis portions of those runs. The parties acknowledge that if subsequent data should indicate that this premise is incorrect, these formulas may require revision.

(9) Regulations affecting treaty users which are enacted in conformity with this comprehensive plan shall be considered as complying with the court's decrees enunciated in *U. S. v. Oregon*, Civil No. 68-513, District of Oregon.

(10) Tribal members fishing pursuant to this agreement may employ only members of the Tribes, while exercising their treaty fishing rights.

(11) All fish numbers referred to in this agreement are *adult* fish.

(12) The sharing formulas contained herein for determining the treaty fishery share refer to those fish caught in the Columbia River below McNary Dam and any other inland off-reservation catch placed in commercial channels.

Except as provided in subparagraph 5 under Spring

Chinook, neither treaty nor nontreaty non-commercial harvest in tributaries, or in the mainstem Columbia River above McNary Dam, shall be considered in the sharing formulas contained herein.

(13) Upon thirty days written notice by any party, after five years from date, this comprehensive plan may be withdrawn or may be renegotiated to assure that the terms set forth represent current facts, court decisions, and laws.

Fish Management Plans

A fish management plan has been adopted for those species of importance to assure future conservation of the resource and equitable sharing of the harvest between treaty Indians and nontreaty users. The formulas represent *Available Fish for Harvest* and may not reflect total catch if fishing effort is inadequate to harvest all available fish. All runs of fish described in this plan are those originating in the area of the Columbia River or its tributaries above Bonneville Dam.

Fall Chinook Salmon

The Columbia River fall chinook shall be managed under the following plan:

(1) Run size shall be determined by the number of fish *entering* the Columbia River which are *destined* to pass Bonneville Dam.

(2) Escapement of 100,000 fish above Bonneville

Dam shall be subtracted from total *in-river* run size.

(3) Additional fish above escapement are available for harvest and shall be shared 60% by treaty fishermen and 40% by nontreaty fishermen.

(4) The states' goal is to manage the fisheries to provide and maintain a minimum average *harvestable* run size of 200,000 upriver fall chinook to the Columbia River.

(5) The 60% treaty share shall include mainstem ceremonial, subsistence, and commercial harvest as allocated by the Indian tribes. The 40% nontreaty share shall include *in-river* commercial and sport harvest as allocated by the appropriate agencies.

Spring Chinook

The Columbia River spring chinook shall be managed under the following plan:

(1) Run size shall be determined by the number of fish *entering* the Columbia River *destined* to pass Bonneville Dam.

(2) Spawning escapement goals shall be a minimum of 120,000 and 30,000 fish above Bonneville and Lower Granite Dams respectively.

(3) The states' goal is to manage the fisheries to provide and maintain a minimum average run size of 250,000 upriver spring chinook to the Columbia River.

(4) Treaty ceremonial and subsistence catch shall have first priority. These fisheries shall not exceed a

catch of 2,000 fish on a run size of less than 100,000 fish; 5,000 on a run size of between 100,000 and 120,000 fish; and 7,500 fish on a run size of between 120,000 fish and 150,000 fish. Treaty ceremonial and subsistence fishing for spring chinook with gillnets as well as other normal gear may occur, but such gillnet fishing shall be subject to a notification system similar to that presently used for ceremonial fishing. All catches shall be monitored cooperatively for the purpose of ascertaining the amount of the catch.

(5) On a run size of between 120,000 and 150,000 fish passing Bonneville Dam, the nontreaty fisheries are limited to the Snake River system and may harvest fish which are in excess of the 30,000 spawning escapement passing Lower Granite Dam. (Under average river flow conditions, 120,000 fish at Bonneville Dam will generally provide 30,000 fish at Lower Granite Dam and 150,000 fish at Bonneville Dam will generally provide 37,500 fish at Lower Granite Dam.)

(6) On a run size of more than 150,000 fish passing Bonneville Dam, all allocations as provided for in items 4 and 5 shall occur. All additional fish available for harvest below McNary Dam shall be shared 40 percent for treaty fishermen and 60 percent for nontreaty fishermen. If river passage conditions improve so as to provide more than 40,000 fish at Lower

Granite Dam on run sizes of 150,000 fish or less, the 40 percent and 60 percent allocation may occur on a run size of less than 150,000 fish at Bonneville Dam.

Summer Chinook Salmon

Summer chinook salmon runs are precariously low and do not warrant any fishery at the present time, with the exception of a treaty subsistence, ceremonial, and incidental catch not to exceed 2,000 fish during the months of June and July.

The parties agree that if the run size increases a formula for sharing of the available harvest above present escapement goals for this race shall be similar to spring chinook.

Summer Steelhead

(1) Run size shall be determined by the number of fish *entering* the Columbia River *destined* to pass Bonneville Dam.

(2) The escapement goal to spawning grounds above Lower Granite Dam shall be a minimum of 30,000 fish. A run size of 150,000 fish at Bonneville Dam will provide for 30,000 fish at Lower Granite Dam.

(3) The treaty Indian mainstem fishery shall be limited to ceremonial, subsistence and incidental catch to other commercial fisheries. A minimum mesh restriction of 8 inches will be utilized to limit incidental catch.

(4) The Indian tribes recognize the importance of the steelhead stocks to recreational users and agree to forgo a target commercial fishery.

Sockeye Salmon

Sockeye salmon runs are precariously low and do not warrant any fishery at the present time, with the exception of a treaty subsistence, ceremonial, and incidental catch not to exceed 2,000 fish.

The parties agree that if the run size increases so as to provide harvestable quantities, such harvest shall be shared equally between treaty and nontreaty fishermen.

The parties recognize the importance of protecting summer chinook and summer steelhead stocks during the harvest of sockeye salmon. Incidental catch of summer chinook and steelhead shall be minimized by providing appropriate restrictions to the sockeye fishery.

Coho Salmon

Coho stock are in the treaty fishing area simultaneously with other species which currently need protection from fishing effort. Parties agree to use their best efforts to develop methods to maximize coho harvest while protecting those other species.

Shad

Shad runs have been sufficiently large to allow for unlimited harvest. However, because shad fisheries

can take stocks of salmon and steelhead that are below harvestable levels, new catch methods shall be pursued particularly by the Indians above Bonneville Dam to assure a sufficient catch of shad while minimizing the catch of other species. If escapement goals and catch formula must be established in the future, the committee shall compile the required data and make recommendations to the managing fisheries agencies.

Sturgeon


The population of sturgeon in the Columbia River appears residual above Bonneville Dam. The parties agree that the Indian tribes shall have a commercial fishery regulated by sound principles of conservation and wise use. A sport harvest may occur simultaneously for sturgeon above Bonneville Dam.

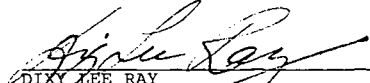

Winter Season

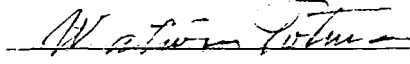
The treaty fishermen shall be allowed a mainstem commercial fishery for any species of fish between *February 1*, and *April 1*.

This comprehensive plan for managing anadromous fisheries on stocks originating from the Columbia

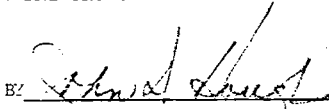
River and its tributaries above Bonneville Dam is adopted by the undersigned this 25th day of February, 1977.

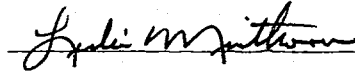

ROBERT W. STRAUB
Governor of Oregon

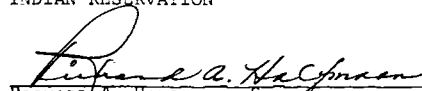

DIXY LEE RAY
Governor of Washington

CONFEDERATED TRIBES OF THE WARM
SPRINGS RESERVATION OF OREGON



CONFEDERATED TRIBES & BANDS OF THE
YAKIMA INDIAN NATION

UNITED STATES OF AMERICA

BY 
JOHN HOUGH
Special Assistant to the
Secretary of the Interior


CONFEDERATED TRIBES OF THE UMATILLA
INDIAN RESERVATION


RICHARD A. HALFMOON, CHAIRMAN
NEZ PERCE TRIBE OF IDAHO


ALTA A. GUZMAN, SECRETARY
NEZ PERCE TRIBE OF IDAHO

APPENDIX B

AFFIDAVIT

STATE OF OREGON)
) ss.
 County of Multnomah)

I, Beverly B. Hall, being duly sworn, state as follows:

(1) I am one of the attorneys who represented the State of Oregon in the *United States v. Oregon and Washington*, Civil No. 68-513, in the United States District Court for the District of Oregon.

(2) Commencing in August, 1976, I entered into negotiations with attorneys representing the Columbia River Indian Tribes for the purpose of arriving at a comprehensive plan for the management of Columbia River anadromous fisheries on stocks originating above Bonneville Dam.

(3) Negotiations continued until February, 1977, and involved extensive efforts from the Director and staff of the Oregon Department of Fish and Wildlife, the Washington Attorney General's office, biologists from both states and from the United States, and attorneys for the four Columbia River treaty Indian tribes.

(4) Discussions were held with representatives of the State of Idaho, Department of Fish and Wildlife, and especially with plaintiff Joseph C. Greenley,

Director of said Department. Provisions were made in the plan for an equitable allocation of spring chinook and steelhead to the State of Idaho, although Idaho was not a party to the suit. After a tentative agreement had been reached amongst the lawyers, staff personnel from the Oregon Department of Fish and Wildlife made a trip to Boise for the express purpose of discussing the proposed settlement with representatives of the State of Idaho and seeking their concurrence therein.

(5) The State of Idaho supported our efforts to develop a comprehensive management plan, and did not disagree with the allocation made or otherwise voice its complaints concerning the comprehensive plan until after this Court's decision on December 7, 1976.

1s/ Beverly B. Hall
Beverly B. Hall

Subscribed and sworn to before me this 5th day of April ~~March~~, 1977.

1s/ Roberta S. Califano
Notary Public for Oregon

My Commission Expires: 12/12/80

[Seal]

APPENDIX C

AFFIDAVIT

STATE OF OREGON)
) ss.
 County of Multnomah:)

I, Burnell Bohn, being first duly sworn, state as follows:

1. I am a biologist employed by the Oregon Department of Fish and Wildlife. My duties include leadership of Columbia River anadromous fish programs, and I was closely involved in the formulation of the Comprehensive Plan for the Management of Anadromous Fisheries in the Columbia River adopted by the United States District Court for the District of Oregon on February 28, 1977, in *United States v. Oregon*, Civil No. 68-513.

2. Under the terms of the comprehensive plan, the Snake River sport fishery will have first priority among non-treaty users on small but harvestable runs of spring chinook and summer steelhead. For example, on a run of spring chinook of between 120,000 and 150,000 fish, the Oregon and Washington non-treaty commercial fisheries are prohibited and the sport fisheries are limited to the Snake River system where Idaho would be the primary beneficiary.

3. The management goal of the plan is to maintain a minimum average run size of 250,000 upriver spring

chinook salmon, which is well within the average run size in recent years.

4. Minimum escapement goals of fish destined to reach the State of Idaho are 30,000 spring chinook and 30,000 summer steelhead reaching the waters above Lower Granite Dam, the last of eight dams on the Columbia and Snake River systems.

5. Under average river conditions, 150,000 fish at Bonneville Dam would generally provide 37,500 fish over Lower Granite Dam, leaving 7,500 fish available for sports catch in the Snake River system.

6. There will be no target commercial fishery on summer steelhead, Indian or non-Indian.

7. Steelhead is a game fish in both Oregon and Washington, and planned harvest of summer steelhead in the mainstem of the Columbia River will be limited to sports catch.

8. No mainstem Columbia River sports harvest of summer steelhead will be permitted on runs of less than 150,000 fish, to insure the escapement of sufficient summer steelhead into the State of Idaho.

9. Both treaty and non-treaty commercial fisheries on the mainstem of the Columbia River will be required to use a minimum mesh of eight inches in diameter to limit the incidental catch of steelhead during certain commercial salmon seasons.

10. The primary reason for reduced runs of spring

chinook salmon and steelhead into the State of Idaho in recent years has been the large loss of fish at Columbia and Snake River dams. It is estimated that 95% of downstream migrants emigrating from the Snake River were lost prior to reaching The Dalles dam in 1973.

15/ Burnell Bohn
Burnell Bohn

Subscribed and sworn to before me this 5th day
of ~~March~~ ^{April}, 1977.

15/ Roberta S. Califano
Notary Public for Oregon

My Commission Expires: 12/12/90

[seal]

