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APR 18 1994

Judge Edward Rafeedie

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8	UNITED STATES OF AMERICA,)	
9	et al.,)	No. 9213 - Phase I
10	Plaintiffs,)	
11	vs.)	Subproceeding No. 89-3
12	STATE OF WASHINGTON,)	STIPULATION RE:
13	et al.,)	PRESENTATION OF TRIBAL
14	Defendants.)	USUAL AND ACCUSTOMED
15)	CLAIMS AND EVIDENCE

WHEREAS, the Tribes represented by undersigned counsel (hereinafter "stipulating Tribes") are parties to subproceeding 89-3 in United States v. Washington, Civ. No. 9213, or are otherwise parties to Civ. No. 9213; and

WHEREAS, the stipulating Tribes intend to introduce evidence in subproceeding 89-3 concerning each Tribe's usual and accustomed shellfishing grounds and stations; and

WHEREAS, most but not all stipulating Tribes have previously determined usual and accustomed grounds and stations in marine waters; and

WHEREAS, such previously determined usual and accustomed grounds and stations significantly overlap with

STIPULATION RE: PRESENTATION OF TRIBAL USUAL AND ACCUSTOMED CLAIMS AND EVIDENCE - 1

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1 each other in many areas and, taken together, encompass the
2 entire case area; and

3 WHEREAS, in the interest of judicial economy and in
4 order to facilitate the orderly and efficient presentation
5 at trial of claims and evidence regarding shellfish usual
6 and accustomed grounds and stations, and to avoid the
7 presentation of excessive cumulative evidence;

8 NOW THEREFORE the stipulating Tribes hereby agree, with
9 respect to subproceeding 89-3 only, as follows:

10 1. Limitation of Evidence and Claims to Previously
11 Determined U&A Areas. With the exception of the Upper
12 Skagit Indian Tribe, as more fully discussed below, each
13 Tribe party to subproceeding 89-3 hereby agrees to limit, in
14 subproceeding 89-3 only, its claims to shellfish usual and
15 accustomed grounds and stations, and its introduction of
16 evidence in support of those claims, to marine and fresh
17 water areas, and tidelands and bedlands adjoining and
18 subjacent to those marine and fresh water areas, which are
19 within the usual and accustomed grounds and stations
20 previously determined for such Tribe in United States v.
21 Washington or any of its subproceedings.

22 2. Exception for Upper Skagit Indian Tribe. All
23 stipulating parties acknowledge and agree that in
24 subproceeding 89-3 the Upper Skagit Indian Tribe shall be
25 entitled to claim, and introduce evidence in support of its
26 claims to shellfish usual and accustomed grounds and
27

28 STIPULATION RE: PRESENTATION OF TRIBAL USUAL
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1 stations, outside of its currently adjudicated usual and
2 accustomed grounds and stations, in the marine and fresh
3 water areas, and the tidelands and bedlands adjoining and
4 subjacent to those marine and fresh water areas, which are
5 within Washington Department of Fisheries Salmon Catch
6 Reporting Areas 7B, 7C, 8 and 8A, except as limited by
7 separate agreement between Upper Skagit and Tribes with
8 existing usual and accustomed grounds and stations in these
9 same areas.

10 Nothing herein shall preclude any stipulating Tribe
11 from contesting in subproceeding 93-1 any claims made, or
12 the evidence offered in support of those claims, by the
13 Upper Skagit Indian Tribe in that subproceeding to
14 additional usual and accustomed grounds and stations for
15 anadromous fish, notwithstanding the fact that such claims
16 or evidence were presented in subproceeding 89-3, and were
17 not contested by such stipulating Tribe.

18 3. Primary Rights Claims. No stipulating Tribe shall
19 make a new primary rights claim in this subproceeding.

20 4. Presentation of Claims and Evidence; Proposed
21 Findings and Conclusions. With respect to the presentation
22 of claims and evidence in subproceeding 89-3, no stipulating
23 Tribe shall oppose any tribal claim which is limited to the
24 scope described in paragraphs 1, 2 and 3 above, nor examine
25 or cross-examine in any trial in subproceeding 89-3 any
26 tribal expert or lay witness whose testimony is limited to
27 the scope described in paragraphs 1, 2 and 3 above, nor

1 propose or join in any proposed finding of fact or
2 conclusion of law that would establish or preclude the
3 establishment of any claim whose assertion would be in
4 conflict with the terms of this stipulation.

5 5. Remedy in Event of Breach of Stipulation. If, either
6 before or during trial, any stipulating Tribe intends to
7 oppose a claim or examine or cross-examine a witness of
8 another stipulating Tribe on the grounds that the latter
9 Tribe has exceeded the scope of its claims or presentation
10 of evidence as agreed to in paragraphs 1, 2 or 3 above,
11 counsel for the Tribe opposing the claim or evidence shall
12 first notify counsel for the latter Tribe and both Tribes
13 shall make a good faith effort to achieve a mutual
14 resolution that will avoid or minimize the need for such
15 opposition. If such efforts are unsuccessful, any
16 stipulating Tribe may submit to the Court a request to
17 enforce the terms of this stipulation against any other
18 stipulating Tribe.

19 6. No Prejudice to Future Claims. Notwithstanding
20 anything in this Stipulation to the contrary, nothing herein
21 shall bar, nor shall any Tribe claim that it bars, any Tribe
22 in subsequent proceedings following determination of the
23 initial issues in subproceeding 89-3, from seeking to:

24 i) expand its shellfish usual and accustomed grounds
25 and stations; or
26
27

1 ii) pursue claims of primary or exclusive right to take
2 shellfish within its usual and accustomed grounds and
3 stations; or

4 iii) oppose any other Tribe with respect to such other
5 Tribe's claims related to sub-paragraphs i) and ii) above.

6 7. Previously Determined Primary Rights. Any Tribe
7 which has obtained a prior court determination that its
8 fishing rights in any location constitute the primary right
9 to fish at that location shall, without the submission of
10 evidence or the entry of any finding of fact or conclusion
11 of law in subproceeding 89-3, be deemed by all stipulating
12 parties to be entitled to the same primary right designation
13 at that location for shellfish unless there is a contrary
14 determination of the primary right issue at a later date in
15 a subsequent proceeding or sub-proceeding.

16 8. No Modification of Existing Usual and Accustomed or
17 Primary Rights. Notwithstanding anything in this Stipulation
18 to the contrary, nothing herein shall be construed to modify
19 or limit the rights of any Tribe as to its previously
20 determined usual and accustomed grounds and stations, or as
21 to its previously determined primary or exclusive rights in
22 such areas.

23 9. Status Quo of Formal and Informal Agreements
24 Between Tribes Maintained. Subject to the provisions of
25 this agreement and orders of the court defining usual and
26 accustomed fishing grounds and stations ("U&A places") and
27 primary rights, it is the intent of the parties thereto,

1 except as specifically set forth herein, to maintain the
2 presently existing status quo established by formal and
3 informal agreement(s) between and among Tribes as it relates
4 to U&A places. Absent agreement to the contrary, a Tribe
5 shall not be precluded from shellfishing in one of their U&A
6 places solely because there has been no directed Tribal
7 salmon fishery in that area during previous seasons. For
8 example, the absence of directed Tribal salmon fisheries in
9 WDF salmon catch reporting area 9 during the past four years
10 shall not preclude any tribe otherwise entitled to fish in
11 that area from shellfishing there.

12 10. Existing Rights Preserved; Stipulation Not an
13 Admission. Notwithstanding anything in this stipulation to
14 the contrary, no stipulating Tribe waives any of its rights
15 under paragraph 25 of the Court's March 22, 1974 Injunction
16 in United States v. Washington, 384 F. Supp. 312, 419 (W.D.
17 Wash. 1974); nor does any stipulating Tribe by agreeing to
18 this stipulation admit any fact or concede any legal theory.

19 11. Filing of Stipulation with Court. This stipulation
20 shall be filed with the Court by tribal coordinating
21 counsel.

22 AGREED TO this 7th day of April, 1994.

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24 
25 Jeffrey John Bode
26 Co-Counsel for Nooksack Indian
27 Tribe

23
24 
25 Allan E. Olson
26 Attorney for Swinomish
27 Indian Tribal Community

28 STIPULATION RE: PRESENTATION OF TRIBAL USUAL
AND ACCUSTOMED CLAIMS AND EVIDENCE - 6

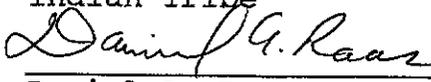
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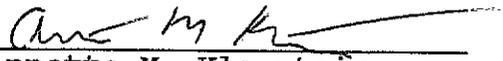
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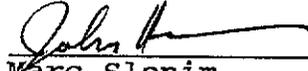

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Co-Counsel for Upper Skagit
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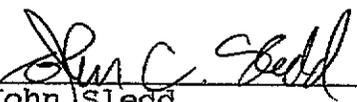

Robert Otsea
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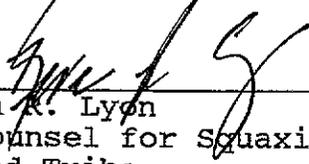

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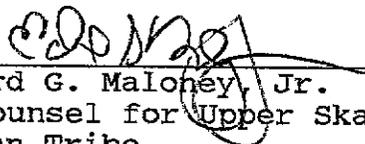

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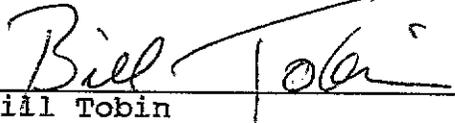

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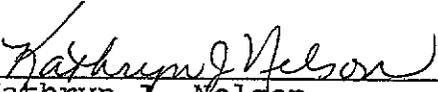

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Tribe, and Port Gamble, James-
town, and Lower Elwha S'Klallam Tribes

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UNITED STATES OF AMERICA, *et al.*,

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v.

STATE OF WASHINGTON, *et al.*,

Defendants.

Civil No. 9213 - Phase I

Subproceeding 89-3

CERTIFICATE OF SERVICE

I hereby certify that I served the documents listed below by causing to be mailed a copy of same, postage prepaid, on April 18, 1994, to those persons whose names appear on the Master Service List for *United States v. Washington* and on the Service List for Subproceeding No. 89-3. The documents served are as follows:

1. this Certificate of Service;
2. Stipulation Re: Presentation of Tribal Usual and Accustomed Claims and Evidence.

Dated this 18th day of April, 1994.


K. Allison McGaw

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