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## Record of Proceedings at the Trial, Vol. IV

Wayne C. Lenhart

*Court Reporter, Spokane, Washington*

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

FILED IN THE  
U. S. DISTRICT COURT  
Eastern District of Washington

FEB 13 1976

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v )  
 )  
BARBARA J. ANDERSON, et al, )  
 )  
Defendants. )

J. R. FALLQUIST, Clerk

Deputy

No. 3643

VOLUME IV

pgs 600-800

1 A Yes, we're getting confused here, I'm sorry. The seven  
2 is the difference between-- The seven is the difference  
3 between 75, the measured high temperature, and the  
4 desirable maximum temperature of 68, is seven, I'm  
5 sorry.

6 Q And what is the 22, according to your understanding of  
7 the testimony?

8 A The 22 is the-- According to what has been presented  
9 in court here, Mr. Navarre's testimony, is the 22 CFS  
10 measured on that day at the U.S.G.S. Gaging Station.

11 Q And when do you understand that to have been measured;  
12 in other words, did you understand that to be at some  
13 particular point, or the average for the day?

14 A The testimony was that that was the average for the  
15 day.

16 Q My question, then, to you is this, in your professional  
17 judgment, is the equation as presented valid if we  
18 use the average CFS flow for the day as a portion of  
19 the equation, or should we be directing our attention  
20 to some other CFS for an alternative?

21 A In my opinion, this is in my opinion, I feel that the,  
22 the, the discharge, the cubic feet per second that was  
23 used in that calculation should have been the discharge  
24 at the instant that temperature was made. This is my  
25 opinion on it.

1 Q Let me ask you another hypothetical question, then, sir.  
2 Assume that at the exact moment in the day that the  
3 highest temperature was reached, namely 75 degrees, the  
4 flow happened to be clear down to, say, 17 CFS at that  
5 particular instant during the day, can you, on the  
6 basis of that assumption--

7 MR. GERMERAAD: Your Honor, I would make an  
8 objection to that question as to its form because there  
9 is nothing in the record to support in any way a  
10 supposition that you can have 17 CFS flow on the same  
11 day that you had the 22 CFS average.

12 MR. CERUTTI: If I may respond--

13 MR. GERMERAAD: If he can point to a point in the  
14 record where that could be established, then I think  
15 he could go forward, but as of now, I don't think  
16 he's laid a proper foundation for this question.

17 MR. CERUTTI: If I may respond, Your Honor, two  
18 points, first is that I use this by way of illustration  
19 and the second point is that Mr. Woodward specifically  
20 did testify that lows of 17 cubic feet per second were  
21 reached during that second. Mr. Woodward further  
22 testified that there was direct correlation between  
23 the flow and the temperature, and that the highest  
24 temperatures came at the lowest flows.

25 THE COURT: Counsel, that's my recollection of Mr.

1 Woodward's testimony.

2 MR. GERMERAAD: But, Your Honor, that was, that  
3 question was based on the fact that the 17 could have  
4 been reached on that same day, and there is an  
5 indication of 17, but counsel has not established that  
6 a 17 CFS flow was high on July 17th, when that was made.

7 THE COURT: Well, you're correct, but I think the  
8 question is purely hypothetical as regards the  
9 possibilities. I will let him answer.

10 Q (By Mr. Cerutti) Perhaps I can repeat the question,  
11 because of the interruption; at least I'll try to re-  
12 phrase it in the same fashion.

13 I'd like you, sir, to assume, just hypo-  
14 thetically, that at the exact moment in time when this  
15 75-degree high was reached, for a water temperature,  
16 the cubic-foot-per-second flow at that point happened  
17 to be 17, notwithstanding the fact that it might have  
18 been 22 for an average for the day, and I'd like you to  
19 tell us, if you can, what effect that would have on  
20 the formula and upon the recommended flow for the  
21 lower mile of the creek.

22 A Could I take this one sentence at a time?

23 Q Certainly.

24 A If the hypothetical-- Hypothetically, if this situation  
25 occurred, 75 degrees fahrenheit, a very critical

1 temperature, obviously, water temperature, 17 cubic  
2 feet per second flow, which would be representative  
3 of the lowest flow of the year. If these computations  
4 could be used and the temperature happened to be taken  
5 at that time, when the flow was at 17 CFS, then,  
6 according to Mr. Navarre's formula, the flow necessary  
7 to maintain a quality trout fishery would be 21.2 CFS,  
8 plus the factor of heating that may be added on to that.

9 Q That brings me to my final question; this plus factor,  
10 the two and a-half that was thrown in to round out the  
11 , you have any professional opinion as  
12 to whether that two and a-half happens to be an amount,  
13 or a number, that is discernible through some pro-  
14 fessionally recognized formula? In other words, why  
15 not one and a-half?

16 A I cannot really speak to Mr. Navarre's derivation of  
17 that figure. There certainly would be some increase  
18 in the exposed water surface to solar energy, and the  
19 heat absorption there would be somewhat greater, but  
20 I, I can see no basis in scientific calculations, in  
21 mathematical calculations, that would arrive at that  
22 figure, from the information presented to me.

23 MR. CERUTTI: Thank you, sir.  
24  
25

1 CROSS-EXAMINATION

2 BY MR. REKOFKE:

3 Q Mr. Simon, showing you Exhibit 65, Plaintiff's Exhibit  
4 65, reference in that first sentence, "A representative  
5 of--". Would you read that sentence?

6 A Yes, sir. "A representative of these two departments  
7 has investigaged the above-referenced application."

8 Q Who was that representative, do you know?

9 A That representative, Donald B. Earnest, who was acting  
10 Regional Fish Biologist in this area in 1969.

11 Q And who, where is he now, or what is he; is he any  
12 longer with the Department?

13 A I'll answer your first question first. At the present  
14 time, Mr. Earnest is vacationing in Mexico.

15 Q I see.

16 A And he a retired employee of the Washington Department  
17 of Game.

18 Q We might show you Defendant's Exhibit No. 3, for  
19 identification, in the event it has not been admitted;  
20 do you recognize that document, Mr. Simon?

21 A Yes, sir.

22 Q What is that, just for identification; you don't have  
23 to read it, but what is it?

24 A This is a letter that Mr. Earnest wrote to a Mr. John  
25 Ward, who functions as our Olympia staff, Water Right

1           Reviewer, application reviewer, go-between between our  
2           Department and the Department of Ecology, or Department  
3           of Water Resource, and this letter, in essence, is--  
4   Q       Better not state what it is.  
5   A       Okay.  
6   Q       Now, the author of Plaintiff's Exhibit No. 65 was whom?  
7   A       (No response.)  
8   Q       Who wrote 65? I don't have it in front of me.  
9   A       I'm sorry, John A. Biggs, Director of the Department  
10          of Game, and Thor C. Tollefson, Director, the Department  
11          of Fisheries.  
12   Q       What connection did Mr. Ward have with those gentlemen?  
13   A       This letter was a field recommendation to our Olympia  
14          staff which resulted in Exhibit 65 being written.  
15               MR. GERMERAAD: Your Honor, I would object, unless  
16          Mr. Rekofke can lay a proper foundation for Mr. Simon's  
17          personal knowledge of what was a recommendation to what,  
18          in '69, three years before he had anything to do with  
19          the Spokane area, or Stevens County, or Chamokane Creek.  
20               MR. REKOFKE: If it please the Court, yesterday  
21          plaintiff examined, and as a matter of fact, put into  
22          evidence, Defendant's Exhibit 65; Defendant's Exhibit  
23          65 makes reference, obviously, to-- I mean, Plaintiff's  
24          65, obviously, makes reference to Defendant's Exhibit  
25          No. 3, and it's been gone into and referred to, and



1           that's why we feel in order to complete the record,  
2           Defendant's 3 should be admitted, because plaintiff  
3           opened it up, as far as we could gather.

4           THE COURT: Well, my main concern in this area,  
5           normally you would have to lay a foundation, but I  
6           think that on pretrial conference, it was pretty well  
7           understood that any such attack on the exhibit would  
8           be done before trial. Relevancy is the only question  
9           that can come up now.

10          MR. GERMERAAD: Your Honor, also, I think part of  
11          your court order was that all of the exhibits that were  
12          planned to be introduced at trial were to be filed, and  
13          this was not filed, and is not part of any State file  
14          that I can determine, so there was no opportunity for  
15          the plaintiff, or the plaintiff intervener, to object  
16          to this, because it wasn't on file.

17          THE COURT: This wasn't at the pretrial confer-  
18          ence?

19          MR. REKOFKE: Yes, that's true. I was not aware  
20          of it, of its existence, personally, Mr. Simon, it was  
21          in his file, and I don't think anybody else was aware  
22          of it until Mr. Simon came into court, but the point  
23          I'm making, Your Honor, is that these people, the  
24          plaintiff, has opened it up; in other words, they put  
25          this other letter in, referring to a representative, and

1       this is their own, Exhibit 65 is their own exhibit,  
2       and I'm saying that to complete the record, because the  
3       Plaintiff's Exhibit 65 makes reference, obviously, to  
4       Defendant's 3, that Defendant's 3 ought to be admitted,  
5       to clarify Exhibit 65.

6               MR. GERMERAAD: Your Honor, if I could respond to  
7       the Court. Although it is marked as Plaintiff's Exhibit  
8       65, and the plaintiff did make reference to it, the  
9       record will show that it came out of the State file,  
10      filed, filed by the Department of Ecology, this was  
11      not an independently-filed exhibit by plaintiff.

12             MR. REKOFKE: Well, they--

13             MR. GERMERAAD: It was referred to, yes.

14             MR. REKOFKE: --they offered it.

15             MR. RUDOLPH: Your Honor, I wonder if we could  
16      see that letter.

17             THE COURT: It hasn't been examined. I don't know  
18      what the letter is, either.

19             MR. RUDOLPH: The only problem-- I don't think  
20      the Tribe would have any objection, Your Honor-- The  
21      only trouble is, it contains, which are, by Mr. Earnest,  
22      which obviously isn't available for examination on it,  
23      but I think we'd concede it's from the Department of  
24      Game, and we're not questioning that, questioning that,  
25      I think we would concede the authenticity of it and would

1 object to its propriety, however, on the basis of it  
2 containing a reported result of an investigation the  
3 witness doesn't know anything about, and we have then  
4 no opportunity to interrogate the person who did make  
5 the investigation; however, if Mr. Earnest made a  
6 study or not, is not apparent.

7 MR. REKOFKE: Well, if the Court please, if that  
8 is the objection, we have all sorts of documents in  
9 here with conclusions and hearsay by people who have  
10 not testified, we've had references by witnesses to  
11 studies made by other departments. It seems the  
12 objections hardly seem valid, and this, I think it's  
13 been conceded that this is a, what it purports to be,  
14 it's an official document, it's a Department of Game  
15 letter, and its authenticity is not--

16 THE COURT: If there is no question as to its  
17 authenticity, I'll admit it.

18 MR. REKOFKE: That's all I have, thank you.

19 (Thereupon, Defendant's Exhibit 3 was marked for  
20 identification and received in evidence.)

21 THE COURT: Any further questions from the defense?  
22 You may take over on Cross.

23 MR. GERMERAAD: I think it might expedite time if  
24 we had a chance to talk to Mr. Navarre before we start  
25 our Cross-examination, rather than going first and

1 interrupting and then coming back.

2 THE COURT: Well, let's take the midmorning  
3 recess.

4 MR. TORVE: Your Honor, I wonder, yesterday we  
5 talked about making a decision as to going Saturday.  
6 I find myself in a peculiar position of having a  
7 witness over in Olympia and also attempting to make  
8 travel reservations back and forth from Olympia,  
9 depending on what day we do commence, I wonder if the  
10 Court could make a decision now, so that these things  
11 could be accomplished, as to whether we go Saturday,  
12 or begin Monday, or whatever, in the Court's discretion.

13 THE COURT: Well, I think we recognize it's a  
14 rather extraordinary circumstance to hold a Saturday  
15 session, because it's inconvenient not only for counsel  
16 and the people, but also for the staff and the Court,  
17 so I'm reluctant to hold a Saturday session unless we  
18 could really accomplish something and button the case  
19 up, but it doesn't appear to me that that is the  
20 situation now, so I think we will not hold a Saturday  
21 session, and what we don't finish today has to go over  
22 to Monday.

23 MR. REKOFKE: Dependent upon what the Court said  
24 about Monday, Your Honor has some sort of a problem,  
25 can we do it in the morning?

1           THE COURT: It's rather minimal. No, on Monday,  
2 I will have to probably recess this case at noon to  
3 about 2:00 or 2:30 to take care of some criminal  
4 matters, but that's not a serious matter. I hope we  
5 can button this up Monday, but if not, we can run over  
6 a little, but there will be no Saturday session in the  
7 case, so we will be in recess for about 10 minutes.

8           THE BAILIFF: All rise; court is now in recess.  
9                               (The morning recess taken  
10                              at this time.)  
11

12           MR. ROE: Your Honor, before we proceed, just  
13 before the recess, we mentioned the possibility of  
14 scheduling starting next Monday, and it's my understand-  
15 ing you're going to have some criminal matter--

16           THE COURT: I have the criminal calendar at 1:30,  
17 and I estimate that will not take over a half an hour,  
18 40 minutes.

19           MR. ROE: Mr. Crum isn't in the courtroom at the  
20 moment, but we did have discussions with him, and he  
21 would be agreeable to move that to the morning, for  
22 the sake of convenience of those who come from Olympia  
23 whereby we could come over later in that morning and--

24           THE COURT: Well, if the Clerk, I'll ask about  
25 this, if we can move that criminal calendar in the

1 morning, why, and we get it out of the way first and  
2 start this case later, why--

3 MR. GERMERAAD: The only thing I don't care for,  
4 Your Honor, if they don't get here before noon, we lose  
5 a whole half a day, and that's just another whole half  
6 a day and more time that I have to be away from my  
7 office.

8 THE COURT: Well, another problem, and I don't know  
9 how much more time we're going to need next week, but  
10 Tuesday morning, I have a long-time-scheduled argument  
11 on Findings in a civil trial, and sometimes, you know,  
12 those arguments take a little longer.

13 MR. GERMERAAD: I'm well aware of that, Your Honor,  
14 and that is why I would hope that we could start early  
15 Monday morning, because otherwise, then, we would be  
16 delayed until Tuesday, and perhaps the end of Tuesday,  
17 before we finish.

18 MR. ROE: Perhaps I misunderstood Mr. Crum, I  
19 thought he said it was about a two-hour schedule with  
20 the criminal matter, but I'm not sure--

21 THE COURT: Well, you know, all I can look at is  
22 the calendar, and I know what's on it, but I don't know,  
23 of course, he may, he probably knows more than I do  
24 about the length of argument on some of the matters,  
25 and if he says it's two hours, I--

1           MR. ROE: I'm not sure, but in the conversation  
2 we had during the break, I understood that to be the  
3 case, and that's where the idea came that perhaps we  
4 could start in the afternoon.

5           THE COURT: I don't really, I would be surprised,  
6 I know what is on the calendar, I've got three sentenc-  
7 ings and one arraignment, so I don't really think it  
8 would take that time.

9           I really think, because, because, otherwise,  
10 if we got jammed into Tuesday, I know I've got to hold  
11 that morning, Tuesday, for the argument. We can be  
12 looking at Wednesday here, before you know it, so I  
13 think we had just better push this case along and keep  
14 going.

15           You may proceed.

16  
17                                   CROSS-EXAMINATION

18 BY MR. GERMERAAD:

19 Q   Mr. Simon, have you personally done any studies on  
20 Chamokane Creek and its fishery resources prior to  
21 August, 1972, when you were transferred to Spokane?

22 A   No, sir.

23 Q   Have you personally done any studies of the fish  
24 resources of the Lower Spokane since August, 1972?

25 A   Of the Little Spokane.

1 Q No, excuse me, let me rephrase the question, if there  
2 is any problem. Have you done any study of the fish  
3 resources of the Chamokane since August, 1972?  
4 A No, I haven't.  
5 Q You did mention that a job duty would be to make  
6 recommendations on water applications; have you made  
7 any recommendations regarding water applications on  
8 Chamokane Creek?  
9 A No, sir, I haven't.  
10 Q Have you at any time ever done any minimum stream flow  
11 studies for the State Department of Game?  
12 A Yes, I have been involved in minimum stream flow studies.  
13 Q While with the Department of Game?  
14 A Yes, sir.  
15 Q Were you in charge of that study, or you were working  
16 on that study?  
17 A I was in charge of a methodology study over the past  
18 year in this area.  
19 Q If you were to conduct a minimal stream flow study,  
20 what are some of the factors you would go into?  
21 A There is a multitude of factors involved in establishing  
22 or determining the desirable minimum stream flow. First  
23 of all, you must qualify what you are talking about when  
24 you say "minimum stream flow"; minimum for what?  
25 Q Have you done any minimum stream flows relating to



1 needs for quality fish, or game fish habitat?

2 A Again you classify it by saying "quality". We have done  
3 minimum stream flow work studies in relation to the  
4 desirable flows for healthy fish populations. There  
5 may be some question as to the difference between  
6 healthy fish populations and quality.

7 Q If we were to disregard that right now, what factors  
8 would you consider?

9 A Very well. We consider the flows, the natural flows  
10 of that stream, the measured flows we may be able to  
11 obtain from U.S.G.S. records, from instantaneous flows  
12 made by our Department or other departments involved  
13 in this stream-gauging measuring. This could include  
14 federal agencies, private agencies, and we try to  
15 accumulate flow records from any source that we feel  
16 are valuable or usable information. We also accumulate  
17 all of the information we can get on temperatures,  
18 water quality of other parameters other than tempera-  
19 tures; hardness, alkalinity, oxygen, and right on down  
20 the line. Then we look at the biota of the creek, the  
21 different animals that are involved in the creek, the  
22 different species of fish involved, their relative  
23 abundance and distribution, we look at their, at the  
24 needs of the fish, in relation to the topography or  
25 geography of the stream, the actual gradient of the

1 stream, its drop-per-mile in feet, the ratio of pool  
2 riffle that Mr. Navarre referred to in his book as an  
3 important factor. We look at the cover, the shading  
4 involved in the creek from surrounding vegetation, as  
5 well as from the riffle effect in the stream. We look  
6 at the exposure of the stream, whether it's south-  
7 easterly flowing stream or a northwesterly flowing  
8 stream, to consider the effect of solar radiation on  
9 the stream, the heating effect. We certainly look at  
10 the flows, in essence, in great detail.

11 One other factor we do look at is some of  
12 the other needs I mentioned, for cover, we also look at  
13 the availability of spawning gravel, we look at the  
14 character of the stream beds, as to its shape and how  
15 the flows in that stream wet that particular shape of  
16 stream bed, and this is related right back to what we  
17 feel is the most important factor in maintaining a  
18 healthy fish population, and that's the growth, and,  
19 what is the word, the survival, and the rearing factor  
20 in there, the factors that are necessary to rear a fish  
21 from a small fish to a desirable-size fish, as far as  
22 the fishery goes, and this is one that is extremely  
23 hard to get a handle on, but it is a very important  
24 factor in considering necessary flows, because if we  
25 don't have flows that are suitable at the rearing

1 period of time, which is, and the critical rearing  
2 period of time, of course, being the summertime, when,  
3 temperatures are important, the amount of gravel in  
4 the bottom, covered with water, is important, various  
5 things, and this is why we look particularly at setting  
6 some desirable low flows, and we look particularly at  
7 time frames, as Mr. Navarre has here, on Chamokane  
8 Creek.

9 Q This study which you participated in, what duration of  
10 time was that study done over?

11 A I'd better talk to that study just for a moment. This  
12 is a methodology study which hopefully come up with  
13 formulas that we will be able to utilize in establishing  
14 minimal desirable flows on many streams in Eastern  
15 Washington.

16 Q In other words, this study which you did is to plan  
17 how you do, how you would do such a study, you said  
18 the methodology, you worked on the methodology of the  
19 study in your planning on how you would do such a  
20 study?

21 A That's correct.

22 Q But have you ever used that to actually do a study?

23 A Used this methodology to do a study?

24 Q Yes.

25 A We haven't in-- I haven't, personally, no.

1 Q How many days have you spent at or on Chamokane Creek?  
2 A None. I have never walked the creek, across it any  
3 time. I have never examined it biologically.  
4 Q You were asked some questions about what Mr. Navarre  
5 found at Station 3. You were not at Station 3 anytime  
6 he was actually doing his findings?  
7 A No. As I stated, my information was from this report  
8 and the testimony given in court.  
9 Q Where, if you were to take a cross-section of the  
10 stream, do suckers reside, at the top, in the middle,  
11 or the bottom, and let's say this cross-section is a  
12 pool; where would the suckers be?  
13 A In the Chamokane Creek?  
14 Q In any creek?  
15 A On the bottom.  
16 Q And if you have that same situation, that same cross-  
17 section in the pool, where would you find the trout?  
18 A Throughout the pool.  
19 Q Are scrap fish generally attracted to warm temperatures,  
20 are they found more permanently in warm-temperated  
21 water than in cool water?  
22 A They seem to be more abundant in warm water.  
23 Q If we were to lower the temperature of Chamokane Creek,  
24 we might find that we have less scrap fish than the  
25 warm-temperated Chamokane Creek, wouldn't that be

1 true?

2 A I would have to agree to that.

3 Q If the water temperature of a creek does, I think, as  
4 you said, fluctuates, or you implied it would fluctuate  
5 with the solar radiation, and this would also vary with  
6 the season, would it not, so that the given temperature  
7 of the stream at any time of day, or throughout the  
8 year would vary, would it not?

9 A Very definitely, yes.

10 Q If the water temperature of the Chamokane Creek  
11 dropped, either from its normal daily fluctuation, but  
12 more likely its year-around fluctuation, would the  
13 lower temperature drive some of the scrap fish out, or  
14 would they tend to leave Chamokane Creek?

15 A I can't speak to Chamokane Creek in particular. As I  
16 stated before, my information is from this work.

17 Q But, generally, that would most likely be the case,  
18 since scrap fish are more attracted and found in greater  
19 abundance in warm temperatures than cold temperatures?

20 A If you drop the temperature to 32 degrees, all fish are  
21 going to leave the creek.

22 Q At two points in time, you were talking about feasi-  
23 bility of the fishery in Chamokane Creek between the  
24 falls and the mouth of the river, and at one point in  
25 time, you seemed to imply that there was no way to have

1 a good trout fishery there because of scrap fish, and  
2 at another point in time, you implied you could build  
3 a barrier near the mouth where the Chamokane Creek  
4 enters the Spokane, and that would aid in keeping the  
5 scrap fish from reentering, if they were eradicated  
6 from that lower portion of the stream. Now, which  
7 implication are we to stay with? Do you believe that  
8 a barrier can definitely aid in keeping scrap fish  
9 from entering Lower Chamokane Creek from the Spokane  
10 River?

11 A I think, if you would check the record, I said at this  
12 time, present circumstances, that there could not be  
13 a resident fish population established there, due to  
14 the high concentration and competition factor of the  
15 scrap fish. Now, in the next part, or the next ques-  
16 tion or two there, I qualified that by saying if you  
17 change the circumstances that are there now by  
18 establishing that barrier, then, you could, in fact,  
19 establish a population up above it, free from the  
20 scrap fish.

21 Q So that certainly is feasible?

22 A It is feasible.

23 Q You mentioned a Montana study which seemed to indicate  
24 that resident fish may be driven from the stream by  
25 planted fish. Do you know of studies by others that

1           indicate just the opposite results?

2     A     Yes, I--

3     Q     What I'm asking you, isn't the Montana study the  
4           exception among studies that have been done on that  
5           subject?

6     A     The Montana study is a more recent study than the  
7           studies that I have seen, and I have seen, in the  
8           transactions of American Fishery Society, I believe,  
9           studies of about 1947, when they did indicate that the  
10          native or resident fish were more resilient, more able  
11          to compete and did remain in the stream in face of  
12          heavy legal plants. But, in the more recent--

13    Q     I think you did answer my question.

14    A     Okay.

15    Q     There are studies which give the opposite results.

16                 MR. REKOFKE: I think the witness ought to be  
17                 able to explain his answer.

18                 MR. GERMERAAD: You can come back.

19                 THE COURT: I think he's given his answer, counsel.

20    Q     (By Mr. Germeraad) Isn't it true that the Spokane  
21           Tribe can control the amount of fishing on Chamokane  
22           Creek?

23                 MR. CERUTTI: I object to the question, Your  
24                 Honor, it calls for a legal conclusion.

25                 THE COURT: I'll sustain that.

1 Q (By Mr. Germeraad) Isn't it true that the Spokane Tribe  
2 does issue a fishing permit for use on Chamokane Creek?  
3 A I'm sorry, I don't know that for a fact. I don't know  
4 for sure if that is the case at this time.  
5 Q Do you know it was the position of the Spokane Tribe  
6 that the Chamokane Creek was closed to fishing by the  
7 general public about two years ago?  
8 A Yes, I'm aware of that.  
9 Q Is there any indication, do you have any records whatever,  
10 that there was a flow of 17 CFS in the Lower Chamokane  
11 on the date July 17, 1973?  
12 A No, sir, I have no records to that effect.  
13 Q When you were asked questions about the two and a-half  
14 CFS which Mr. Navarre made an addition for, you mentioned  
15 one factor, and that was, have a wider stream which could  
16 absorb more solar radiation, is that correct?  
17 A That's correct.  
18 Q Isn't that what you testified?  
19 A Correct.  
20 Q Recalling the testimony of Mr. Navarre, did he not say  
21 that two and a-half included allowance for another fac-  
22 tor, that factor being days that the air temperature  
23 was much higher, based upon historical records, than  
24 the day in question?  
25 A Yes, I recall that he did refer to that in his testimony.



1 Q Thank you. So that would be a second factor that you  
2 would have to consider, and I believe your answer  
3 stated that you considered one, is that correct; I mean,  
4 in your answer, you didn't mention the second factor?  
5 A That's correct, I didn't include the second factor.  
6 Do you want me to include a third factor?  
7 Q No.  
8 A Okay.  
9 Q Does the Game Department, or has the Game Department  
10 ever planted trout in a stream where there are suckers?  
11 A Yes, we have; I'm sure we have.  
12 Q Well, if the suckers are so detrimental to the trout,  
13 why would the Game Department ever put trout where there  
14 are suckers in the stream?  
15 A To create an artificial fishery in an area of high  
16 intensity.  
17 Q Are suckers, in fact, found in almost every stream?  
18 A They are quite common. I wouldn't say by any means  
19 that they're found in every stream.  
20 Q Yes, but they are quite common?  
21 A They're fairly common in the larger streams.  
22 MR. GERMERAAD: I have no further questions.  
23 THE COURT: Tribe on Cross?  
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CROSS-EXAMINATION

BY MR. RUDOLPH:

Q Are you aware, Mr. Simon, of the plans to clean up the  
Spokane River?

A Yes, but not intimately.

Q You're aware there are such plans?

A Correct.

Q And it definitely is in the offing that the Spokane  
River, and particularly, let's call it the Spokane  
Lake, in the area adjacent to the Chamokane Creek, is  
expected to be cleaned up at some time in the future?

A There are plans that indicate that, yes.

Q If those plans are carried out and achieved, would Lake  
Spokane then become habitable for game fish?

A Lake Spokane at this--

MR. TORVE: Your Honor, I'm going to object to  
the question. First of all, there is nothing in the  
evidence what the plans are and who's doing the plans,  
and what the plans are oriented for. I think there has  
to be some foundation before that type of question is  
asked.

THE COURT: I think you need a little better  
foundation, all right, counsel, what does he know about  
this?

MR. RUDOLPH: Well, let's put it in a little more

1           theoretical ground, then.

2       Q     (By Mr. Rudolph) Assuming that there is a cleanup  
3           carried out in Little Falls Lake, would not such a  
4           cleanout accomplish an achievement of a suitable fish  
5           habitat for game fish in Little Falls Lake?

6           MR. CERUTTI: I object to that question. The  
7           assumption that is being made in the hypothetical  
8           question is not supported by anything in the record,  
9           and unless counsel can give some assurance that it would  
10          be, I think the question is still improper.

11          MR. REKOFKE: I further object, Your Honor, on the  
12          grounds it's not within the scope of any direct. I  
13          don't know if this is Cross-examination or what, but  
14          I'm assuming it is, and if it is Cross-examination,  
15          it's obviously not within the scope of the Direct. If  
16          counsel wants to make the witness his own witness, I  
17          have no objection to that.

18          MR. RUDOLPH: Well, if Your Honor please--

19          THE COURT: It sounds like you're outnumbered here.

20          MR. RUDOLPH: I'm certainly outnumbered. If Your  
21          Honor please, he expressed great concern about the  
22          scrap fish coming in from the lake into the Lower  
23          Chamokane, and now, and he knows that there are plans,  
24          he has conceded that there are plans to clean up that  
25          section of the lake, and I certainly think I'm entitled

1 to then explore with him, this being Cross-examination,  
2 Mr. Rekofke, an attempted one, I'm certainly entitled  
3 to explore what he thinks that those plans would achieve  
4 concerning his fear.

5 THE COURT: Well, he may answer. It's kind of a  
6 question of weight, but I'll see what he says.

7 A Okay, if I can be allowed to answer to the entire  
8 question.

9 MR. REKOFKE: Fine.

10 A The cleanup entails improving the water quality of  
11 Long Lake and resulting in the cleanup of the entire  
12 Lower Spokane River, from Spokane downstream. Presently,  
13 there are trout populations existing. In fact, all of  
14 the species of trout that I can think of, with the  
15 exception of cutthroat, are not present in Long Lake,  
16 and also present in the Spokane River.

17 You spoke to game fish at one time. There  
18 are various game fish in there, other than trout, as  
19 well.

20 One point that must be brought out is that  
21 this cleanup is not, this, this is a water quality  
22 cleanup, it does not consider the elimination in any  
23 way the, of the deleterious species that are present  
24 in Long Lake and the Spokane River, all the way down  
25 to the mouth. This, in fact, would probably be a

1           very unfeasible operation to eliminate, say, all the  
2           scrap species, or deleterious species, in Long Lake  
3           and the Spokane River, it would be something that would  
4           probably be impossible.

5                       Did I answer your question?

6       Q     (By Mr. Rudolph) Now, would the improvement in water  
7           quality result in the decline in the scrap fish popula-  
8           tion?

9       A     Probably not.

10      Q     You would say probably not?

11      A     It's my opinion they probably wouldn't be affected one  
12           way or another by the cleanup they have now proposed  
13           and are proceeding towards.

14      Q     Aren't scrap fish attracted to your less-pure water?

15      A     They are found just as abundant in some of the more  
16           pure water that we have.

17      Q     You're saying you find suckers everywhere, then?

18      A     Not particularly, no. We have areas we do not have  
19           suckers because the water temperature never is high  
20           enough to really encourage scrap fish population. We  
21           have them there in some of the lower levels, possibly.  
22           Some places, we don't have them entirely because of  
23           barriers, other types of barriers possibly, possibly  
24           some structural barriers, or anchor iced in the winter-  
25           time, this type of thing. You have--

1 Q Do you have-- Oh, excuse me.

2 A Go ahead.

3 Q Do you have any information as to the temperatures of

4 the water in the Little Falls Lake as compared with

5 that in the Lower Chamokane?

6 A No, I don't have, right offhand, I don't have those

7 records.

8 Q You would assume it to be warmer?

9 A Yes, I would.

10 Q The answer which you gave to Mr. Germeraad when he

11 asked you about, would cold water drive out the scrap

12 fish, and I think his question was, "Would any drop in

13 temperature drive them out?", and you said, the example

14 you gave was, "If it got down to 32 degrees, obviously,

15 all fish would leave." My question to you is, what

16 degree of drop, or what extent of drop, would start

17 pushing the scrap fish out?

18 A You have to be more specific as to the time, the time

19 of the year, because we've got a range of temperature

20 on the Chamokane Creek, it probably ranges almost to

21 32 degrees, it probably ranges into the low 40's at

22 least, and we still have the suckers in there. I don't

23 have, I can't think of, at this time, any reference to

24 literature that indicates the tolerance levels of the

25 various scrap species, so it's a little tough for me to

1           answer your question directly.

2       Q     All right, let's refer to the summertime. Now, you've

3           heard Mr. Navarre's testimony, and his recommendations

4           and determination as to what the maximum temperature

5           should be, and then the information in the study, which

6           you have read, as to what these maximum temperatures

7           are running. Now, would a seven- to 10-degree drop in

8           the maximum temperature in Chamokane during the summer,

9           would not that result in the scrap fish leaving?

10      A     In my opinion, it wouldn't.

11      Q     Would not?

12      A     Would not encourage great numbers of scrap fish to

13           leave.

14      Q     Would they start to leave?

15      A     Start to leave, uh, I don't know, I really couldn't

16           speak to that.

17      Q     It's logical to think it's not as desirable for them as

18           at the higher level, isn't it?

19      A     You're talking now, Mr. Navarre measured a temperature

20           of 75 degrees, and if you drop that 10 degrees, you get

21           into a 65-degree range, and I would say that would be

22           pretty comfortable for whatever type species we have

23           in there.

24      Q     Well, why do scrap fish prefer a higher temperature?

25      A     Did we say they preferred a higher temperature than that?

1 Q I thought you said they preferred higher temperatures  
2 than trout.  
3 A Well, yes, they do, and when you drop from 75, 10  
4 degrees, to 65, you're still talking about the upper  
5 limits of what trout really desire. Am I not right?  
6 Q I didn't hear that.  
7 MR. RUDOLPH: Could I have that answer read back?  
8 (Answer read back by the Court Reporter.)  
9 Q (By Mr. Rudolph) I don't think that is what my ques-  
10 tion was directed at. I was asking at what scrap fish  
11 desire and whether the drop in temperature, if they  
12 would not start to leave.  
13 A Would you re-read about three questions back? Can I  
14 ask that?  
15 MR. RUDOLPH: I think we would save time, Your  
16 Honor, if I just asked it again.  
17 THE COURT: Just ask it again.  
18 MR. RUDOLPH: I'll just ask it again.  
19 Q (By Mr. Rudolph) With a seven- to 10-degree drop in  
20 temperature, is it not reasonable to think that the  
21 scrap fish are going to start to leave?  
22 A I don't think so.  
23 Q What do you consider the temperature which the scrap  
24 fish prefer?  
25 A Considering acclimation of these fish from cold winter



1 temperatures, which obviously occur, to the warmer  
2 summer temperatures, in my professional judgment, they  
3 would probably prefer summer temperatures somewhere in  
4 the range of 50 to 70.

5 Q For scrap fish?

6 A Right.

7 Q And that's just two degrees higher than the maximum  
8 allowable for trout?

9 A I'm talking about preferred temperatures. Now, there  
10 is a maximum allowable for the scrap species. Each  
11 species has its maximum allowable, you might say, for  
12 the wellbeing of that fish. Now, probably the maximum  
13 allowable for the wellbeing of suckers and carp, vari-  
14 ous, let's strike carp, I'm not speaking of them, but  
15 suckers would probably have a higher allowable than  
16 trout, and maybe even higher than 70, but I'm saying  
17 the preferred temperatures.

18 Q Do you agree with Mr. Navarre that the preferred  
19 temperature for trout is between 50 and 60?

20 A Right.

21 Q And do you agree with him that at 66 degrees, the trout,  
22 because of the stress and the increase in their meta-  
23 bolism, that the trout stop feeding and stop growing?

24 A I seem to recollect that in that area, between 66 and  
25 68, there has been some evidence that trout will stop

1 feeding.

2 Q And do you agree with Mr. Navarre's conclusions in  
3 that regard?

4 A I would have to say that in excess of 66, there is  
5 some, 66 degrees Fahrenheit, there is some curtailment  
6 of feeding activity, yes.

7 Q That isn't the question I asked you. I asked you if  
8 you agree with Mr. Navarre's conclusion that at 66  
9 degrees the fish are going to stop, the trout are  
10 going to stop feeding and stop growing?

11 A Okay, I won't agree with that.

12 Q You will?

13 A I will not.

14 Q You will not agree?

15 A With your last statement there, I will not agree.

16 Q All right, what figure do you state?

17 A I don't have a figure on the top of my head that I can  
18 give you.

19 Q All you do is disagree with Mr. Navarre?

20 A Yes.

21 Q Do you have Exhibit--

22 MR. GERMERAAD: Plaintiff's Exhibit 64.

23 Q (By Mr. Rudolph) --Plaintiff's Exhibit 64, a copy of  
24 it?

25 A Yes, sir.

1 Q Well, look at Table 2 on page 13 a moment, would you  
2 please?  
3 A (Does so.)  
4 Q Now, isn't it obvious from Table 2 that the maximum  
5 temperatures for scrap fish are far, far greater than  
6 for trout?  
7 A Yes, definitely.  
8 Q And isn't it obvious, then, that at lower temperatures  
9 suited for trout, that the scrap fish are going to  
10 leave?  
11 MR. TORVE: Your Honor, I'm going to object. I  
12 think this has been gone into, he has solicited the  
13 answer, he obviously didn't get the-- The answers,  
14 he didn't like, but it seems to me it's been gone over  
15 and over.  
16 MR. RUDOLPH: I haven't heard anything I don't like  
17 yet.  
18 MR. TORVE: I know you haven't, but you have gotten  
19 the answers.  
20 THE COURT: This is Cross-examination, he's allowed  
21 leeway.  
22 A I think you'd better read the question again. I think  
23 I answered it, but you probably didn't get it.  
24 (Read back by the Court Reporter.)  
25 Q (By Mr. Rudolph) And did you answer?

1 COURT REPORTER: No, I don't think so; Mr. Torve  
2 made his objection.  
3 A No, it's not obvious to me.  
4 Q (By Mr. Rudolph) Well, you're saying, despite the  
5 fact that there is a substantially higher maximum  
6 temperature for scrap fish, that they will stay in  
7 what is a desirable habitat for trout?  
8 A I believe we have a-- Well, I'll answer your question--  
9 (Witness hesitates) You'd better repeat the question.  
10 MR. RUDOLPH: Would the Reporter read the question?  
11 (Question read back by the Court Reporter.)  
12 A Scrap fish have a much wider range of desirable or  
13 acceptable temperature than do the trout. We find,  
14 sometimes, these scrap fish, these same scrap fish,  
15 under the ice in wintertime in streams.  
16 Q Do you agree with this conclusion, that with the  
17 higher average temperature in Chamokane Creek, that  
18 scrap fish population would be encouraged, and trout  
19 fish population would be discouraged?  
20 A Higher than what?  
21 Q Higher than anything lower than that?  
22 A (Witness hesitates)  
23 Q Now, this is a relative question, and I think you  
24 know exactly what I mean.  
25 A No, I don't think I do.

1 Q What is the average summer temperature in the Chamokane  
2 now?

3 MR. REKOFKE: If he knows.

4 MR. TORVE: Your Honor, I--

5 A I don't believe that I would offer.

6 MR. TORVE: --I would object to that question, as  
7 it would mean that he would have to compile from records  
8 that are in evidence--

9 MR. RUDOLPH: All he has to do is say he doesn't  
10 know.

11 A Okay, I don't know what the average temperature--

12 Q (By Mr. Rudolph) Okay, you don't know.

13 A --is in the Chamokane at this time.

14 Q All right, let's go back to my question, and I say,  
15 I'm referring to a temperature higher than what would  
16 be within the desirable range for trout, and near the  
17 upper limits, let us say, 64. Now, can you answer the  
18 question?

19 A Now, I'm not sure what the question is, now.

20 THE COURT: Would you restate the question,  
21 counsel, with the assumption you have added to it?

22 MR. RUDOLPH: Yes.

23 Q (By Mr. Rudolph) Would you agree with the conclusion  
24 that if the average temperature, the average tempera-  
25 tures of the Chamokane move higher than 64, 65, or 66

1 degrees, that scrap fish population would be encouraged  
2 and the trout fish population would be discouraged?

3 A Yes, I agree with that.

4 Q And would you also agree that as the temperatures drop  
5 from the range which I gave you, that scrap fish popu-  
6 lation would be discouraged and trout fish population  
7 would be encouraged?

8 A (Witness hesitates) I couldn't disagree with that, no.

9 Q In fact, you do agree with it?

10 A Yes.

11 Q And that's the whole essence of Mr. Navarre's conclu-  
12 sion in recommending a higher stream flow, isn't it?

13 MR. TORVE: I'm going to object to that, Your  
14 Honor.

15 THE COURT: Sustained.

16 Q (By Mr. Rudolph) Do you agree that the higher the  
17 stream flow in the Chamokane, that the lower the  
18 temperature would be in the summertime?

19 A I'm not that familiar with Chamokane, and from Mr.  
20 Navarre's report, I would have to agree that the higher  
21 the flow, then the lower the temperature would be in  
22 that lower section where he did measure it, in Station  
23 3 there.

24 Q And you also agree, don't you, that with that drop in  
25 temperature, that there would be an improved habitat

1           for trout?

2           MR. TORVE: Your Honor, I'm going to object to  
3 this line of questioning. I think it's beyond the  
4 scope of the Direct, and it seems to me he's going  
5 quite far afield in his Cross-examination.

6           THE COURT: I'm going to sustain the objection.  
7 I don't think he went into this on Direct at all,  
8 counsel. I don't recall any testimony out of this  
9 witness that goes to what you're now inquiring into.

10          MR. RUDOLPH: Very well, I guess you're correct,  
11 Your Honor, I guess, as I think about it. All right,  
12 I'll proceed on something else.

13   Q    (By Mr. Rudolph) Now, with the drop in temperatures  
14 in the wintertime in the Chamokane, the scrap fish and  
15 all the other fish probably leave during that time  
16 of the year?

17   A    I have no way to make that assumption in Chamokane  
18 Creek. I'm not that familiar with it.

19   Q    Well, you made certain assumptions about the popula-  
20 tion of the scrap fish in the Lower Chamokane.

21   A    There is no temperatures recorded in this study, and  
22 I'm referring my testimony to this study and the  
23 testimony given here, and there is nothing on the  
24 winter temperatures, or what happens during the  
25 wintertime, to provide me with information to make that

1 statement.

2 Q Didn't you make a statement a short while ago that in  
3 the wintertime, you would expect the temperatures in the  
4 Chamokane to be somewhat below 40? Didn't I understand  
5 you to say that

6 A Yes, I probably did.

7 Q All right, now, referring to your answer, and I'm  
8 asking you, would not you expect, during that time of  
9 year, that the scrap fish would leave the Lower  
10 Chamokane?

11 A I don't know whether they would or not. I wouldn't  
12 make an assumption.

13 Q Well, sir, I know you don't know, because you never made  
14 a study of the Chamokane; I'm asking your assumption.

15 A I'm not going to make an assumption, it's out of my  
16 expertise on Chamokane Creek.

17 Q All right, assuming a 38-degree temperature at a given  
18 time of the year, would the scrap fish leave, as well  
19 as the other fish?

20 MR. TORVE: Your Honor, it seems to me that's the  
21 same question, with a little, slight variation.

22 THE COURT: No, I don't think so.

23 Q (By Mr. Rudolph) Would you look at page 12, sir, on  
24 the exhibit, and note some minimum temperatures in  
25 November of 38 degrees. Now, you said you didn't know



1 the temperatures, but now they tell you the temperatures.  
2 Now, with that in mind, I'm asking you, would you not  
3 expect these scrap fish, as well as the other fish, to  
4 be leaving?

5 A No.

6 Q You expect that they would stay?

7 A They would remain in the stream, if they-- It's my  
8 opinion that they wouldn't move very far, as long as  
9 there was water enough there.

10 Q You made the statement to Mr. Germeraad that at 32  
11 degrees, they would all leave.

12 A They would expire.

13 Q Well, leave or expire. And now you say they would not  
14 leave at 38 degrees. Now, please tell me, between 32  
15 and 38 degrees, at which temperature they will leave?

16 A At 32 degrees, they would be solid, they would expire.  
17 At 38 degrees, they would not expire.

18 Q That wasn't my question, sir.

19 A You asked for the effect of the fish between 32 and 38  
20 degrees, is what you asked.

21 Q Now, I asked you where, between 32 and 38 degrees,  
22 would you expect them to leave?

23 A In my judgment, where would I expect them to leave.  
24 I would expect somewhere shortly above the time they  
25 reach lethal temperatures. I don't have a feel, really,

1           for the physiological changes that may occur and what  
2           may actually happen to the fish, why they would move  
3           down at that time, at any time in that range.

4           MR. RUDOLPH: Your Honor, we would offer Exhibit  
5           No. 39. That's the Tribal resolution which closes  
6           the Chamokane Creek to fishing, adopted by the Tribal  
7           Council. It's been on file. If any of counsel wants  
8           to see it again, it's there.

9           MR. REKOFKE: I have never seen it.

10          THE COURT: Would the bailiff--

11          MR. CERUTTI: Your Honor, I'm not sure of the  
12          purpose of the exhibit. Maybe that could be explained  
13          to us, for what purpose it's being offered, what its  
14          relevance is.

15          MR. RUDOLPH: Well, Your Honor, it's a resolution  
16          adopted by the Tribe which closes Chamokane Creek to  
17          fishing. It's certainly relevant in that, in itself,  
18          I think, to show what the Tribe has done pertaining to  
19          the Chamokane, and it's also relevant pertaining to Mr.  
20          Simon's testimony about his fears about the stretch  
21          of the stream being overfished by multitudes of fisher-  
22          men coming in.

23          THE COURT: Plaintiff's Exhibit--

24          MR. CAMPBELL: Counsel, may I ask, if Your Honor  
25          please, doesn't it say, the resolution say, "closed to

1 fishing by the general public", rather than distinguish-  
2 ing members of the Tribe?

3 MR. RUDOLPH: Yes.

4 THE COURT: Plaintiff's Exhibit 39 will be  
5 admitted.

6 Q (By Mr. Rudolph) Now, with regulation and limitation  
7 on the number of fishermen, surely Chamokane Creek  
8 could be so controlled as to be utilized in the best  
9 interest of the enjoyment of whoever is licensed to  
10 use it, as well as the preservation of it for continu-  
11 ing utilization of a fishery, is not that a correct  
12 statement?

13 MR. TORVE: I'm going to object on the basis the  
14 question assumes the legal authority of the Tribe to  
15 do so, which may or may not be the case. I don't want  
16 to really argue the point, but--

17 THE COURT: I don't know if this witness has the,  
18 can express an opinion on that, counsel.

19 MR. REKOFKE: It's not within the scope of any  
20 Direct.

21 MR. RUDOLPH: Well, his statement on Direct, Your  
22 Honor, his statement on Direct, notwithstanding what Mr  
23 Rekofke just said, was that the Lower Chamokane, if  
24 stocked and had a lot of fish in it, would immediately  
25 be fished out, because of fishermen coming in, and I

1 think the question relates directly to his statement in  
2 that regard.

3 MR. TORVE: I think the point being, Your Honor,  
4 even assuming the Tribe had the authority to do this,  
5 the resolution in existence today doesn't mean it will  
6 be in existence tomorrow. One of the witnesses, I  
7 believe Mr. Navarre, testified to the possibility of  
8 many things happening down there, none of which were  
9 related to this resolution, and then he's asking the  
10 witness, also, to interpret the resolution, which I  
11 don't think he can do, either.

12 THE COURT: He can't interpret the resolution,  
13 but I think he can answer the question all right.

14 A If you will restate the question.

15 THE REPORTER: I'll try to find it.

16 MR. RUDOLPH: All right.

17 (Question read back by the Court Reporter.)

18 A That is correct.

19 Q (By Mr. Rudolph) Did I understand your answer to Mr.  
20 Germeraad, that there is a difference between minimum  
21 fishery and quality fishery?

22 A Yes, there is.

23 Q And you would not disagree, would you, with the Tribe's  
24 goals here to establish a quality fishery?

25 A I would not disagree with their goals.

1 MR. RUDOLPH: Thank you.

2 THE COURT: Further examination of the witness?

3 MR. CERUTTI: Just a couple of things on Redirect,  
4 if the Court please.

5

6 REDIRECT EXAMINATION

7 BY MR. CERUTTI:

8 Q Sir, to your knowledge, are any of the streams or lakes  
9 on the Reservation being presently stocked with game  
10 fish?

11 A Yes, they are.

12 Q I would like to ask you a hypothetical question. Assume,  
13 if you will, sir, that the Spokane Indian Tribe decided  
14 to set up campgrounds and issue licenses and have people  
15 come in and fish along the Chamokane Creek, assume  
16 further that they wanted to extend that down into the  
17 bottom mile above the mouth, would it, in your opinion,  
18 be possible, making those assumptions, to achieve the  
19 desired result by yearly stocking of legal game fish  
20 in that bottom mile?

21 A Yes, it would be possible.

22 MR. CERUTTI: I have nothing further, Your Honor,  
23 thank you.

24 THE COURT: Any further Redirect, Mr. Rekofke?

25

REDIRECT EXAMINATION

BY MR. REKOFKE:

Q On Cross-examination by Mr. Germeraad, you were asked about the studies made, the Montana study, which you testified, I think, was more recent than the other studies. I want you to amplify on that just a little bit; just explain your answer there.

A Yes, that's correct, as fishery science is no perfect science in any manner, it's an improving science as we proceed through time, we develop new techniques, we discover that some of our old practices may not have been very good practices, management practices; we're finding that in particular in this Montana study, that many states have stocked legal fish, legal-size trout, on top of native or resident population, and we found, since this study came out, in our own management activities, that this, in fact, is true. We have seen it in several instances where we have stocked hatchery-reared legal fish on top of native or resident populations, and it has eliminated these fish, the native or resident populations, which are actually-- Well, let me stop there.

Q It tends to eliminate the native or resident fish when you plant legal-size fish--

A Right.

1 Q --in there?  
2 A On top of them.  
3 Q And you've had this in your own experiences, as I  
4 understand. Are those brown trout, are they native  
5 to that stream?  
6 A No, they aren't.  
7 Q Apparently they have been stocked there by someone?  
8 A Yes. They were never stocked intentionally there.  
9 Q Apparently the Washington Game Department is not  
10 stocking Chamokane Creek?  
11 A At this time we are not. We ceased stocking Chamokane  
12 Creek in about 1965.  
13 Q Pardon?  
14 A I said, we ceased stocking Chamokane Creek in about  
15 1965.  
16 Q And what type of fish were placed in there?  
17 A Rainbow were stocked through the years.

18 MR. REKOFKE: That's all.

19 MR. CAMPBELL: May I ask two questions from here,  
20 Your Honor?

21 THE COURT: Yes.

22

23 EXAMINATION

24 BY MR. CAMPBELL:

25 Q Which did you consider the better quality game fish,

1 the native or the stocked?

2 A In my opinion, the native is much the superior game  
3 fish.

4 Q Second question, do you know what kinds of fish are  
5 being reared presently at the fish hatchery?

6 A Yes, they are Eastern Brook and rainbow at the present  
7 time.

8 Q No browns?

9 A No browns.

10 THE COURT: Further questions?

11 (No response.)

12 THE COURT: You may step down, Mr. Simon.

13 MR. RUDOLPH: Just one question, Your Honor, if  
14 I may do it from here.

15

16 RECROSS-EXAMINATION

17 BY MR. RUDOLPH:

18 Q Isn't it true that the Chamokane has an automatic re-  
19 stocking, to some extent, by reason of the location of  
20 the hatchery?

21 A This is true.

22 MR. RUDOLPH: Thank you.

23 A Could I enlarge a little bit?

24 THE COURT: Is it an escapement from the hatchery?

25 A Escapement from the hatchery, yes.



1                   THE COURT: You may step down. Thank you, Mr.  
2 Simon.  
3                   MR. RUDOLPH: Your Honor, this would probably be  
4 an appropriate time to finish, I've lost track of the  
5 exhibits going in, and I think we ought to finish  
6 offering in at this time all of the exhibits which have  
7 been on file, and I specifically refer to, uh, there is  
8 from the material, I believe all the material that was  
9 filed in February is in; I would like to offer Exhibits  
10 I think they start with what, 36, is it?  
11                   THE CLERK OF THE COURT: Thirty-six is in.  
12                   MR. RUDOLPH: Could I just peek at that a minute?  
13 Let's see, 37, the Tribe will--  
14                   THE COURT: Counsel, it's about eight minutes to  
15 12:00, so why don't we recess and you can check that  
16 out with counsel, and the first thing after lunch, we  
17 can admit whatever--  
18                   MR. RUDOLPH: All right, fine.  
19                   THE COURT: So we will be in recess until 1:30.  
20                   THE BAILIFF: All rise; court is now in recess.  
21   (The noon recess had at this  
22   time.)  
23  
24  
25

1 Hon. Marshall A. Neill, Judge  
2 Spokane, Washington  
3 Friday,  
4 March 15, 1974  
5 1:30 P.M.

6 MR. RUDOLPH: Your Honor, we were going to move  
7 for the admission, at this time, of Exhibits 37, and  
8 43 to 63, and they're grouped in that category because  
9 these are all of the historical documents which were  
10 filed with the Court some time ago, relating to the  
11 history of the Reservation, and negotiations which  
12 led to the treaty, subsequent negotiations and acts  
13 relating to it. This consists of either material  
14 taken from the National Archives, or from Kappler's.  
15 It's a compilation of Indian treaty documents, and so  
16 forth.

17 THE COURT: The Clerk advises me that Plaintiff's  
18 38 has not been offered, I guess.

19 MR. RUDOLPH: Thirty-eight was referred to in Mr.  
20 Rekofke's Cross-examination yesterday, and we would  
21 also offer that. It was, if I'm remembering, that's  
22 the fisheries, a copy of the Fisheries Management Report  
23 of 1970.

24 THE COURT: All right.

25 MR. DUFFORD: Your Honor, with respect to 38,  
which is that Fisheries Report, we have no objection  
to the admission of that.

1 MR. REKOFKE: I have no objection.

2 THE COURT: Plaintiff's 38 will be admitted.

3 (Thereupon, Plaintiff's Exhibit 38 was received in  
4 evidence.)

5 THE COURT: What about 37?

6 MR. DUFFORD: Thirty-seven is the, 37 is the  
7 Tribal resolution. With respect to all the other  
8 exhibits to which Mr. Rudolph has reference, I guess  
9 it's fair to say that the defendants haven't completely  
10 assimilated what's there, and we would prefer that they  
11 were offered as the occasion develops, so that we can  
12 know the context in which they're offered and make some  
13 objections about their relevancy.

14 THE COURT: I have no knowledge, really, of what  
15 is in them, so--

16 MR. RUDOLPH: There aren't going to be any witnesses  
17 concerning them, I mean, this is, we think it's  
18 obviously relevant, it's germane to the purposes of the  
19 Reservation and bearing right on the question which is  
20 in issue in this case. We're not going to have any  
21 precise testimony as to any one of these, but we  
22 certainly will be referring to them, summarizing and  
23 referring to them in our brief, but there isn't going  
24 to be any precise testimony concerning them, and I just--  
25 I repeat, I don't see how there can be any question as

1 to relevancy.

2 MR. REKOFKE: If the Court please, I might say  
3 this, inasmuch as there is no evidence going to be  
4 offered with respect to these exhibits, it seems to  
5 me we would have some time between 12:00 and 2:30,  
6 whenever, next Monday, we could look at these things,  
7 obviously, we're not going to conclude the case before  
8 then, and could then offer any objections we have at  
9 that time, and I'm referring specifically to the  
10 historical documents. It may well be there will be no  
11 objections, but I would like, you know, just to look at  
12 them.

13 With respect specifically to Exhibit 37, the  
14 Tribal resolution, Your Honor, which, as I view this,  
15 and I have just scanned it, it's very self-serving, and  
16 sets forth the Tribe's position, which is fine, I think  
17 that is what this whole lawsuit is about, and I don't  
18 see, although it may be relevant, I don't think it's  
19 admissible, on other grounds, and, as I say, it asserts  
20 the Tribe's rights to certain waters of the Chamokane  
21 Creek, and it's a resolution drawn by the Tribe.

22 There is another exhibit here, I haven't had  
23 a chance to read it, it has to do with some sort of  
24 report--

25 MR. GERMERAAD: Your Honor, could I respond as to

1 the Tribal resolution, which I believe is No. 37?  
2 Since it is, as Mr. Rekofke says, relevant, and since  
3 he hasn't specified any particular grounds for it not  
4 to be admitted, I think it obviously should be. As to  
5 all the other documents, I point out that I believe  
6 they have been on file for between 13 and 16 days  
7 already, for all the defendants and their attorneys  
8 to take a look at them, and how much time do they  
9 actually need? All of these were done pursuant to the  
10 Court's order, and any objections as to authenticity  
11 were supposed to have been lodged a week ago today.

12 MR. REKOFKE: I'm not objecting on the grounds  
13 of authenticity, I'm objecting-- With respect to  
14 Exhibit 37, it's a self-serving document, and as I say,  
15 I don't, something may be relevant and yet self-serving  
16 and inadmissible. As I say, it sets forth the Tribe's  
17 position, which I assume counsel will urge in their  
18 briefs and in their argument. Here, this Exhibit 41  
19 is a report by Mr. Kris Kauffman, engineer, Department  
20 of Ecology.

21 MR. RUDOLPH: I haven't offered 41, Your Honor.

22 MR. REKOFKE: You're not going to offer it?

23 MR. RUDOLPH: I didn't say I wasn't going to offer  
24 it, I said I'm grouping--

25 THE COURT: He's offered 37--

1 MR. REKOFKE: I'm sorry, I lost my head.

2 THE COURT: --and then 43 through 63.

3 MR. REKOFKE: All right, I stand corrected.

4 THE COURT: I see no harm in simply reserving  
5 ruling over the weekend, if they want to take a second  
6 look at them, and then we will come back to that, but  
7 in the meantime, if you need to refer to them, we will  
8 take it up as you need to.

9 MR. RUDOLPH: Very well.

10 MR. REKOFKE: I'll put these back in order so  
11 I don't get shot by the young lady here.

12 THE COURT: Everybody prepared to move ahead?

13

14 ALEX SHERWOOD,

15 being first duly sworn, testified on behalf of the plaintiff  
16 as follows:

17 THE CLERK OF THE COURT: Would you please state  
18 your full name to the Court, spelling your last name,  
19 please?

20 A Alex Sherwood. Alex. No middle name.

21

22 DIRECT EXAMINATION

23 BY MR. DELLWO:

24 Q Mr. Sherwood, where do you reside?

25 A Wellpinit, Washington.

1 Q How long have you resided at Wellpinit?  
2 A Permanently, 45 years.  
3 Q Do you have a position with the Spokane Tribe?  
4 A Yes.  
5 Q Are you a member of the Spokane Tribe?  
6 A Member of the Spokane Tribe, yes.  
7 Q What is your position with the Spokane Tribe?  
8 A I have been a member of the Spokane Tribal Council for  
9 32 years, going on 33 years.  
10 Q Do you have an office on that Council?  
11 A I have been Chairman of the Tribal Council for something  
12 like 19 years; 18 or 19.  
13 Q And this was both before and after the current  
14 constitution of the Tribe?  
15 A Yes.  
16 Q Who did you succeed, just in a general way, in the  
17 history of the Tribe; who are the men that preceded you  
18 as Chief, or Chairman of the Tribe?  
19 A My father-in-law, by the name of Moses Phillips.  
20 Q And before him?  
21 A Before him, the Tribe operated under the chief system.  
22 Q What was the chief system?  
23 A The chief ruled the Tribe. The chief was the boss, I  
24 guess you would call it, of the Tribe. His word goes.  
25 Q Does the chief system go back into ancient times?

1 A Yes.

2 Q Who are some of the chiefs that preceded Moses Phillips?

3 A That I know of personally and talked with, I might

4 start with Chief Three Mountains of the Upper Spokanes,

5 Chief Sam Boyd of the Lower Spokanes, and the subchiefs,

6 well, such a capacity as my father-in-law, you know,

7 active in the Tribal.

8 Q What was your education, Mr. Sherwood?

9 A Very little.

10 Q When you say "very little", you mean in school?

11 A In school, yes.

12 Q What was your primary language?

13 A My primary language is the Spokane language, or Salish,

14 or whatever they use.

15 Q What tribes speak this language?

16 A Spokane.

17 Q Yes, the Salish language, what tribes in the Northwest

18 spoke the Salish language?

19 A You want me to say this in English, or Indian--

20 Q No, no; no, no. What other tribes besides the Spokane

21 talked Salish?

22 A Well, all three bands of the Spokane Tribe, Kalispell,

23 the Flathead, and the Chewelah bands.

24 Q Did this constitute a kind of a brotherhood of tribes,

25 the Salish-speaking Indians?



1 A Yes.

2 Q Have you acted as interpreter for Indian meetings?

3 A Many times.

4 Q And how do you find it best to express yourself, in

5 Spokane or in English?

6 A Well, I do my best, I understand my own language better

7 than I do English, and I think that is what helps me

8 translate into English.

9 Q When did you begin to have an interest as a student of

10 Indian affairs?

11 A This started in my young life, when I was probably 15,

12 16 years old.

13 Q How did you follow that interest?

14 A I heard my grandparents and other elderly people talk-

15 ing about how the Indians were treated by the white

16 man in their time, and I think, more or less, that is

17 what led me into taking interest and got me wondering

18 why that one people in our country could be different

19 than others, and I think that is what led me into it.

20 Q Would you say you became a student of Indian history?

21 A As much as my ability would carry me, yes.

22 Q Were there people in the Tribe that knew Indian his-

23 tory; old people?

24 A Well, Indian history, it's unwritten history, but it's

25 been known by Indians from God knows, 'way back, how

1 far back. Those words is passed on from generation  
2 to generation. There has never been, as known, been  
3 any change in words of wisdom or history.

4 Q Were there the storytellers in the Spokane Tribe?

5 A Well, there is two types I might mention. There is  
6 the storyteller, same as we have probably amongst  
7 ourselves right here in this room, and there is another  
8 person, that is more serious, talking about the history  
9 of life of an Indian.

10 Q Did you know some of these as a young man and a boy,  
11 some of these that were more serious and told the  
12 history of the Spokanes?

13 A Yes, I do.

14 Q Who were some of these?

15 A Well, mostly, the ones that, I believe, to my interest,  
16 in what I have said here before, was the chiefs. I  
17 always thought that those people, when they speak of the  
18 past, how they were forced off the different parts of  
19 the country, onto others, so I would say that the  
20 chiefs were the more serious ones that I have taken  
21 into my self-educated Indian.

22 Q Were they like fathers of the Tribe, responsible for  
23 its wellbeing?

24 A Yes.

25 Q Mr. Sherwood, did you consider yourself a chief?

1 A Well, as the word goes, no, because the meaning of a  
2 chief in a time when it's in use, you have to be a  
3 descendant, whether it's from your father's side, or  
4 your mother's side, before you can claim any part of a  
5 chieftain, and therefore, I didn't have, on either side  
6 of my ancestors.

7 Q Do you function as a chief?

8 A Well, yes, I believe I would say so.

9 Q You consider yourself a father of your Tribe?

10 A I would say so.

11 Q Do you know of anyone in the Spokane Tribe that might  
12 know more than you about the history of your Tribe?

13 A Two ways that I can answer you on that. The person that  
14 is more educated than I am might know more than I do,  
15 but as far as this unwritten history from generation  
16 to generation, I don't believe so, I don't think anybody  
17 else knows.

18 Q Are there many oldtimers, leading Indians, in the tribes  
19 of the Northwest?

20 A Not anymore, no.

21 Q Do you stand alone as being the oldest leader in this  
22 whole area?

23 A Well, we do have members older than I am, on reserva-  
24 tions, has been the leader of the tribe, and probably  
25 in the same capacity that I serve now, but he's getting

1           so old. We thought about bringing him here to make  
2           this presentation what I'm making, trying to make now,  
3           but he was just getting too old, so I put myself, I  
4           thought I would put myself in his place.

5       Q     How old are you, Mr. Sherwood?

6       A     I'm 72. I will be 73 this summer.

7       Q     Where were you born?

8       A     I was born in Chewelah, Washington.

9       Q     Were there Indian lands in Chewelah on which you lived?

10      A     Yes, I was born on Indian lands, trust lands.

11      Q     That's a different subject, the Chewelah allotments  
12           outside the reservation, isn't that correct?

13      A     That's right.

14      Q     Your parents were Spokane Indians?

15      A     Not by blood, but as a member of the Tribe, they are.

16      Q     I see in the archives a man by the name of Sherwood  
17           who is a land agent inspecting reservations in the '70s  
18           and saying whether they were good or bad; was he any  
19           relation to you?

20      A     He's my grandfather.

21      Q     He was not an Indian?

22      A     No, he was a white man.

23      Q     He was working for the government?

24      A     At the time when he was trying to help the Indians  
25           of the different tribes, to offer his services, his

1 help, to other tribes, which he give to the Chewelah  
2 bands, or Tribe.

3 Q He participated in the formation of the Colville and  
4 the Spokane Reservations, did he not?

5 A Yes.

6 Q You feel that you know the history of the Spokane Tribe  
7 enough to tell this Court who the Spokanes were in the  
8 1870s and the '80s, at the time of the parlance that  
9 established the reservations?

10 A Yes, I believe I am qualified to answer on that.

11 Q In the 1877 agreement, and in the case that is before  
12 the Court that discusses it, the Widmer case, it speaks  
13 of the Lower Spokanes, and in the parley notes of 1887,  
14 it speaks of the Upper and the Middle Spokanes; will  
15 you tell the Court what this means, Upper, Middle and  
16 Lower Spokanes?

17 A Well, as it's been told on this unwritten history of  
18 the Tribe, the 1877 parley, or treaty, or whatever  
19 happened there, there is a lot of different ways of the  
20 Indians explaining that meeting, but anyway, the words  
21 on that parley was concerning the Upper, not the Upper,  
22 excuse me, the Lower Tribe only, at the 1877 parley.

23 Q Where were the Middles and the Uppers, as far as  
24 geographically?

25 A The Uppers, the Middles, they stayed out of this, as

1 the history goes, they stayed out of this 1877 parley,  
2 with the Upper tribes with the hopes and wishes that  
3 they could stay and remain in the country that they  
4 had resided for God knows how long.

5 Q Where was this country?

6 A That's right here, probably right down below us here,  
7 right along this river, whichever side it was, on this  
8 side, or on the other side, that is known as the Upper  
9 Band. The Middle Band was down here where the Little  
10 Spokane and the Spokane River come together, between  
11 the two rivers, where they come together.

12 Q Do you know Chief Louis, Chief Louis, and Chief Garry,  
13 what band they led, or bands?

14 A They represented the Upper Tribes.

15 Q The Upper Tribes?

16 A Yes.

17 Q And in the parley of 1887, much is said about the land  
18 around the Little Spokane; why were they so concerned  
19 about the land around the Little Spokane and the  
20 Spokane River?

21 A Well, at that time, in 1887, as well, well, speaking of,  
22 uh, well, we speak of the Middle Spokanes, the Indians  
23 living in the Little Spokane and the Spokane River, they  
24 didn't want to leave that country because they had  
25 lived there for nobody knows how long back, ever since

1 Indians has known, on account of the fishing, that is  
2 one of the best fishing places in the Spokane River.  
3 Q Before parley days, would you tell the Court of the  
4 importance of fishing to the Spokanes and where they  
5 fished?  
6 A Of all bands, or just--  
7 Q Of all bands, and then get specific.  
8 A Well, all of the Spokanes, that is, I mean Spokanes,  
9 it's one that speaks the same language, so we start  
10 from the beginning of the Spokane River where it  
11 empties into the Columbia. From there, there is sites  
12 where they catch salmon during the summer, all up the  
13 river, Little Falls is one of the main ones, it's an  
14 all-summer season there for salmon. Then the Chamokane  
15 Creek, as you call it, but the Indian name is different  
16 than what you call it.  
17 Q What was the Indian name?  
18 A The Indian name of Chamokane Creek, in Indian, is  
19 Tshiwesch-- Tshiwesch-- I'm Indian, I can say that  
20 word.  
21 Q I practiced last night, and won't try.  
22 Above Chamokane, where were there fishing  
23 sites, on the Spokane?  
24 A On the Spokane, there was very little, at the Long  
25 Lake Falls, there was a falls at Long Lake, where they,

1           then, the Washington Water Power dam is now, but not  
2           much there, till you come on up the river, and till  
3           you get up to, known as Tumtum, there's another place  
4           there where they have their fishtrap clear across the  
5           Spokane River, the river happens to be wide and  
6           shallow, so they set a trap there, and that's all-summer  
7           season there, but then you come on up to the Little  
8           Spokane and Spokane River come together, and that's  
9           where the big, the big fishing place is, because on  
10          account of the two rivers, the Little Spokane is known  
11          for steelhead fishing there, and the main river is  
12          salmon. Then you pass that place and you come to the  
13          falls here, right below us, that is the end of the  
14          salmon travel, they don't get up past Spokane Falls,  
15          they can't get over the falls, so that's all-season  
16          fishing place is Spokane Falls. What I mean by "season",  
17          you might want to question that. Salmon fishing has a  
18          season, it starts in early summer, and the fall run  
19          probably comes in around August, early part of  
20          September, and that will be over with for the season  
21          until next year.

22        Q     Now, the Spokane Falls was a prime site, was it not?  
23        A     Prime site is right.

24        Q     Did this falls have a significance in the difference  
25              of Indian families and Indian culture to the east and



1 to the west, and if so, why?

2 A Well, the Spokane Falls is kind of a center, center  
3 fishing place, I guess you would call it, from all  
4 sides, from all tribes, not only the Spokanes.

5 Q What was the situation to the east, on, say, the  
6 Flatheads, and Coeur d'Alenes, Kalispells, Kootenais,  
7 and so forth?

8 A Well, to the east, going up the Spokane River, up into,  
9 not too far up the Spokane River, then you get into  
10 the Coeur d'Alene territory, in those days, which they  
11 thought that was their country, until that was taken  
12 away from them, too. Mainly, I think the Coeur  
13 d'Alenes, due to the, they had a better location than  
14 the Spokanes had. They farmed probably one of the  
15 earliest tribes in this part of the country, to farm  
16 and produce some food for themselves, and they hunted  
17 quite a lot, because they were right close to the  
18 mountains on the east side.

19 Q Did Spokane Falls, the falls itself, have anything to  
20 do with them farming and hunting?

21 A What?

22 Q Was there some reason they farmed and hunted that's  
23 traceable back to Spokane Falls, the falls itself,  
24 the fact that the fish couldn't come over the falls?

25 A Well, yes, yes, that cuts off the fishing history of

1 the Indian people right here.

2 Q So, to the east there were no salmon or steelheads--

3 A No.

4 Q --and to the west there were?

5 A Yes.

6 Q Going back to what is now the Spokane Reservation and

7 Chamokane, that name Chamokane, does that have a

8 meaning in Indian also; you say we call it Chamokane,

9 but does that word have a meaning in Indian?

10 A Yes. Chamokane is a, well, I mentioned the name a

11 while ago. You mean, the meaning of the name--

12 Q Yes.

13 A --of Tshiwesch?

14 Q Yes, of Chamokane, the Chamokane name.

15 A Of Tshiwesch?

16 Q Yes.

17 A What does it mean?

18 Q Yes.

19 A It's a stream.

20 Q Does the word Chamokane, itself, have a meaning that

21 comes from that--

22 A The Chamokane word, yes, it has a meaning, it's a

23 stream or creek, or might be a big stream coming out

24 of the ground, and I think the reason that Chamokane

25 got its name like that, because you all know that, the

1 report's here, that Chamokane disappears, I mean, the  
2 main stream of Chamokane disappears a few miles above  
3 Ford, and it comes out right there above the bridge  
4 at Ford.

5 Q Was that the same in treaty days?

6 A Yes.

7 Q In the ancient past?

8 A Yes.

9 Q Going back into the ancient past, tell the Court of  
10 the importance of Chamokane to Spokane Indians, what  
11 they did with it, or near it?

12 A Well, according to the Indian history, it's very, very,  
13 very important to the Indian people in the past for a  
14 winter, places for them to stay up the creek, there's  
15 three places that's been mentioned to me by the older  
16 people, where they get their supply of food, from other  
17 sources, such as their camas, bitterroots, there's two  
18 or three different types of camas from the prairie  
19 across the river, they pack it in there, and they  
20 store it up Chamokane Creek at these places where they  
21 winter, and then in the fall of the year, say when  
22 the salmon fall run is over with, of course, they have  
23 enough salmon during the summer, already cured, already  
24 dried, they have got it stored up at these camp sites  
25 up the Chamokane Creek, then in August or early

1 September, they move into their winter quarters and  
2 get ready for the winter, for the reason that Chamokane,  
3 due to the springs that feed into the creek, they don't  
4 freeze, and the water, it's pure, it's good, and they  
5 get their water from there, and they can also fish  
6 during the winter in the Chamokane Creek for fresh fish,  
7 and the three sites, the three different camps,  
8 wintering sites up the Chamokane begin from where  
9 Chamokane empties into the Spokane River, there is one  
10 site there. It still shows sometimes when you're in  
11 that country, you look around, and you can find the old  
12 Indian way of getting prepared for Indian quarters. Of  
13 course, they don't build homes, they build one every  
14 year, whenever they get ready to settle.

15 And then one right up where the Cascades has  
16 their veneer mill today, that's another place where  
17 they winter. And then going up the creek another mile  
18 or so, a little bit above the bridge at Ford, that's  
19 another site where they winter, because the winter is  
20 mild down in that part of the country. And that's  
21 about it as far as--

22 Q You speak of "wintering"; is this the same as saying  
23 their winter home?

24 A For the winter, yes.

25 Q Where are they during the rest of the year, the

1           Spokanes?

2       A    The rest of the year, as soon as it breaks up in the  
3           spring, they start moving, gathering up food for the  
4           coming year, because your roots, your camas, they have  
5           seasons on that just about the same as your garden today.  
6           One kind of vegetable is going to ripen at a certain  
7           time, and another kind at a certain time, all during  
8           the summer, so they begin to move from place to place  
9           up on the prairie. Following the season on their root-  
10          digging, preparing it, moving it back to their winter  
11          quarters.

12       Q    Where do they go for meat?

13       A    Meat; in the early times, it's been told, been passed  
14           on from generations, in the early times they go, some  
15           of them go east, into the buffalo country, and some of  
16           them go north, up towards the Canadian lines for deer.  
17           That's about the means of meat, because in those days,  
18           as they tell it, that this country, this part of the  
19           country was never known for very many wild game of any  
20           kind.

21       Q    Where would they find the buffalo?

22       A    They have to go into the Montana country.

23       Q    How would they get there?

24       A    Well, of course, I don't know how long ago, whenever  
25           the horses was brought to the Indians, from there back,

1 farther back than that, I wouldn't be able to answer  
2 because I wouldn't know how they got over there. Some  
3 of these people, you know, you take the Kalispells and  
4 the Upper Tribes and the Coeur d'Alenes, and up east,  
5 up the river here, they join up with the Kalispell  
6 Tribes, because the Kalispell Tribes are canoe people,  
7 they travel up the Pend Oreille River into the Flathead  
8 country, and then from there, how they travel from  
9 there into the buffalo country, across the Rocky  
10 Mountains, I couldn't answer that.

11 Q Did this go back to ancient times, to time immemorial?

12 A Yes.

13 Q And the change was the horse, as I get that, you say,  
14 was that correct?

15 A That is correct.

16 Q And that gave them a mode of transportation?

17 A The first, the first horse was introduced to the  
18 Indian, to the Spokanes, as it's been told from genera-  
19 tion to generation, was done right down here at the,  
20 where the two rivers come together, the Little Spokane  
21 and the Spokane River, that's where the horse was  
22 introduced to the Spokane Indians.

23 Q Prior to that time, the Spokanes had boats and feet,  
24 is that right?

25 A Yes.

1 Q All right, now, Mr. Sherwood, would you explain to the  
2 Court the attitudes of the Spokanes toward lands at  
3 the time of the parley and before and its relationship  
4 to water?

5 A Well, at the time when these parleys were negotiated,  
6 or whatever happened, well, as I said, about these  
7 Upper Tribes, they refused to move from the country,  
8 due to their fishing, stuff like that. Well, let's go  
9 down to the lower end of the tribes, the Lower Tribes,  
10 the Lower Spokane. Of course, that's their natural  
11 country, that's where they've been, I guess, all,  
12 ever since Indians been known.

13 Well, they didn't have much negotiating to  
14 do, they want a country, because they got a river  
15 on the south side, they got a river on the west side,  
16 and they got Chamokane Creek on the east side, and they  
17 weren't worried about the value of land as the people  
18 east from here value the land, in dollars. They didn't  
19 care whether they get a rock pile or a bunch of scrub  
20 timber, or anything like that, because that's what they  
21 got. All they were worried about was how they were  
22 going to survive from the river, from the Spokane  
23 River, from the Chamokane Creek, that's all they were  
24 thinking about.

25 Q This was the fish?

1 A That's the fish.

2 Q The Coeur d'Alenes were different, they looked at land  
3 differently, did they not?

4 A That's right.

5 Q In the parley, in the first parley of the Lower  
6 Spokanes, I gather this was their home, their natural  
7 home, is that it?

8 A Natural home, yes, and the difference is, in the Lower  
9 Spokanes especially, the Middle and part of the Upper,  
10 they had valuable lands, too, because they have learned  
11 from their neighbors, the other tribes, the Coeur  
12 d'Alenes, that they do have some valuable land here  
13 which they could farm, such as the Peone Prairie, and  
14 some of these tracts, they even had some here west of  
15 the City of Spokane where they settled at one time.  
16 But no, white man wanted that land more than they did.

17 Q Was there a group of Spokanes at Deep Creek?

18 A Yes.

19 Q How many families?

20 A Well, that's the group, I don't know just how many  
21 there is in a group, but that's the ones that, when  
22 they joined with the Spokane Reservation, they picked  
23 the west part of the Reservation, according to the  
24 map, you know, up there, that, they took that west  
25 part.



1 Q Mr. Sherwood, the 1887 parley lasted for many days,  
2 and as the exhibit will show, the instructions of  
3 John Wright was to get the Upper and Middle bands to  
4 move to the Coeur d'Alenes, and the parley shows they  
5 resisted that to a man for eight days.

6 THE COURT: Counsel, excuse me, '87, or '77?

7 MR. DELLWO: '87.

8 Q (By Mr. Dellwo) Can you explain the resistance of the  
9 Spokanes to move to the Coeur d'Alenes, or, alterna-  
10 tively, or as an option, to the ?

11 A Well, no, when they were given this choice, of course,  
12 the ways the words was put by the old people that  
13 passed on, from generation to generation, the way it  
14 was put to them, that they were, the Great White  
15 Father was going to help them, they were offering  
16 them help, so they could put them in a better country,  
17 a better position to support themselves than where  
18 they were, but then, at the same time, where the  
19 tribes were fighting for their lives to keep this  
20 part of the country, because they had enough experience  
21 with the country that they know they can survive on  
22 what farm, what farm experience that they had already  
23 at that time, and there was enough fish in Spokane  
24 River and Little Spokane, and that's what they were  
25 trying for, but as it turned out, they were forced,

1           forced, that's the word that's used, to move.

2   Q       Did some of them go to the Coeur d'Alene?

3   A       Some of them went to the Coeur d'Alene. Of course,

4           most, probably over half of the Upper Tribe went to the

5           Coeur d'Alene Reservation, and some of them went to the

6           Flathead, but most of your Middle went to the Spokane.

7   Q       That was the Garry band?

8   A       The Upper, yes, that's the one that went to the Coeur

9           d'Alenes.

10   Q       Where did Garry go?

11   A       Most of them went to Coeur d'Alene.

12   Q       Where did Garry, himself, go?

13   A       Garry never did go, no reservation. He was one Indian

14           that wouldn't go on nobody's reservation.

15   Q       He stayed around here, didn't he?

16   A       Yes, and died here.

17   Q       And lost his farm.

18   A       Yes.

19   Q       In the parley, they speak of the Lot's Reservation.

20           John Wright never mentioned the Lot's Reservation, he

21           mentioned the Coeur d'Alenes, the Jocko and the Colville;

22           what was Lot's Reservation?

23   A       Well, this, the reason this word was used, in the Lot's

24           Reservation, because in this 1877 parley, it only

25           consists of the Upper and whoever they were meeting with.

1 Q They had already taken care of the Lower?  
2 A Yes.  
3 Q And Lot's Reservation was the Lower?  
4 A Yes.  
5 Q And is that the same as the Spokane Reservation?  
6 A Same as the Spokane Reservation.  
7 Q So wherever they say "Lot's Reservation", they mean  
8 Spokane?  
9 A That's right.  
10 Q Who was Lot?  
11 A Chief Lot was a big chief, according to the history  
12 of him. Chief Lot's father was a chief for the Spokanes.  
13 That's 'way back; 'way back. And then, when Lot,  
14 himself, passed on, his son, Oliver Lot, took over as  
15 a chief, but he passed away, too.  
16 Q How do these two chiefs come down to you, as far as  
17 greatness?  
18 A Then, of course, after Oliver Lot went, then they  
19 started appointing a chief.  
20 Q Who appointed?  
21 A Well, the government, or the Bureau, had something to  
22 do with it. I think the Indians made the recommendations  
23 and then the B.I.A. approved it.  
24 Q From then on, they were appointed, and then later on,  
25 they were elected?

1 A Yeah, up to the time the constitution and bylaws was  
2 adopted by the Tribe.  
3 Q You were elected, were you?  
4 A Yes.  
5 Q And always have been?  
6 A Yes.  
7 Q You were never appointed?  
8 A No.  
9 Q What happened after 1887, when everything was settled,  
10 the Uppers and the Middles had signed the session  
11 agreement, some had gone to Lot's Reservation, some  
12 had gone to the Coeur d'Alene, some to Jocko, and some  
13 to Colville; now, we have the Spokanes that are left  
14 on the Spokane bordering this 25 miles of river; after  
15 that, what happened to the river and the fishery?  
16 A Well, the fishing on the Spokane River, it carries on  
17 pretty good. From the time of 18-- when they really  
18 got together was 1891, or something like that.  
19 Q It took them that long--  
20 A Yeah, to get together.  
21 Q That's when the agreement was ratified.  
22 A Well, the fishing on the Spokane River was pretty good.  
23 The salmon come up the river in full force up to the  
24 time, I believe, in 1907, or thereabouts, 1907 or '08,  
25 they built a Little Falls dam.

1 Q Who built it?

2 A Washington Water Power. And when, they built a dam at

3 the Little Falls, and that's when they stopped it,

4 right there, and also I'm speaking of, seems like

5 Chamokane's in question. Before they built a Little

6 Falls dam, salmon and, there's four kinds of, main

7 kinds of fish that comes up to the Spokane River and

8 up the Chamokane, up to the falls, that we have been

9 talking about here for the last three days, and there

10 was no water temperature or anything like that mentioned,

11 they just come up there, and migrate, and spawn, and

12 everything. Of course, times were different, I guess,

13 in those days. But when the Little Falls went in there,

14 and that stopped it below the falls, it carried on for

15 quite a few years after that, below the falls, but the

16 only thing we got after Little Falls was in there, which

17 said it was finished in 1910, part of 1911, then from

18 there it just began to taper off, and all we got up the

19 Spokane River, as far as Little Falls, was the dog

20 salmon, that's the fall run, the ones that come up the

21 river to spawn and die. That's all we got for a few

22 more years till Coulee Dam got in and that was the end

23 of it.

24 Q That's the end of any fish?

25 A Yes.

1 Q Other than those that became native of Roosevelt Lake?  
2 A Yes.  
3 Q Did the Tribe have anything to do with Little Falls, was  
4 that done in cooperation with the Tribe in any way?  
5 A What do you mean?  
6 Q Did the Tribe have anything to do with permitting the  
7 building of Little Falls?  
8 A No, no, that was all done without the Tribe's, uh--  
9 Q Did you ever get anything out of it?  
10 A No.  
11 Q Are there any stories that you know from the old people,  
12 or that you personally observed of the fish below Little  
13 Falls, when it was built?  
14 A Oh, yes, yes.  
15 Q What happened to them, what was the immediate effect of  
16 Little Falls, as far as the fish coming up there; other  
17 than blocking them off, what happened to the early runs  
18 right after Little Falls, did they continue to come up?  
19 A Well, yes; I mean, the variety of fish, now, excuse me,  
20 I should remember what to say, but you see, before  
21 Little Falls went in, what came up the Spokane River was  
22 these four kinds of salmon, like you call salmon, some  
23 were trout, maybe, but there is the salmon, the steel-  
24 head, and this other kind of a, I don't even know the  
25 name of this little salmon, it's a small salmon, is what

1 it is, those were the four major fish that came up the  
2 Chamokane and on up to the falls here in the early  
3 times, but then when Little Falls went in, and the  
4 few years that remained after that were just the salmon,  
5 just the big salmon.

6 Q Nothing got by Little Falls?

7 A No.

8 Q That was the last salmon, or the last anything?

9 A Yeah.

10 Q Nothing got up there?

11 A No.

12 Q Chamokane Creek never saw a salmon or steelhead again,  
13 did it?

14 A No.

15 Q From 1908 or '10 on, in the early years, say in the  
16 years following that, on up to, say, the present day,  
17 in quick summary, what has been the importance of  
18 Chamokane to the Spokane Tribe as a fishery?

19 A Well, the hopes of the Tribe, we have talked about  
20 Chamokane. The importance of Chamokane today, since  
21 the polluted river, Spokane River, that's the only  
22 place that we enjoy ourselves, especially our children,  
23 we go down there, that's the only place that's been  
24 recommended that we can go in there and have our kids  
25 swim in it, drink out of it, and all that, and hopes of

1           someday, if we ever find out who has the full rights to  
2           the water, to develop it into something worthwhile  
3           instead of just draining it out and forgetting it like  
4           the rest of the country. I believe, right today, east  
5           of the mountains, or anywhere in our neighborhood here,  
6           I believe Chamokane is the best, purest, cleanest water  
7           there is there. It's not very far, it's not very long,  
8           but our hopes is to, let's keep it the way nature put  
9           it there and leave enough water in there so some kind  
10          of a fish, of course, as far as your native fish, it's  
11          gone, it had to be replaced with a different kind, with  
12          a commercial.

13        Q    What happened to the Spokane River below the dam, as  
14              far as being suitable for fishing and swimming after  
15              1910?

16        A    Well, after 1910, it was, it was allowed there for a  
17              few years, but this, I suppose, the pollution got so  
18              bad down the river, then it was forbidden to swim in it.

19        Q    Who forbade you?

20        A    Well, where I got this information myself was from a  
21              doctor, a government doctor that used to, you know, be  
22              the Bureau of Indian Affairs used to take care of the  
23              Indian health program on the Reservation. He's the one  
24              that forbid the people to swim in the Spokane River.

25        Q    By the way, how many Spokane Indians are there?



1 A As of today?

2 Q Yes.

3 A Oh, 1700-and-something.

4 Q And many live off the Reservation and many live on?

5 A Oh, yes, it's more live off than live on.

6 Q What are the rights of off-Reservation members to come  
7 on the Reservation and enjoy it?

8 A The same as I have.

9 Q No difference?

10 A No difference.

11 Q Do they come?

12 A They do.

13 Q What do they do when they come there?

14 A They come there to enjoy themselves, to swim, to fish,  
15 mainly, or hunt in the fall of the year.

16 Q Do they have cabins and places to live for over week-  
17 ends, or summers, and so forth?

18 A No, mostly people come in there with their campers, and  
19 stuff like that.

20 Q Just a constant interchange?

21 A Um-hum.

22 Q What about members of other tribes?

23 A Members of other tribes, I believe that I'd better pass  
24 that on to the next.

25 Q All right. Although the next witness will cover it,

1 in a quick, quick way, what are the plans of the Spokane  
2 Tribe for irrigating and development of the Spokane  
3 Reservation; what are the plans?  
4 A Well, there is big plans, big plans on it, I believe,  
5 that--  
6 Q Do any of them include irrigating?  
7 A I think you will hear this by our, I see our witness is  
8 back there, our planner is here, and he's going to let  
9 you people know just what the Spokane Tribe is planning.  
10 Q As leader of the Tribe, what have you recommended through  
11 the years, as far as using the Chamokane for irrigation?  
12 A I never once thought we'd ever use it for irrigation,  
13 on this, well, I'll stop right there, because I think that  
14 other witnesses will explain why.  
15 MR. DELLWO: That's all.  
16 THE COURT: Does the Government have further  
17 Direct?  
18 MR. GERMERAAD: No, Your Honor.  
19 THE COURT: Cross?  
20  
21 CROSS-EXAMINATION  
22 BY MR. DUFFORD:  
23 Q Mr. Sherwood,--  
24 A I might say this, before you start your questions, there  
25 are reports, you know, from the different witnesses, and

1 if it's something that concerns them, I will let you  
2 know that it will come out later.

3 MR. RUDOLPH: That will be decided on the subject,  
4 Your Honor.

5 A But if it is something in line with me, I will be more  
6 than willing to do so.

7 MR. DUFFORD: Thank you.

8 Q (By Mr. Dufford) I was wondering, speaking now about  
9 the old days of the Spokanes prior to the time, or  
10 about the time that these treaties were entered into  
11 back in the 1870s and 1880s, did the Spokane people have  
12 a distinctive religion that they followed?

13 A Not their own. Not their own religion, but the only  
14 religion that you might call it, in line of religion-  
15 like, is their power, you know, it's not a religion,  
16 it's a--

17 Q The power of individual man?

18 A Yes.

19 Q In the early days, was there some activity with respect  
20 to missionaries coming out to visit with the Spokanes  
21 and trying to convert them?

22 A Right. You see, that's, now, speaking of Walker's  
23 Prairie, you see, Walker's Prairie, again, is not the  
24 name that the Indians called it. The Walker's Prairie  
25 was named after a missionary that settled there on Mr.

1           Whatyoucallum's farm now. Gosh, I don't know when it  
2           was.

3   Q       Would that be Mr. Seagle?

4   A       Yes, Seagle's farm as of now. Walker and Eells set up  
5           a missionary there 'way, 'way back, I don't know what  
6           year that was, but that's where this Walker got the  
7           name of Walker's Prairie. The valley's got its own  
8           Indian name.

9   Q       Was that mission set up before the 1877 parley?

10  A       Oh, yes, oh, yes.

11  Q       And did many of the Spokane people become converted to  
12           the religion that Mr. Walker and Mr. Eells--

13  A       Right. Not only converted, but some education was  
14           accumulated a little bit from them, too.

15  Q       And what about today, is there any distinctive reli-  
16           gious practice of the Spokanes, or what sort of  
17           religious practices do they follow?

18  A       We have two denominations that's active on the  
19           Reservation; we have the Catholic and the Presbyterian.  
20           We do have a third one there, the Assembly of God, but  
21           not as active as the other two.

22  Q       You said that Walker's Prairie had an Indian name; do  
23           you happen to recall what that might be?

24  A       Yes.

25  Q       Would you tell me?

1 A Chimocane (phonetic).

2 Q In responding to Mr. Dellwo, you spoke of three

3 wintering sites that the Spokanes used on Chamokane

4 Creek in the old days?

5 A Um-hum.

6 Q And one of them, you said, was at the Cascade, I

7 believe; is that what we have been talking about as

8 the falls? Was that, or did I misunderstand you on

9 that?

10 A No, you didn't.

11 MR. DELLWO: Boise Cascade Lumber Company.

12 MR. DUFFORD: Oh, I see.

13 A Yeah, that's what is there presently. The name of that

14 the name of that site, as the Indians called it,

15 Skof-ta-weh (phonetic), Skof-ta-weh, that's the name,

16 I know the Clerk can say it; that's the name where

17 that Boise Cascade mill is now. And the upper and the

18 last site is Chimocane, see, because Chimocane, well,

19 you know, that's easy to translate into Chamokane,

20 it just happens that English words and Indian words

21 come pretty close. Chimocane is the last winter

22 quarters.

23 Q And is that by the bridge at Ford?

24 A Yes, a little bit above.

25 Q That's the furthest one upstream?

1 A Upstream, yes.

2 Q You were talking about the practice of digging camas  
3 roots and bitterroots; did those roots, did they grow  
4 in the Walker's Prairie area, what is now called  
5 Walker's Prairie?

6 A Very little.

7 Q Where did the Indians go to get them?

8 A They had to go across the river, in the Big Bend  
9 country, but they do get enough-- About the only thing  
10 they get from Walker's Prairie, from the north end of  
11 it, is the bitterroots, they do get the bitterroots  
12 there.

13 Q Is that kind of thing still going on, are the Indians  
14 still--

15 A Oh, yes, you bet, you can't lose those old customs,  
16 you know, some of them. Of course, not very much, but  
17 I still use it, myself, I still get it.

18 Q You talked about the fishing in the early days and  
19 described pretty completely all the different places  
20 where the tribes used to catch salmon. Insofar as you  
21 know, were there ever any salmon above what we have  
22 talked of as the falls on Chamokane Creek, did they  
23 ever get over that?

24 A Not above, no. They go as far as the falls. Something  
25 I forgot to mention, too, in regard to the fishing part

1 of the history, we have eels, too, that comes up the  
2 Spokane River, very much so, and that's valued pretty  
3 high, diet, too, with the Indian people, and they also  
4 go up to the falls, up Chamokane.

5 Q Are they like the salmon, have they been cut off by  
6 the dams, or are they still around?

7 A Yes, definitely, yes, they were cut off by the building  
8 of the dam of 1910.

9 Q Apart from salmon fishing, or steelhead fishing in the  
10 old days, did the Indians catch other kinds of fish?

11 A Yes, yes, you see, Spokane River has all kinds of fish,  
12 that is, of course, we mentioned the salmon as the most  
13 valuable, you know, fish, but they have white fish,  
14 they have native trout on the Spokane River in the  
15 early days.

16 Q What was the characteristic method of catching fish  
17 in those days, how was it done?

18 A Well, in the, where there is no, most of these sites,  
19 the main sites, the big sites, for instance, like,  
20 down here at the falls, they set the traps, the fish  
21 traps, what you call "fish traps", they make it out of  
22 what you call "willows", you know, they form it into  
23 kind of a basket, and as the salmon jumps up the falls,  
24 you know, all the time trying to get up there, then  
25 they fall back in the basket, that's how they catch

1           them at the falls, but in the wide river, I mentioned  
2           the Tumtum for one place, and another place below Little  
3           Falls, it's a quiet river, you know, there is no, no  
4           current to it, so they stretch their fish trap clear  
5           across the river, you know, they make big tripods, they  
6           weight them down with rocks, and clear across the river,  
7           then they sit their traps in the middle, or wherever  
8           the water is a little bit deeper than the other, and  
9           as the salmon go through this netting, you know, they  
10          have netting, and they catch them in the fish trap.  
11          That's the way they do it on the quiet water, but on the  
12          falls, they catch them in the basket; and then spear  
13          them, that's another; then hook-and-line.

14    Q       Getting back to the old history again for a moment,  
15            I just wondered if I was correct in understanding that  
16            the agreement in 1877 between the Spokanes and the  
17            government representatives, was that simply with the  
18            Lower Spokanes?

19    A       We seem to be that the only ones were, were mentioned  
20            in that parley, which, as I said, has been told to me  
21            by the older chiefs, that the reason for that, this  
22            Upper Tribe and the Middle Tribe stayed out of this  
23            parley because they were going to fight for their own  
24            country, here. They wanted to get a reservation right  
25            here, which never happened. That was the reason I have



1           been told.

2   Q       You were describing the Chamokane Creek as, I think you

3           said that it's about the only place left to enjoy, as

4           a fishery, and as a natural stream. Correct me if I'm

5           misquoting you. What I wanted to ask you is what kind

6           of fish resource does the Little Chamokane provide?

7   A       Well, we have fish in there, we catch fish out of the

8           Little Chamokane, but the funny part about the Little

9           Chamokane, it dries up here and there during the

10          summer, we can't, it doesn't have the flow as the Big

11          Chamokane has, till you get down close to the river,

12          then it has a little flow, but it dries up, but yet

13          there is fish in there, it's mostly native fish, you

14          know, native trout.

15   Q       Are there any lakes or ponds on the Reservation where

16          fishing is carried on today?

17   A       Oh, yes.

18   Q       And are those native fish in there?

19   A       No, no, they're all planted.

20   Q       They're planted?

21   A       Um-hum.

22   Q       By whom?

23   A       By the hatchery. We have a deal with them.

24   Q       What kind of deal do you have?

25           (Laughter)

1 A We furnish the water.

2 (Laughter)

3 A I don't know, that's built there, somebody can explain  
4 that better than I can, I don't know how the deal was,  
5 but during the reclama-- Park Service, or reclamation,  
6 during the taking of this, when they built the Coulee  
7 Dam, they built that hatchery for some purpose, but  
8 actually, I guess it's maintained by the State now, but  
9 we thought that was part of the Reservation at the time,  
10 but-- (witness hesitates)

11 Q To the best of your understanding, has there ever been  
12 any irrigating on the Walker's Prairie area of the  
13 Chamokane Creek Basin on the Reservation?

14 A No.

15 Q What about up on the Chamokane Bench, has that area  
16 ever been irrigated?

17 A No.

18 Q Are there people living, members of the Tribe, living  
19 in those two areas today?

20 A No. I think other witnesses will explain that part of  
21 it. That is why I told Mr. Dellwo that there is some,  
22 there is some report on that that's different than what,  
23 see, I'm talking about Indians myself, but this will  
24 have to include white men, now.

25 MR. DUFFORD: Thank you, that's all my questions.

1 THE COURT: Mr. Torve, do you have any Cross?

2 MR. TORVE: Oh, just a couple of questions, Your  
3 Honor.

4  
5 CROSS-EXAMINATION

6 BY MR. TORVE:

7 Q Mr. Sherwood, has the Spokane Tribe published any  
8 history, any public histories made?

9 A Of the--

10 Q Of the Tribe, history of the Tribe?

11 A No, not what I'm trying to quote, but there is a book,  
12 I believe I saw one on that table yesterday, that's one  
13 of them. Then we have another one at our office known  
14 as the Children of the Sun, published by one of the  
15 members of the Tribe, but this here, what I just got  
16 through explaining, is just words that passed on from  
17 one leader to another.

18 Q The book I had, maybe it's the one you saw, the book  
19 called Children of the Sun by David Wynecoop?

20 A Um-hum.

21 Q Who, I gather, himself, is a member of the Tribe?

22 A Yes.

23 Q Are you acquainted with that book?

24 A Oh, yes.

25 Q Was that book done, the research done from members of

1           your Tribe?

2    A       Um-hum.

3    Q       Does the Tribe have records as to the status of the  
4           various land included in the Reservations, and in that,  
5           I mean, what lands are allotted lands, or were formerly  
6           allotted lands?

7    A       Well, again, I'll have to pass that on to the--  
8           because I think the other witnesses are--

9    Q       Well, my question is, does the Tribe have records of  
10          the lands, various land transactions within the  
11          Reservation, to you knowledge?

12   A       Yes, I believe they have. I believe we have.

13   Q       Would you know whether or not they would include lands  
14          that might have been classified as timber lands by the  
15          Secretary of the Interior many years ago when the  
16          Reservation was opened up for homesteading?

17   A       Yes, I think there is such a book as that, such a  
18          record as that, but-- Yes, I think there is.

19   Q       I wonder, in 1958, apparently the Tribe reacquired  
20          surplus homesteaded, or lands that were available for  
21          homestead that were surplus that were never acquired,  
22          and the Tribe reacquired these. Do you know whether or  
23          not the Tribe would have records as to what lands those  
24          were?

25               MR. GERMERAAD: Your Honor, I would like to object

1 to that question in its form because it's based on a  
2 certain legal presumption on Mr. Torve's part that there  
3 was some recent acquirement of land, and I don't think  
4 that is the Tribe's position, certainly.

5 MR. DELLWO: No. If the Court please--

6 MR. GERMERAAD: And the United States, I don't  
7 believe, has studied that particular question, to have  
8 taken a particular position on it, but Mr. Torve's  
9 question presupposes certain legal positions. I think  
10 that's a rather unfair question to ask.

11 MR. TORVE: Well, let me put it this way, Your  
12 Honor--

13 Q (By Mr. Torve) There was a public law passed in 1958,  
14 Mr. Sherwood, and pursuant to that, certain lands were  
15 included within the dictates of the law; does the  
16 Tribe have records as to what, specifically what lands,  
17 those were?

18 MR. DELLWO: If the Court please, this is a  
19 technical question. The records are primarily with the  
20 Indian Bureau, rather than the Tribe. Really, these  
21 records are primarily kept by the B.I.A.

22 MR. TORVE: Well, I think the witness can so state,  
23 then.

24 Q (By Mr. Torve) Do you have knowledge of any records  
25 within the Tribe?

1 A Well, I had something to do with that myself, but  
2 whatever the record is, I wouldn't be able to answer.  
3 Q All right.  
4 A I'm one of the people that sponsored that program.  
5 Q Mr. Wynecoop, in his book, Children of the Sun, makes  
6 the statement that this law, and I'm referring to the  
7 1958 law, returned some 2,752.5 acres of land to  
8 Tribal ownership, and that's what I'm wondering if the  
9 Tribe had records of, of what Mr. Wynecoop is referring  
10 to here?  
11 A Well, I'm just as puzzled as you are on that question,  
12 because I haven't had time to find it and I don't even  
13 know what it says.  
14 MR. GERMERAAD: Your Honor, if I could suggest,  
15 that if he wants to ask a question of what Mr. Wynecoop  
16 asked, or meant, and what Mr. Wynecoop's research might  
17 be, he might call Mr. Wynecoop as a witness for himself.  
18 THE COURT: Well, he's merely testing this man's  
19 knowledge on the same history to which he's testified,  
20 and if he doesn't know, he can say so.  
21 MR. TORVE: I think the witness was answering,  
22 but I couldn't get it.  
23 MR. REKOFKE: I couldn't either.  
24 COURT REPORTER: I couldn't either, there were  
25 two voices going.

1 Q (By Mr. Torve) I wonder if you could attempt to  
2 answer that question, and the question is, do you  
3 know what lands Mr. Wynecoop might have been referring  
4 to that were related to that 1958-- or were there,  
5 are there Tribal lands--  
6 A Yes, just like I said a while ago, I'm one of the  
7 leaders that fought for that land like that, but after  
8 we got the answer that the land is restored, but I have  
9 been trying to find out, where is that land, is it over  
10 here, or over there, or where? I haven't been able to  
11 get the answer on that myself.  
12 Q Just a couple more questions. Does the Spokane Indian  
13 Tribe manage its timbered lands on a sustained-yield  
14 harvest?  
15 A Right.  
16 Q Do you know how many acres of timber lands are  
17 managed on a sustained-yield harvest?  
18 A Not exactly, no.  
19 Q Do you know where, well, could you tell me where those  
20 lands are located that are managed on a sustained-yield  
21 harvest?  
22 A Well, everything on the--  
23 MR. DELLWO: I object to this, Your Honor, it's  
24 outside the scope of the Direct. We have other  
25 witnesses--

1 THE COURT: I will sustain the objection.

2 MR. TORVE: I think that's all the questions I  
3 have, Your Honor.

4 THE COURT: Mr. Campbell?

5 MR. CAMPBELL: The defendant Smithpeter, we have  
6 no questions, Your Honor.

7 THE COURT: Mr. Tracy?

8

9 CROSS-EXAMINATION

10 BY MR. TRACY:

11 Q I have just a couple of questions, Mr. Sherwood. First  
12 off, did the Spokanes ever fish over around Kettle Falls?

13 A Oh, yes.

14 Q How far is Kettle Falls away from the mouth of the  
15 Spokane River?

16 A Oh, 60, 60 miles, 70 miles.

17 Q It's that far up the Columbia?

18 A Yes, up the Columbia River.

19 Q Has there ever been any payment made by the United  
20 States, to your knowledge, for the taking of those  
21 fisheries from the Spokanes?

22 A Not to my knowledge, no. If it has, that would be  
23 probable claim, anyway.

24 Q Now, there was one thing, did you say that the salmon  
25 did not go up over Chamokane Falls?



1 A Not up, no.  
2 Q Where did the fish spawn in the Chamokane?  
3 A Between the falls and the river.  
4 Q Throughout that area between the falls and the river?  
5 A Uh-huh.  
6 Q So the Indian fished, then, all along the Chamokane,  
7 there?  
8 A All along the Chamokane to the falls, and then above  
9 the falls, where, fishing is different above the falls.  
10 Q They fished above the falls, too?  
11 A Yes, in a different-- For trout, see, but below the  
12 falls, you're catching steelhead and salmon and whatnot.

13 MR. TRACY: No further questions.

14 THE COURT: Mr. Cerutti?

15 MR. CERUTTI: Thank you, Your Honor.  
16

17 CROSS-EXAMINATION

18 BY MR. CERUTTI:

19 Q Mr. Sherwood, I would like to talk a little bit further  
20 about ancient history with you. I understand that this  
21 Walker's Prairie is named after a missionary?

22 A Right.

23 Q These are white missionaries?

24 A Oh, yes.

25 Q When did they come in, if you know, sir?

1 A Oh, boy. You might look it up in that book, Children  
2 of the Sun. I can't tell you.

3 Q Well, before the treaty that we're talking about here?

4 A Right.

5 Q More in the mid-1800s?

6 A Well, early 1800s, in there.

7 Q I understand they located their dwelling, or home, on  
8 lands that Mr. Seagle now owns?

9 A Right.

10 Q That's where the old mission was?

11 A Yes.

12 Q Were the missionaries successful in their attempt to  
13 convert the Indians to their religious faith?

14 A Not very well, no, not according to the stories.

15 Q Did the people in the Walker mission there make any  
16 attempt to educate the Tribe?

17 A They tried, yes.

18 Q Did they teach them the English language, for example?

19 A (Nods.)

20 Q Did they make any attempt to teach them agriculture?

21 A If they have, where would they do it?

22 Q Well, I don't know, but I gather, to your knowledge,  
23 they didn't make any great effort, then, to teach the  
24 Tribe any kind of agriculture?

25 A Well, yes, agriculture has been taught by the Jesuits,

1 by the different church people, but on the Spokane  
2 Reservation, again I say, where could they do it, if  
3 they did follow the teaching of the agriculture?  
4 Q Do you know, sir, on that early mission site, did the  
5 missionaries have occasion to build any wells?  
6 A I wouldn't know that. All they talk about is springs,  
7 Seagle's back yard, there is some there, in those days.  
8 Q I wonder, sir, do you know, did the missionaries  
9 establish or plant any crops on the area where the  
10 Seagle farm is now located?  
11 A Oh, yes.  
12 Q Did they? Did they barter or sell any of their crop  
13 to the Indians, or wheat, or whatever they were  
14 raising?  
15 A Well, probably give 'em some.  
16 Q I wonder, sir, do you know, did they irrigate their  
17 crops when they planted them on that site?  
18 A Not in those years, no.  
19 Q I wonder if you know, then, how did the crops grow  
20 without irrigation?  
21 A Well, even in my time, we didn't need no irrigation  
22 to grow good crops.  
23 Q Why was that?  
24 A When I was a young fellow. I worked for farmers all  
25 of my life, and when I was young, why, farmers didn't

1           need no irrigation to grow crops, not like they do  
2           nowadays, so changing times is what I mean.  
3   Q       Would they ditch, ever, for irrigation, just to channel  
4           the water?  
5   A       Would they what?  
6   Q       Would they ditch for irrigation, ever, just to channel  
7           the water?  
8   A       You mean the missionaries?  
9   Q       Yes, or any of the people that farmed back in those  
10          times?  
11   A       No.  
12   Q       Would they dig shallow ditches to move the water about?  
13   A       I suppose where they have a natural, living on a spring,  
14           something like that, maybe, I don't know, but as far  
15           as setting up an irrigation system, I don't think so.  
16   Q       I wonder, sir, do you know when the missionaries left  
17           their site on the Seagle farm?  
18   A       Well, they left there brokenhearted, from the way the  
19           story's been told from generation to generation. They  
20           didn't succeed with the Indian people. In the first  
21           place, they weren't working with the Indians at all,  
22           they went against them, I guess, is what you would  
23           call it.  
24   Q       I understand it didn't work out very well, but I  
25           wonder, do you know approximately when they left?

1 A Oh, no, no, that's 'way before my time.

2 Q Do you have any knowledge, sir, from, not personal,  
3 of course, but from things that you have heard, as to  
4 whether or not, another white man, a Mr. Haynes, came  
5 in and settled on the Seagle farm after the mission-  
6 aries left?

7 A Haynes?

8 Q Yes.

9 A Yes.

10 Q He came in and took over the site after they left,  
11 did he?

12 A I believe so, yes. I think he located in the same  
13 location.

14 Q And am I correct in understanding that Mr. Haynes was  
15 settled there prior to the 1887 treaty; he was there  
16 before that?

17 A I believe so.

18 Q Did the Indian Tribe ever have occasion, back in the  
19 mid- to late 1800s, to engage in what we would call  
20 recreational fishing?

21 A By fishing, you mean--

22 Q I say recreational fishing. I understand that they  
23 fish for their food source, for the salmon, but would  
24 they go out for enjoyment and fish, like I might, this  
25 weekend?

1 A Oh, no, oh, no, they worked hard enough to get enough  
2 supply for the winter. They had feasts, yes, but  
3 that's on special occasions.

4 Q I understand. You say, sir, that your personal belief  
5 is that the Tribe should not irrigate from the  
6 Chamokane Creek?

7 A Not if we could help it.

8 Q And I understand that's a recreational spot for the  
9 Tribe because the water is pure and unpolluted?

10 A Yes, and it's got potential for the benefit of the  
11 Tribe, which the Tribe always feel that they own the  
12 creek.

13 Q You're interested in keeping the water pure, correct?

14 A Pure, yes, and make it just a natural--

15 Q To your knowledge, are any of the defendants in this  
16 lawsuit causing that water to be polluted in any way?

17 A Polluted?

18 Q Yes.

19 A No, I don't think they're polluting it, they're  
20 draining it.

21 MR. CERUTTI: I have nothing further, Your Honor.

22 THE COURT: I think we will take the afternoon  
23 recess before we continue.

24 MR. DELLWO: No more Redirect.

25 THE COURT: Pardon?

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MR. DELLWO: No more Redirect.

THE COURT: All right.

THE BAILIFF: All rise; court is now in recess.

(The afternoon recess taken  
at this time.)  
(Colloquy between Court and  
counsel as regards Monday's  
schedule.)

CROSS-EXAMINATION

BY MR. REKOFKE:

Q Mr. Sherwood, you live on the Reservation at this  
time, do you?

A Right.

Q How long have you lived on the Reservation?

A About, well, off and on, all my life.

Q Where did you go to school? Just curious.

A Just curious; I didn't go to school.

Q I was under the impression that you had attended school.

A Hum-um.

Q You seem to be doing quite well without having attended  
school, I might add.

This practice that you described as the  
Indians' making their winter homes, I think you said  
on the Chamokane, as you described it, this was a

1 practice, I assume, that has long since been  
2 discontinued?

3 A Yes. Not altogether a lost art, either. There is  
4 people still do that, of course, but they don't live  
5 in it all year 'round, but at celebrations, and things  
6 like that, we still move our camps for powwows and  
7 things like that.

8 Q I see. More of a ceremonial basis?

9 A Yes.

10 Q Essentially, these sights were occupied, I think you  
11 said, for winter homes in days gone by?

12 A Right.

13 Q Incidentally, the Lower Spokane, you said the  
14 Reservation, as I understood your testimony, this  
15 Reservation, it is the Lower Spokane's natural home,  
16 did I understand--

17 A Yes.

18 Q What area did the Lower Spokane occupy as their natural  
19 home?

20 A Well, they occupied quite big country, till they cut  
21 them down, to the south they claimed the country  
22 there, I believe they go clear into, I'll easily say  
23 Snake River, in through that country, and that was  
24 their roots, you know what I said about roots, and  
25 then up, they didn't go up north very far, because the



1 Colville Tribe has claimed that part of the country.  
2 Q Well, in other words, is the northern boundary of the  
3 Reservation now essentially the same as the area  
4 occupied by the Upper Spokanes at the time?  
5 A Not what they thought was their country. They went  
6 beyond the boundary, 'way beyond.  
7 Q You did?  
8 A Oh, yes.  
9 Q That's what I'm trying to find out, how far beyond  
10 the present boundary did--  
11 A Well, that's what I mean, you go south probably to--  
12 Q No, I'm talking about the, to the north, excuse me.  
13 A Oh, to the north?  
14 Q Yes, to the north, that's what I'm talking about.  
15 A Yeah, well, you go north beyond Chewelah.  
16 Q Oh, I see.  
17 A Yes.  
18 Q Was this the Spokanes or the Lower Spokanes that  
19 we're talking about?  
20 A The Lower Spokanes.  
21 Q I see. And the Middle Spokanes, where were they  
22 situated?  
23 A Where the two rivers come together.  
24 Q Oh, I see.  
25 A And the Uppers were right here where we're at.

1 Q Where--  
2 A Right here in Spokane, Washington.  
3 Q Right here.  
4 A Yes.  
5 Q Okay. Now, you testified also that there were  
6 approximately 1700 members of the Spokane Indian Tribe?  
7 A Right.  
8 Q That's the Lower--  
9 A Enrolled members.  
10 Q That's the Lower?  
11 A No, that's the whole Tribe.  
12 Q Oh, the whole Tribe?  
13 A Yes.  
14 Q And how many in the Lower Tribe?  
15 A Well, since they put them together, well, that,  
16 they're one tribe, there is no difference.  
17 Q Oh, there is no more differentiation?  
18 A No, no, because--  
19 Q All the, then, I understand, all the tribes now have  
20 been consolidated?  
21 A That's right.  
22 Q The Upper, Middle and Lower?  
23 A That's right, yes.  
24 Q And that totals about 1700?  
25 A And then the Spokanes, well, we'll say the Uppers,

1           those has joined with the Coeur d'Alenes, they became  
2           Coeur d'Alenes, those that joined with the Flatheads,  
3           they become Flatheads.

4       Q       I see.

5       A       The same with the Colvilles.

6       Q       But at the present time, there are still about 1700  
7           members?

8       A       Yes.

9       Q       How many of you, approximately, reside on the  
10          Reservation, do you have any idea?

11      A       Well, we always use between 600 and 700.

12      Q       How many were on the Reservation when it was first  
13          established, do you know what the population on the  
14          Reservation was when it was initially established in  
15          1877, or whenever it was established?

16      A       Well, according to the allotment, I think it was right  
17          around between 7 or 800, something like that, allot-  
18          ments was issued out to the Indians.

19      Q       So the population of the Reservation has remained  
20          rather constant, or stable?

21      A       Oh, yes. Yes.

22      Q       Did the Tribe, well, let me ask you what the  
23          residents of the Reservation, at this time, in what  
24          do they engage, what do they do?

25      A       Well, right now, instead of what I said at the

1           beginning of my fourth year, the fish people are  
2           working people now.

3   Q       I see.

4   A       We have to, because there is no other means of surviv-  
5           ing on our land or anything like that.

6   Q       In other words, they work off the Reservation, is that  
7           right?

8   A       No, we have projects on the Reservation, and off the  
9           Reservation. We can't provide enough employment on  
10          the Reservation, so they have to leave.

11   Q       I see. But there are no crops grown on the  
12          Reservation?

13   A       No, we just don't have the land, not the way people  
14          farm nowadays, you have to have a section of land  
15          before you can even--

16   Q       I see.

17   A       --and we don't have that.

18   Q       Then you do, apparently, have some timber land?

19   A       Oh, yes, yes, that's the means of income for the  
20          Tribe, is timber sales. Of course, that belongs to  
21          all members.

22   Q       I see.

23   A       Timber that's cut on Tribal lands, see, we have  
24          Tribal lands, and then we have private allotment of  
25          land, and the Tribal lands, we have timber sales on

1           that, that goes to all the members.

2   Q       That goes into the--

3   A       Into the kitty.

4   Q       --Tribal treasury? Kitty?

5   A       Into the kitty, yes.

6   Q       Okay. Then you parcel it out to the various members

7           of the Tribe, is that it?

8   A       Yes. So once a year we do that. That's about all we

9           can do.

10   Q       Does that include the people who are members of the

11           Tribe who are off the Reservation?

12   A       Oh, yes.

13   Q       They all get--

14   A       As long as you're enrolled, you're entitled to that.

15   Q       They all get their cut?

16   A       That's right.

17   Q       And what, does the Tribe itself conduct or operate

18           tree farms, or do you lease that out to someone?

19   A       Well, the B.I.A.

20   Q       Oh, I see, they handle that?

21   A       Um-hum, they manage all the timber cutting and, uh,--

22   Q       The sales, and whole thing?

23   A       Yes.

24   Q       And they just, the proceeds--

25   A       Um-hum.

1 Q --is given to the Tribe?  
2 A Right.  
3 Q Is there any other sources of revenue for the Tribe?  
4 A Oh, let's see, we have a mine, uranium mine, which  
5 brings in some revenue to the Tribe. Not very big.  
6 Q Who manages that, Mr. Sherwood?  
7 A They, well, the Tribe, the Tribe's part is, the  
8 B.I.A., it's kind of divided, half of it is private-  
9 owned, and the other half is the Tribe.  
10 Q Who owns the private half?  
11 A It's known as the Boyd property.  
12 Q I see.  
13 A Dawn Mining Company has the contract over it.  
14 Q Oh, I see. And is there any other source of revenue  
15 the Tribe has?  
16 A No, I don't think so. I can't think of any.  
17 Q Does the Tribe lease any land to others?  
18 A Not to speak of, no.  
19 Q Apparently, in the past, the Tribe has permitted  
20 fishing by members other than the Tribe in the  
21 Chamokane Creek, is that correct?  
22 A What?  
23 Q I say, sometime in the past, you have permitted people  
24 other than members of the Tribe to fish in the  
25 Chamokane Creek?

1 A Oh, yes, yes, there for many years, the Chamokane  
2 Creek was wide open to-- That's what-- That's what  
3 killed your native trout fishing in Chamokane Creek  
4 to begin with.

5 Q Well, didn't you, didn't the Tribe, and correct me  
6 if I'm wrong, I was under the impression the Tribe  
7 issued fishing permits to members other than the  
8 Tribe, to fish in the Chamokane?

9 A No, it was just wide open.

10 Q Oh, I see.

11 A Yeah.

12 Q That's--

13 A That's quite a while ago, you know. We're not--  
14 I'm speaking of 40 or 50 years ago, that was just  
15 wide open.

16 Q But in recent years, has the Tribe--

17 A Oh, yes.

18 Q They issued permits for people to come up there and  
19 fish?

20 A Yeah, well, since when, that we, what's been mentioned  
21 here--

22 Q Yes.

23 A --when we thought we would just try to restrict that.

24 Q Yes. I understand that that practice has since been  
25 discontinued, that you no longer issue permits, is

1           that correct?

2     A       Not on Chamokane.

3     Q       You don't issue permits on the Chamokane?

4     A       No, we don't allow anyone in there.

5     Q       I see. But you have in the past?

6     A       Well, I don't think we ever did allow fishing in there.

7     Q       Oh, well, I guess I misunderstood you. You would know

8           more about that than me. I was under the impression

9           that you had.

10           MR. REKOFKE: I believe that's all I have, Mr.

11           Sherwood, thank you.

12           THE COURT: Mr. McGregor, do you have any Cross?

13           MR. MCGREGOR: No questions.

14           MR. TRACY: I have one or two more questions I

15           would like to ask the witness, if I may.

16           THE COURT: All right.

17

18                           CROSS-EXAMINATION

19     BY MR. TRACY:

20     Q       Mr. Sherwood, did you know Mr. Lapray?

21     A       Yes, I know Joe Lapray. That's Junior. You see, the

22           old, Old Lapray was Joe, Joseph.

23     Q       Well, it would be Mr. Newhouse's great-grandfather.

24     A       Right.

25     Q       Did you know him?



1 A Now, which one is which now?

2 Q He's the one that first built the bridge across the  
3 river there.

4 A No, I don't know him, I know the Young Joe.

5 Q Have you ever been told when the Old Mr. Lapray first  
6 came?

7 A I have heard stories about him, yes.

8 Q Was it about 1875?

9 A Somewhere in there.

10 Q And he has a house, now, that is on the Newhouse  
11 land, is it not?

12 A Um-hum, yes.

13 Q Well, he, he built one there originally?

14 A Yes, as far as-- I don't believe it's the Old, I  
15 don't think it's the Old Lapray that built it, I think  
16 it's the Young Lapray, because he was a fairly old  
17 man himself.

18 Q Do you know when it might have been built?

19 A Well, I have known that country approximately 60 years,  
20 something like that, and that's always there.

21 Q Now, do you know if - the Old Mr. Lapray is the one  
22 I'm trying to direct your attention to now-- Do you  
23 have any information on whether or not he had some  
24 stock there, some cattle there, on the land that were--

25 A No, I don't.

1 Q You don't?

2 A No.

3 MR. TRACY: Okay, thank you.

4 MR. CAMPBELL: If Your Honor please, would you  
5 indulge me a couple of questions of Mr. Sherwood?

6 THE COURT: Fine.

7

8 CROSS-EXAMINATION

9 BY MR. CAMPBELL:

10 Q Mr. Rekofke was asking about various means of income  
11 on the Reservation, Mr. Sherwood. Hasn't the Tribe,  
12 from time to time, received settlements for various  
13 claims from the United States Government, through  
14 the Claims Commission?

15 A Yes, we received the settlement, but I didn't take  
16 this question as to that.

17 Q He didn't ask the question, is why you didn't, but I  
18 would like to ask the question. Now, the latest one  
19 was in 1967 or '68?

20 A Yes.

21 Q How much was that?

22 A Oh, I think, altogether, a little over \$7,000,000,  
23 something like that.

24 Q Have you had other settlements prior to that time?

25 A No.

1 Q Have you had any since?

2 A No.

3 Q Can you tell us briefly, tell the Court what that  
4 money is used for today?

5 A I might answer it this way, for information to His  
6 Honor, that we, when we got the money from the  
7 government, we set aside so-many dollars for this  
8 program, say, beginning with the development, to  
9 develop our Reservation, we set aside so much money  
10 to buy land, which had got out of Indian ownership.  
11 We set aside monies to educate our young people.  
12 And what else? Maybe I missed some, but--

13 Q Do you have a reserve fund?

14 A --but the rest of it, we paid it out to the members.

15 MR. CAMPBELL: Thank you, that's the point I  
16 wanted to make, Your Honor.

17 THE COURT: Redirect?

18 MR. DELLWO: Thank you.

19

20 REDIRECT EXAMINATION

21 BY MR. DELLWO:

22 Q That that was paid out to the members was primarily  
23 for housing and family improvement, wasn't it?

24 A Right.

25 Q Mr. Sherwood, what was that recovery for, the land

1 claim recovery?

2 A The recovery for that was for land that the Spokane  
3 Tribe felt it was their country that was taken by the  
4 government without any kind of a compensation, without  
5 their consent, without consulting with them, and they  
6 measured off the country on their own minds, no survey,  
7 or anything like that, they just make points of  
8 certain parts of the country. We go that far south,  
9 we go this far east, and west, and north, and so on,  
10 and that's what they put their claim in for, which the  
11 country that they weren't, they weren't trying to go  
12 into other tribes' territory, they feel that was the  
13 country that the Spokanes roamed in from the time of  
14 beginning up to the time that they were bunched up on  
15 this so-called "reservation", and that's what they  
16 sued for.

17 Q Mr. Sherwood, it was for, to put it in legal terms,  
18 which you shouldn't be expected to do, it was for,  
19 under the Indian Claims Commission Act, for the  
20 unconscionably low consideration paid for the lands  
21 that belonged to the Spokanes. I wonder if you would  
22 testify, just in quick summary, the outer boundaries  
23 of the area that the claim covered, the outer boundary  
24 of the Spokane-claimed area that this claim covers.  
25 Can you do that, or would some other witness--

1 A I think we'd better, I'll leave that to, I think our  
2 director would be more familiar with that.

3 Q All right. Now, I think, with the understanding of  
4 the Court, there's been almost a request from opposing  
5 counsel that Alex close by giving a message to the  
6 Court in his Salish language; that you might give the  
7 Court, and then tell the Court what you said.

8 MR. DELLWO: If that's all right. And the Court  
9 Reporter can take it down, too.

10 (Laughter)

11 COURT REPORTER: Sure.

12 A (Speaking in Salish.)

13 Q (By Mr. Dellwo) And interpret.

14 A We are here gathered for the purpose, and you, Your  
15 Honor, hopin'-- What did I say--

16 (Much laughter)

17 MR. : Nobody knows.

18 MR. : Have him read it back.

19 (Much laughter)

20 A --hopin' that you'd see this, see the case to the best  
21 of your judgment.

22 THE COURT: That's why I'm here, Mr. Sherwood.  
23 I wish you would indulge the Court one bit of curio-  
24 sity. These three wintering places you testified to  
25 in the earlier days; although you said it's milder

1           there, it's still kind of wintry country; what kind of  
2           shelter did the earlier Indians use up there in the  
3           winter?  
4       A    I explained it to a gentleman over there a while ago.  
5           You see, each year, the old timers, each year they get  
6           prepared for new home, new quarters for the winter, and  
7           they get their material ready; mostly, the Spokanes  
8           uses tules, they gather up the tules and make mats out  
9           of it. They're lengths of 10, 12 feet long, and four  
10          feet in length, and that's what they cover with.  
11                 THE COURT: I didn't understand what the material  
12           was they used. Thank you. Any further questions of  
13           the witness?  
14                 (No response.)  
15                 THE COURT: You may step down. Thank you, Mr.  
16           Sherwood.  
17                                 (Witness excused.)  
18  
19       ALFRED E. McCOY,                   being first duly sworn,  
20                                 testified on behalf of the  
21                                 plaintiff as follows:  
22                 THE CLERK OF THE COURT: Would you please state  
23           your full name to the Court, spelling your last name,  
24           please?  
25                 THE WITNESS: Alfred E. McCoy, M-C, Capital C-O-Y.

1 DIRECT EXAMINATION

2 BY MR. DELLWO:

3 Q Mr. McCoy, where do you reside?

4 A Fruitland, Washington.

5 Q Is that on the Spokane Reservation?

6 A Yes, it is. It's on the west end of the Spokane Indian  
7 Reservation.

8 Q Where is it situated, with regards to Roosevelt Lake?

9 A It's eight miles upstream from the confluence of the  
10 Spokane River.

11 Q How close to the water?

12 A Probably four miles.

13 Q No, no; how close to the water, to the Spokane arm,  
14 where you live?

15 A Oh, I live right on the lake shore.

16 Q How long have you lived in the Spokane Reservation?

17 A All my life.

18 Q How old are you?

19 A 54.

20 Q Do you have a family on the Reservation?

21 A Yes.

22 Q How many children have you?

23 A Twelve.

24 Q You have been a farmer on the Reservation?

25 A Yes.

1 Q What have you raised in the past years?  
2 A Cattle and children.  
3 Q Would you summarize your background quickly from where  
4 you have resided at various times of your life and what  
5 you have done up to the time you became a member of the  
6 Council?  
7 A I think, to start with, I completed high school at  
8 Hunters, Washington, and from there I went to school  
9 one more year at Salem, Oregon, and from there I was  
10 drafted into the Second World War. I served five and  
11 a-half years in the Army. After service, I went back  
12 to the Reservation and done work at odd jobs up until  
13 1957. There was a vacancy on the Council. At the  
14 time, I was working in the Dawn Mining Uranium plant.  
15 I was appointed on the Council, and I have been on the  
16 Council ever since then.  
17 Q You have been appointed to fill a vacancy, and elected,  
18 and re-elected ever since '57?  
19 A That's right.  
20 Q And you mentioned being a farmer; did you farm your  
21 own land?  
22 A Yes, I have my own ranch.  
23 Q And was this Indian lands--  
24 A Yes.  
25 Q --in trust that you have, what we call "allotted lands"?



1 A Right.

2 Q How many acres did you farm?

3 A 120.

4 Q 120?

5 A Yes.

6 Q What type of crops did you raise?

7 A Alfalfa.

8 Q And livestock, horses?

9 A Right.

10 Q And sticking to your farming, what are your farm

11 activities at the present time?

12 A I have my ranch leased out right now, but I live on

13 the river and just raise vegetables now, and have a

14 grape vineyard.

15 Q A test plot of grapes?

16 A Right.

17 Q And this is right down on the Spokane arm of the

18 Roosevelt Lake?

19 A Yes.

20 Q Do you have, other than being on the Council, are you

21 an officer of the Council?

22 A I'm vice-chairman.

23 Q Before that, were you an officer?

24 A I was secretary.

25 Q When you began your service on the Council, how large

1           was the business council?

2       A     It was a three-man council up until three years ago,  
3           we went to a five-man council.

4       Q     What is this Council; what does it do?

5       A     The Council is the governing body of the whole Tribe.

6       Q     Do you have a constitution and bylaws?

7       A     Right.

8       Q     This has been approved and recognized by the Department  
9           of Interior?

10      A     Right.

11      Q     When you first came on the Council, under what Indian  
12           agency was the Spokane Reservation?

13      A     We were under the Colville Indian Agency.

14      Q     That was located where?

15      A     Nespelem.

16      Q     And this was for the Colvilles as well as the Spokanes?

17      A     Right.

18      Q     They shared their personnel on the Spokane Reservation?

19      A     That's right.

20      Q     What is the situation now?

21      A     Up to now, we have our own agency, located right at  
22           Wellpinit, Washington. It's a newly-established  
23           agency, established two years ago.

24      Q     What familiarity do you have with the background and  
25           history of the Tribe, as such as was testified to by

1           Mr. Sherwood?

2       A     I would only add that Alex spoke the truth; done a  
3           good job.

4       Q     Do you have a general understanding from the people  
5           that have talked to you about the history of the Tribe?

6       A     Yes.

7       Q     If you were asked the various questions asked Alex,  
8           would your testimony be any different?

9       A     No.

10      Q     When did you begin to have an interest in Tribal  
11           affairs in your life?

12      A     I think after I was discharged from the service.  
13           Naturally, everybody had to think about jobs, and  
14           doing these odd jobs around, I became interested  
15           in the development of our Reservation, that we should  
16           have something interesting to put younger people to  
17           work.

18      Q     Are your children all Spokanes?

19      A     Yes.

20      Q     That was kind of a population explosion of the Tribe,  
21           wasn't it. Would you tell the Court of your view and  
22           interest of the development of the Reservation and what  
23           you found and what your personal plans and hopes for  
24           the Reservation were?

25      A     I think I will go back to when I first was appointed

1           on the Council. The thoughts were then that we had to  
2           have something interesting on the Reservation to put  
3           the younger people to work, and it's already been  
4           stated that education was one of our goals for people,  
5           and the development of our own resources.

6       Q     What were those resources?

7       A     Timber, mining, cattle, recreation.

8       Q     About this time the claims case was being generated to  
9           a conclusion?

10      A     That's right.

11      Q     Do you recall about when that was finished?

12      A     1967, '68.

13      Q     Would you tell the Court the difference of the before  
14           and after, as far as the Tribe having finances, income  
15           to do with in developing?

16      A     I think before we received our judgment, that you could  
17           almost say it was a poverty place to live, there just  
18           were no jobs, and after we got money, we started mak-  
19           ing plans on how we could support ourselves.

20      Q     What have some of the results been?

21      A     We have a veneer mill within our boundaries, and a  
22           cattle program; education.

23      Q     Tell what is different about that veneer mill; talk  
24           about the timber and the veneer mill and how that adds  
25           to the employment.

1 A Well, we negotiated a sale with a firm to build a mill  
2 within the boundaries of the Reservation, within our  
3 Reservation, to manufacture our timber with the contract  
4 to employ certain amount of our Indian people, and  
5 manufacture at least 70 percent of the cut at this  
6 mill. At this point of time, our annual cut is a  
7 maximum of 25,000,000, and a minimum of 21,000,000,  
8 and they are logging the maximum cut at the present  
9 time. Out of this 25,000,000, we get back 10 percent  
10 that the B.I.A. used to hold out for their charges to  
11 handle the sale. The Tribe now receives this 10  
12 percent back.

13 Q You got this away from them?

14 A Right. We use this money now to improve our timber  
15 stands.

16 Q Yes.

17 A The timber stands thinning project, that employs  
18 probably 20 people right now, that we pay by the hour.

19 Q So the whole timber program employs Indians, doesn't  
20 it?

21 A Yes.

22 Q What was the situation before this mill was in there,  
23 with regards to where the timber went, and so forth?

24 A I think it was less than half what it is now, because  
25 the timber was cut and hauled off the Reservation.

1 Q It was manufactured elsewhere?

2 A Right.

3 Q And without going into it, you have similar require-

4 ments in mining and so forth, and various enterprises,

5 Indian preference, and so forth, leading to employment?

6 A Right.

7 Q Now, you have had a specialty on the Council, and

8 despite being a small council, are there more or less

9 assignments made to the different members of the

10 Council to be primarily alert to planning for certain

11 things?

12 A That's right.

13 Q What has your assignment been?

14 A I have been interested in water rights, and water

15 studies.

16 Q And this has gone on how long?

17 A Since 1969. I think that we were the first Council or

18 Tribe that asked for a long-range water use plan for

19 study.

20 Q Would you go on and tell the Court how this has

21 developed and what has happened?

22 A Well, it was a long process in getting the expertise

23 here and to listen to the Tribe to make a study, and

24 I think most of this we done on our own. We finally

25 employed the Woodward Brothers to come out and make

1 the studies on the Reservation.

2 Q Did you, yourself, participate in certain studies?

3 A Yes, I worked with Lincoln County Health Department,  
4 Park Service, and the Tribe, on making water pollu-  
5 tion studies from the Columbia River up the Spokane  
6 River up to, clear into the town, the city here.

7 Q This went on for how long?

8 A It started in 1971, and is still going on.

9 Q Without being specific, can you give a general idea  
10 of what the studies showed with regard to pollution?

11 A Yes, our studies showed-- We had two stations in the  
12 Columbia River, one below the confluence of the  
13 Spokane River, and one above the confluence of the  
14 Spokane River. We had 11 stations up the river, up  
15 to Little Falls Dam, and at each station, the water  
16 at the Columbia River was almost pure, almost drink  
17 that water. As we came up the Spokane River, it kept  
18 getting more polluted until up at the Little Falls,  
19 it's pretty bad.

20 Q Do you know how bad? Scientifically, do you remember?

21 A No, I don't.

22 Q Now, as a result of this work by the Tribe-- Well,  
23 let me, let me ask you, are you familiar with the  
24 general direction that was given to the Woodward  
25 Brothers and those working with them, as to the general

1 policy and direction you wanted the inventory and  
2 their general analysis to take?

3 A Yes, I think the Tribe gave them the direction that--  
4 We been to several different meetings where people  
5 were talking water rights, and the use of water, and  
6 the restrictions, and the government water, that we  
7 felt we should have a plan, and that's where right  
8 now we're right in the middle of a plan to write our  
9 own water code, we will have restrictions even to our  
10 own members as to how much water we can use, and when.

11 Q You have general plans existing or in process for the  
12 irrigation now or the long-range future of the  
13 Reservation?

14 A We're going to plan for an irrigation project now that  
15 is going to cost \$3,000,000 to start, and we--

16 Q Where is this project?

17 A This is on the east end of the Reservation at Little  
18 Falls. We call the area "Little Falls Plat", and the  
19 "Bull Pasture".

20 Q You might tell the Court where that is, with relation  
21 to the confluence of the Chamokane.

22 A It's just downstream from the confluence of the  
23 Chamokane, probably one mile or less.

24 Q Is it below Little Falls Dam?

25 A Right.



1 Q And would you tell the Court, in general, what this  
2 project consists of?

3 A This project will be irrigated, uh, we're going to  
4 start to grow hay, irrigate out of the river, and we  
5 plan on irrigating about 2,000 acres at this one  
6 location.

7 Q I wish you would come to the board on the exhibit  
8 which number I'll read as soon as you get there, and  
9 show the Court where this project is-- This is  
10 Plaintiff's Exhibit 10-- And pointing to my finger  
11 being approximately on Little Falls, and the river  
12 going down, this is the wide part of the river?

13 A This Little Falls Plat would be this area, No. 1  
14 take-off of the program, and the other would be right  
15 about here.

16 Q And that is what you call the "Bull Pasture" area?

17 A Right.

18 Q Where would you get the water for this project?

19 A Above the dam.

20 Q Above Little Falls?

21 A Probably about here, for the Bull Pasture.

22 Q You would pump from Little Falls Lake and from  
23 Roosevelt Lake, is that right?

24 A That's right.

25 Q And who is planning this project for you?

1 A We have a planner with us here who will testify.  
2 Q I mean, who is engineering it, should be the word?  
3 A The Woodward Brothers.  
4 Q What part does the Bureau of Reclamation play in this  
5 particular project?  
6 A Well, they're out there making the survey, helping us  
7 lay it out, and the project will cost 3,000,000 to  
8 start.  
9 Q Do you have an idea where the funding will come from  
10 for it?  
11 A We're going to Washington, D.C., and talk prices to  
12 them people, the Secretary.  
13 Q What is your hope as to how soon this project will be  
14 on the line and raising alfalfa?  
15 A By 1975-- 6.  
16 Q And after alfalfa, are there any plans?  
17 A Yes, we feel that alfalfa is a place to start. We  
18 have had studies for grape vineyards, and orchards  
19 and maybe hops. That is another crop, cash crop, we  
20 will go into later.  
21 Q What have the studies shown as to whether or not you  
22 can grow these crops on this location?  
23 A They're very favorable.  
24 Q As a matter of fact, your little test plot has something  
25 to do with it, doesn't it?

1 A Right.

2 Q Now, going from this currently-planned project, in your  
3 opinion as a Council member, knowing the plans and  
4 policies of the Council, where do you go from there,  
5 irrigation-wise?

6 A We go to other areas than these two on the irrigation,  
7 using the water from Roosevelt Lake, and we could  
8 irrigate up to 20,000 acres, using Roosevelt Lake.

9 Q Do you know whether or not one of the justifications  
10 of Coulee Dam was the reclamation of the Indian lands?

11 A No, I don't.

12 Q Do you know whether any Indian lands have been reclaimed  
13 and irrigated up to this point out of Roosevelt Lake?

14 A No, I don't.

15 Q You say there haven't been, or you don't know?

16 A I don't know.

17 Q How about on the Spokane Reservation?

18 A No.

19 Q I mean-- I can't hear your answer.

20 A No.

21 Q The answer is "no"?

22 A No.

23 Q My question is: Do you know of any lands irrigated on  
24 the Spokane Reservation as a result of Grand Coulee  
25 Dam?

1 A Oh, yes, there is, private land.  
2 Q Private pump?  
3 A Right, private alfalfa fields.  
4 Q Have there been, up to this current project that  
5 you're talking about, any federally-financed projects  
6 such as in the Columbia Basin?  
7 A I don't get your question, sir.  
8 Q Well, irrigation projects, federally-financed, on the  
9 Spokane Reservation, have there been any?  
10 A No.  
11 Q And similar to water on the Columbia Basin project?  
12 A No, there hasn't.  
13 Q So this project you're talking about would be the  
14 first?  
15 A Right.  
16 Q These additional ones are down the line time-wise?  
17 A That's right.  
18 Q Would you give the Court an overview of the long-  
19 range irrigation plans of the Tribe and any relation-  
20 ship to Chamokane Creek?  
21 A I think that the Tribe never did plan on using  
22 Chamokane Creek for irrigation. We always did plan  
23 to use the fertilized Spokane River for irrigation.  
24 We have a land purchase program that we spend up to  
25 half a million dollars annually for buying back a lot

1 of these properties they want to sell, from non-Indians,  
2 and we have up to date purchased 1600 acres around  
3 Chamokane Bench there, and we plan to use the Spokane  
4 River for irrigation on that property, or building  
5 holding ponds and storage areas for runoff from the  
6 upwater.

7 Q To catch the washwater?

8 A Yes, right.

9 Q Do you have any idea, from your knowledge of the  
10 agriculture in the area and studies of any other crops  
11 other than alfalfa that might be suitable along in  
12 that section of the country?

13 A Yes. The details, I can't remember, but we have our  
14 planner or director to answer these questions. We do  
15 have orchards, studies are being made.

16 Q Did you participate in the resolution declaring  
17 Chamokane to be forever a natural and free-flowing  
18 creek and not available for irrigation?

19 A Right.

20 Q Were you on the Council at that time?

21 A Yes.

22 Q Do you know the thinking of the Council, that went  
23 into that resolution?

24 A Yes.

25 Q Would you tell the Court what that was?

1       A     Our thinking is, as Alex stated, we would like to  
2             leave the stream as a beautiful stream, and it's not  
3             public, just leave it there.

4             MR. DELLWO: That's all.

5             THE COURT: Any further Direct by the Government?

6             MR. GERMERAAD: No, Your Honor.

7             THE COURT: Cross? Mr. Dufford?

8

9

CROSS-EXAMINATION

10       BY MR. DUFFORD:

11       Q     Mr. McCoy, you talked about having a cattle ranch, I  
12             believe; is that correct?

13       A     Right.

14       Q     And I was wondering if you could give me some  
15             information about stock-raising on the Reservation  
16             in general. Are there other people engaged in that  
17             kind of occupation?

18       A     Yes.

19       Q     Is there any grazing presently being conducted in the  
20             area of the Chamokane Creek drainage?

21       A     Yes.

22       Q     And do the cattle that do that grazing use water from  
23             the Chamokane Creek at all?

24       A     Yes.

25       Q     Do you have any idea how extensive that use of that

1 area might be?

2 A Our range program is run by the Bureau of Indian  
3 Affairs. We have a range manager that makes estimates  
4 on how many cattle could graze on a certain range  
5 unit, and Chamokane Creek area, I believe, is Unit 4,--  
6 3 or 4.

7 Q Four animals per--

8 A No, that is the number of the unit. I don't know how  
9 many cattle or how many acres it takes per cow in that  
10 area.

11 Q When you were discussing the plans for irrigation in  
12 the area which is below the mouth of the Chamokane  
13 Creek on that-- Is that adjacent to the Little Falls  
14 Lake, somewhere, is that land nearby-- I can't  
15 remember--

16 A Is that the Little Falls Plat that I spoke of?

17 Q Yes.

18 A Yes.

19 Q Is that same area where you would take water out, were  
20 you to complete your plans someday to do some irrigat-  
21 ing in the Chamokane Creek drainage, is that where  
22 you would it out?

23 A Yes.

24 Q And with respect to your long-range plans maybe to do  
25 some irrigating in the Chamokane Creek drainage, were

1           you referring mostly to what we have talked of as the  
2           Chamokane Bench when you were talking about plans for  
3           irrigating?

4       A    Well, this area that I'm talking about irrigating is  
5           adjacent to Chamokane Creek.

6       Q    Is it presently covered with timber, any of the land  
7           that you would irrigate?

8       A    No, it's farmland.

9       Q    So your ultimate plans don't call for irrigating any  
10          acres that are presently in timber in the Chamokane  
11          drainage?

12      A    No.

13                   MR. DUFFORD: I think that's all my questions.  
14           Thank you.

15                   THE COURT: Mr. Torve?

16  
17                                   CROSS-EXAMINATION

18   BY MR. TORVE:

19       Q    Can you tell me, or, let me ask you some preliminary  
20           questions; you said you had a sustained yield unit;  
21           I assume when you laid those type of plans, you have  
22           a base timberland category which you have called your  
23           "sustained use"; is that correct?

24       A    Correct.

25       Q    Can you tell me where that unit is; do you have a



1 description of that unit, or can you, like, say, go  
2 to Exhibit 10 and tell us where the sustained unit is  
3 on the Reservation?

4 MR. DELLWO: If the Court please, I think the  
5 witness might be confused with the question. The  
6 unit is the entire Reservation.

7 A Right.

8 MR. DELLWO: And the Reservation is divided into  
9 units, but the sustained yield is the entire  
10 Reservation.

11 A That's right.

12 Q (By Mr. Torve) Let me ask you this, then; in order  
13 to ascertain an allowable cut of 25,000,000 board feet  
14 per year, have you determined what the base acreage is  
15 of timberlands to ascertain that cut?

16 A Yes, we have expert foresters with the Bureau of Indian  
17 Affairs that sit with the Council and makes these  
18 determinations on how many thousands of feet we're  
19 going to cut.

20 Q Has he ascertained what areas are included in the  
21 base of the allowable cut?

22 A I can't understand these type questions.

23 MR. GERMERAAD: Mr. Torve, I can, from other  
24 litigation, inform you that the B.I.A. has a special  
25 Indian Forestry Division, and I believe there's been

1 testimony today saying they are the ones that are  
2 managing the forest resources for the Tribe on this  
3 Reservation, as well as other reservations across the  
4 country, and I think your question is of a technical  
5 nature on which this witness is not necessarily  
6 qualified in each particular scientific forestry,  
7 would be more properly directed to B.I.A. foresters,  
8 which I guess you have not indicated earlier you were  
9 interested in, as you certainly didn't take any  
10 depositions, or ask to take any information from the  
11 B.I.A. foresters.

12 THE COURT: Are there other witnesses who will  
13 be called who will have knowledge in this area?

14 A The superintendent.

15 MR. DELLWO: The superintendent, Your Honor.

16 MR. TORVE: What I'm interested in, Your Honor,  
17 in the sustained-yield area, what lands are designated  
18 as timberlands, and then which are cut, and then have  
19 reproduction on them, and then continued in the base  
20 to, to maintain an allowable cut. I think that is  
21 important to the question of the extent of the irri-  
22 gable lands.

23 THE COURT: That's right. The only problem is  
24 whether we have the right witness who can properly  
25 answer the question. If he can answer it, fine.

1                   MR. TORVE: Maybe I'll rephrase the question to  
2                   this particular witness.

3       Q        (By Mr. Torve) Does the Tribe or the Council have  
4                   records or have access to records in which the  
5                   allowable cut is based on?

6       A        Yes.

7       Q        Are those records at Wellpinit?

8       A        Right.

9       Q        Now, I believe you indicated earlier that the, most of  
10                  the income is derived from timber harvesting, is that  
11                  correct?

12      A        Right.

13      Q        And in that harvest program, do you have a reproduc-  
14                  tion program putting the lands back into reproduction,  
15                  the ones that are cut-- reseeding?

16      A        Right.

17      Q        --and planting. Do you know, from your own knowledge,  
18                  whether any of those lands lie within what has been  
19                  described on Exhibit 10 as Chamokane Basin?

20      A        I don't know.

21      Q        You referred to a project that might possibly follow  
22                  the Little Falls Plat, if that's the correct name, an  
23                  additional area that you plan to pump out of the  
24                  Spokane River, you referred to additional, further  
25                  irrigation project of approximately 20,000 acres; can

1           you tell me where that project is?

2       A     It's all, on all benches of the whole Reservation.

3           It's lands that can be irrigated from the river.

4       Q     I believe-- Am I correct in--

5       A     This Bull Pasture you're speaking of, and the Little

6           Falls Flats is one project; two different locations.

7       Q     I thought I understood you to say in your testimony

8           that after that project, there was another project

9           that you were contemplating with no particular date on

10          it, but a further project for irrigating some 20,000

11          acres out of Roosevelt Lake?

12      A     Right.

13      Q     Where are those lands you're contemplating?

14      A     It would be on downstream on the Spokane River, within

15          the boundaries.

16      Q     You have indicated that the Tribe has spent a half

17          million dollars annually buying back allottees' lands,

18          or fee-owned lands, within the confines of the

19          Reservation, is that correct?

20      A     Right.

21      Q     How long a period has that been going on?

22      A     Several years.

23      Q     Does the Tribe, or do you have access to information

24          as to what lands those are and when they were purchased?

25      A     Right.

1 Q Are those records at Wellpinit?

2 A Right.

3 Q And I take it some of those lands are within what has  
4 been designated as the "Chamokane Basin" here, as  
5 shown on Exhibit 10?

6 MR. GERMERAAD: Would you re-read the question,  
7 please.

8 (Question read back by the Court Reporter.)

9 A I couldn't point out the exact locations on that map  
10 on which allotments we bought back, but I think we  
11 have people here that could, and will later testify.

12 Q Will there be further witnesses that have that  
13 information more specifically on maps?

14 A Yes.

15 MR. TORVE: No further questions, Your Honor.

16 THE COURT: Mr. Campbell?

17 MR. CAMPBELL: No, Your Honor.

18 THE COURT: Mr. Tracy?

19

20 CROSS-EXAMINATION

21 BY MR. TRACY:

22 Q Mr. McCoy, about these purchases, you don't have any  
23 specific knowledge as to what lands have been bought  
24 back at this time, do you?

25 A No.

1 Q Do you know if any lands have been bought outside of  
2 the Reservation?  
3 A None.  
4 Q You don't know?  
5 A None.  
6 Q None have been?  
7 A Right.  
8 Q Would the Tribe have the authority to buy lands outside  
9 the Reservation?  
10 A Yes.  
11 Q They can buy lands if they want to?  
12 A Yes.  
13 Q Well, without irrigation water on the east bank of the  
14 Chamokane, those lands would be a lot cheaper to buy,  
15 would they not, than if they had irrigation water?  
16 A Yes.  
17 MR. TRACY: I have nothing further.  
18 THE COURT: Mr. Cerutti?  
19 MR. CERUTTI: Nothing, thank you, Your Honor.  
20 THE COURT: And Mr. Rekofke?  
21 MR. REKOFKE: Just a couple of questions. Well,  
22 maybe more.  
23  
24  
25

1 CROSS-EXAMINATION

2 BY MR. REKOFKE:

3 Q Mr. McCoy, you, I think you said on Lake Roosevelt,  
4 in that area, is that correct?

5 A Right.

6 Q And that's off of that Exhibit 10, is it not; it's  
7 downstream, isn't it?

8 THE COURT: The west edge is covered.

9 A On the Spokane arm.

10 Q (By Mr. Rekofke) Trying to figure out just about if  
11 you live over here--

12 A Right.

13 Q --that's where your 120-acre farm is?

14 A Right.

15 Q And you don't apparently operate your farm, or ranch,  
16 any longer?

17 A No.

18 Q Who does operate that?

19 A It's rented.

20 Q Pardon?

21 A It's rented out.

22 Q To whom?

23 A Right now, Dennis McCrea (phonetic) has it.

24 Q Is he non-Indian?

25 A He is Indian.

1 Q Indian. And what does he raise there?  
2 A Cattle.  
3 Q Cattle. You're now longer growing grapes, apparently;  
4 you were trying to raise grapes for a while?  
5 A I have a test plot at my present home, on the lake  
6 shore.  
7 Q Oh, I see. This veneer mill, Mr. McCoy, is this  
8 operated by the Bureau of Indian Affairs?  
9 A Boise Cascade.  
10 Q By Boise Cascade. And what, how much income does the  
11 Tribe derive from that mill annually, approximately?  
12 A I think I stated the contract requires that 70 percent  
13 of the annual cut be manufactured at the Boise Cascade  
14 Veneer Mill.  
15 Q I mean, in dollars and cents; can you give us some idea  
16 of what the Tribe receives?  
17 A Seventy percent of 25,000,000, at so many dollars a  
18 thousand.  
19 Q So you get 70 percent of 25,000,000?  
20 A Right.  
21 Q About 17 1/2 million, or thereabouts, is that what you--  
22 A I think--  
23 Q What you're really talking about as 25,000,000, I'm  
24 sure, is board feet. I'm talking in terms of dollars,  
25 what does the Tribe receive?



1 A I don't know.

2 Q Okay. Seemed like an awful lot of money, but-- Okay.

3 MR. : Harvest any wood lately?

4 (Laughter)

5 MR. REKOFKE: Might not be so far off, after all.

6 Q (By Mr. Rekofke) Who would have those records of what

7 the Tribe actually receives?

8 A I guess the Forest Department, Bureau of Indian Affairs.

9 Q Wellpinit?

10 A Right.

11 Q And is there any timber sold off of the Reservation,

12 independent of what goes through that mill?

13 A Yes.

14 Q Do you understand my question?

15 A Right.

16 Q Okay. And that's handled by whom?

17 A Boise.

18 Q By Boise also. And you get how much of that?

19 A We don't get any of that.

20 Q You don't get any of that?

21 A No.

22 Q Any other-- You said something about a cattle program;

23 what is that, I made a note here that you have some

24 sort of a cattle program.

25 A Not a Tribal cattle program. It's individual members

1           raise cattle.

2       Q     I see. And so, the sources of-- Oh, incidentally,

3           this fund you receive from the veneer mill, is any

4           of that distributed to the Tribal members?

5       A     Yes. I think that question has already been answered.

6           You do have an annual per capita payment to the members.

7       Q     What does that amount to, do you have any idea what

8           it averages?

9       A     Usually two or \$300 each per year.

10      Q     Of the 1700 members of the Tribe?

11      A     Right.

12      Q     And, okay, a portion of the proceeds from the mining

13           operation, likewise, was distributed to the members of

14           the Tribe?

15      A     Right.

16      Q     How much does that amount to per year, approximately,

17           that the Tribe gets?

18      A     I don't know.

19      Q     Pardon?

20      A     I don't know.

21      Q     Okay. Do you know who might know?

22      A     Again, the realty would know, the Realty Branch of the

23           Bureau of Indian Affairs at Wellpinit.

24      Q     Now, as far as the present use of the land, other than

25           for the timber that is on it, and the veneer mill and

1           the mining, the land is used principally, apparently,  
2           for grazing, is it not, grazing and timber at this  
3           time?  
4       A     Right.  
5       Q     And I think you testified that you plan to irrigate  
6           certain portions of it?  
7       A     Right.  
8       Q     And that you're going to convert, what, some of the  
9           grazing land, into irrigated lands?  
10      A     That's right.  
11      Q     But as far as, your plans are to leave the timber  
12           remaining?  
13      A     That's right.  
14      Q     And you have no intentions of ultimately converting  
15           the timberlands to agricultural purposes?  
16      A     No, we don't have any intention of clearing lands for  
17           agricultural purposes.  
18      Q     Do you have any rough estimate of the percentage of  
19           lands on the Indian Reservation that contains timber,  
20           as compared to that which contains grazing?  
21      A     No, I don't.  
22      Q     You can't give me a ballpark figure?  
23      A     No.  
24      Q     Twenty-five percent, 50, or anything like that?  
25      A     No.

1 Q Okay. If you can't, you can't. Do you know who can?

2 A Nope.

3 Q Well, maybe we can find out some other way.

4 This particular irrigation project that  
5 you're contemplating, I believe there are two, there  
6 is one that kind of is in progress now, that you're  
7 working on, and one contemplated in the future, isn't  
8 that right?

9 A Right.

10 Q Okay. Who will operate those; I mean, what do you  
11 contemplate there, that would be individual Tribal  
12 members, or be operated for the Tribe, or what is  
13 contemplated?

14 A Well, later, it will be our own Tribal members. First  
15 we plan for hiring a manager to train our own people  
16 how to operate these.

17 Q And ultimately you will divide it up, apparently,  
18 portions of it, and have the Tribe, is that what you  
19 have in mind?

20 A That's right.

21 Q I see. And these funds that you use to purchase lands  
22 back, I think you said \$500,000 each year--

23 A Yes.

24 Q --where do these funds come from?

25 A That's part of our judgment fund.

1 Q Part of your what?  
2 A Our judgment fund.  
3 Q Your judgment fund?  
4 A Yes, judgment award.  
5 Q I see. Each year you get that much money to spend for  
6 that purpose, is that what you're saying?  
7 A No, we have the money.  
8 Q You can spend it for whatever you want?  
9 A Right.  
10 Q And you're using it to buy?  
11 A Right.  
12 Q I misunderstood.

13 MR. REKOFKE: I think that's all. Thank you, Mr.  
14 McCoy.

15 THE COURT: Further questions of this witness on  
16 Redirect, if you can do it in about 10 minutes, or we  
17 will carry him over.

18  
19 REDIRECT EXAMINATION

20 BY MR. DELLWO:

21 Q Mr. McCoy, apparently there is an impression that  
22 practically all the 150,000 acres of the Reservation  
23 is timberland. Would you make a brief description of  
24 the Reservation with regard to the benches and the  
25 valleys that are not timberlands and are potentially

1           irrigable, where they are, and generally how they lay?

2           MR.                   : Your Honor, I believe the witness

3           already testified he doesn't know.

4           MR. DELLWO: Well, he's lived there all his life,

5           he knows very well.

6           THE COURT: He couldn't identify the particular

7           areas of the timberland, is my recollection.

8    A       What I think, this isn't exact, generally, the north

9           part of the Reservation is our timber area, and the

10          southern part, or southwestern slopes, are the

11          farmlands that are open benches.

12   Q       (By Mr. Dellwo) These are open benches and valleys?

13   A       Right.

14   Q       And as a matter of fact, you drive through them every

15          day to Wellpinit?

16   A       Right.

17   Q       What do they look like; what is the general nature

18          of them?

19   A       Well, flatlands, or rolling hills.

20   Q       And what uses can be made of them at the present time?

21   A       Grazing.

22   Q       Are there farms that are through there?

23   A       Yes.

24   Q       And what do the farmers do with the lands?

25   A       They raise mostly alfalfa hay for their cattle.

1 Q Any grain?

2 A Very little.

3 Q Any potatoes, things like that?

4 A They have vegetable gardens.

5 Q When you get over into the Chamokane area, what is the

6 nature of those lands within range of the Chamokane,

7 with regards to the timber?

8 A It's timber in that area, I guess it was logged off

9 several years ago, the timber stand in that area is

10 not too good.

11 Q Are you generally familiar with the lands that are,

12 that Mr. Woodward said would be considered irrigable

13 in that Chamokane area, up onto the Chamokane Bench?

14 Have you been through there?

15 A Yes.

16 Q And is that timber that is important to your sustained

17 yield?

18 A No, like I say, it's not a very good grade of timber,

19 not too much of it.

20 Q Would you say that much of that land, most of it, or

21 what-- Maybe this is the question, what portion of that

22 land, in your opinion, would be farmland?

23 A Probably 60, 70 percent.

24 Q Intermingled with little stands of timber?

25 A Yes, sir.

1 Q In your land-purchase program, is there any portion  
2 of it that relates to the purchase of the lands off  
3 the Reservation?  
4 A No.  
5 Q The answer is what?  
6 A No.  
7 Q And have you ever purchased lands off the Reservation?  
8 A No.  
9 Q Does the Tribe have any plans that you know of to  
10 purchase lands off the Reservation?  
11 A We haven't said no.  
12 Q There is a problem on whether it can be in trust or  
13 not, things of that kind?  
14 A Right.  
15 MR. DELLWO: That's all.  
16 THE COURT: Any further, short questions?  
17 MR. CERUTTI: None here.  
18 MR. TORVE: Just one question.  
19  
20 RECROSS-EXAMINATION  
21 BY MR. TORVE:  
22 Q What is the name of the forester who would have the  
23 record of what the basis of the timberlands--  
24 A Bob Redlinger (phonetic), purchasing department.  
25 THE COURT: Court will be in recess, then, until



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9:30 a.m. Monday morning, or as soon thereafter as  
Northwest scheduling permits.

1 Hon. Marshall A. Neill, Judge  
2 Spokane, Washington  
3 Monday  
4 March 18, 1974  
5 9:30 A.M.

6 MR. McNICHOLS: Your Honor, I might make a  
7 request; I spoke with counsel; I represent the Dawn  
8 Mining Company; as the Court's aware, there has been  
9 a stipulated agreement worked out between the Tribe  
10 and the Government on the one hand, and Dawn and the  
11 Tribe on the other, which minimizes our participation  
12 in the proceedings. Mr. Earl Craig, the general  
13 manager, of Dawn, will be available this afternoon,  
14 and I'm wondering if the Court would permit us to put  
15 on a very brief presentation after the noon recess,  
16 perhaps, I would say 10 or 15 minutes, merely to  
17 establish our property ownership and usage in the  
18 area.

19 THE COURT: Well, as far as property ownerships,  
20 are the exhibits in?

21 MR. McNICHOLS: All the exhibits are in and were  
22 lodged with the Court under the pretrial order, and  
23 I assume there is no objection to them there. There  
24 are certifications of water appropriation, and the--

25 THE COURT: That shouldn't take very long.

MR. McNICHOLS: I wouldn't think so.

1 THE COURT: Well, we'll run from now to 12:30,  
2 and then recess til 2:00 and then perhaps you can put  
3 that witness on at 2:00 before we take up again.

4 Well, let's see, when we recessed for the  
5 weekend, had we finished with Mr. McCoy?

6 MR. DELLWO: Yes, we had finished.

7 THE COURT: Then let's proceed with the next  
8 witness--

9 MR. RUDOLPH: Your Honor, I wonder if we could  
10 dispose of at this time having entered in evidence  
11 exhibits we offered the other day and counsel had a  
12 chance to look at it over the weekend, that would be  
13 Exhibits 47 through 63, and I believe they did have  
14 a chance to see them over the weekend, and we would  
15 ask that they be admitted, for the record, and in order  
16 to avoid any confusion, I would point out that Exhibit  
17 52 on that list actually is already in evidence as  
18 3-1-74-17. I thought it was better to have a  
19 duplication, rather than to throw the numbers off.

20 THE COURT: Are there objections to Plaintiff's  
21 37 and 43 through 63?

22 MR. REKOFKE: If Your Honor please, No. 37-- If  
23 I might see these documents.

24 THE COURT: That's the Tribal resolution, I  
25 guess.

1 MR. REKOFKE: I don't know what purpose it is  
2 offered for; it's a self-serving document. I guess  
3 it must set forth the position of the Tribe with  
4 respect to water rights, and I think that's essentially  
5 a legal matter, and I would object to the admission  
6 of 37. I really don't know for what purpose it's  
7 being offered.

8 MR. RUDOLPH: Well, Your Honor, it's an official  
9 action of the governing body of the Tribe relating to  
10 the various water course that is in litigation, and  
11 specifically in that resolution is not only the  
12 declaration of the Tribe's position concerning it, but  
13 a determination of the protest to the State concerning  
14 the Smithpeter application, which is before the Court  
15 here, and as an official act of the Tribe, I certainly  
16 think it's not only relevant, but material to the  
17 report.

18 THE COURT: Well, it seems to me that although  
19 it is in the nature of a self-serving declaration, but  
20 it's an official action of the Tribe as against an  
21 individual member of the Tribe who might testify to  
22 the same thing, I think you would have to show that the  
23 Tribe officially took this action as a plaintiff in  
24 this case, so Exhibit 37, Plaintiff's 37, will be  
25 admitted. Is there any question to Plaintiff's 43

1 through 63?

2 (Whereupon, Plaintiff's Exhibit 37 was admitted  
3 into evidence.)

4 MR. REKOFKE: Well, Your Honor, with respect to  
5 Exhibit 40, which is a range management map.

6 MR. RUDOLPH: I wasn't offering 40.

7 MR. REKOFKE: Oh, you weren't offering 40.

8 MR. RUDOLPH: I was offering 43 through 63.

9 MR. REKOFKE: I'm sorry, I thought you offered it  
10 the other day.

11 THE COURT: He offered Exhibits 43 through 63.

12 MR. REKOFKE: Oh, I'm sorry. Well, the other  
13 exhibits, 43 through 63, are essentially historical  
14 documents. I don't know their particular relevancy  
15 or pertinency in this proceeding. It seems to me,  
16 Your Honor, that the ultimate agreement reached between  
17 the Tribe and its government would be determinative,  
18 and I think these other documents, some of which are  
19 statutory enactments, some are documents pertaining to,  
20 apparently, negotiations between the Government and  
21 the Tribe, and it seems to me that the ultimate, I  
22 say the ultimate decision reached by the defendant  
23 Government and the Tribe be controlling, and for that  
24 reason, I would object to those exhibits.

25 THE COURT: Of course, the Court hasn't had an

1 opportunity to examine each and every one of those  
2 exhibits, but experience with all Indian treaties  
3 indicates there is apparently a lot of ambiguity to  
4 anything that would explain the intention of the  
5 parties at the time of the treaty would certainly be  
6 of help in destroying the word of those rather nebu-  
7 lous and ambiguous instruments, so in that regard, the  
8 Court will admit Plaintiff's 43 through 63.

9 (Whereupon, Plaintiff's Exhibits 43 through 63  
10 were admitted into evidence.)

11 THE COURT: You may proceed.

12 MR. RUDOLPH: All right.

13 MR. DELLWO: Calling Mr. Galbraith.

14  
15 GLENN F. GALBRAITH, being first duly sworn,  
16 testified on behalf of the  
17 plaintiff as follows:  
18

19 THE CLERK OF THE COURT: Please state your full  
20 name to the Court, spelling your last name.

21 THE WITNESS: Glenn F. Galbraith,  
22 G-A-L-B-R-A-I-T-H. Two "n's" in Glenn.

23 THE CLERK OF THE COURT: Thank you.  
24  
25

DIRECT EXAMINATION

BY MR. DELLWO:

Q Where do you reside, Mr. Galbraith?

A I reside at Wellpinit, Washington.

Q How long have you resided in the vicinity of Wellpinit?

A Wellpinit has always been my permanent home. Other than when I was away in college and the armed forces, this is where I have always been.

Q Where were you born and raised?

A I was born in a log cabin nine miles north of Wellpinit on the Spokane Indian Reservation.

Q Did your parents live on a farm during your boyhood?

A Yes, they did.

Q Whereabouts was this farm located?

A Nine miles north of Wellpinit, about a mile and a-half from the Reservation border.

Q How far--

A One of the more remote areas of the Reservation.

Q How far from Chamokane Creek?

A The closest point to the Chamokane Creek would be three to four miles from where I live. This is what we term locally as "Upper Chamokane Creek".

Q What is your age, Mr. Galbraith?

A Fifty-four.

Q What is your position at this time?

1 A I'm the executive director for the Spokane Tribe of  
2 Indians.

3 Q How long have you been executive director?

4 A I have been in this position since May, 1968.

5 Q What are your duties and responsibilities as director?

6 A My duties are to administer the business affairs of  
7 the Spokane Tribe, under the supervision of the  
8 Spokane Tribal Council. This involves a multitude of  
9 duties that have to be performed. The Spokane Tribal  
10 Council is a governing body, which we have a type of  
11 government similar to county or state. We have all  
12 the different facets of government, including law and  
13 order, public health, forestry, management of our  
14 natural resources, mining, education.

15 Q Do you know what the average budget is of the Tribal  
16 operation?

17 A The budget for, officially, for the calendar year 1974  
18 was approximately \$428,000.

19 Q Primarily for Tribal operation, staff, expenses of  
20 running the government?

21 A It's primarily for this. This year it was increased  
22 a little bit from the timber-management program that  
23 Mr. Sherwood mentioned here last week.

24 Q Are you the top manager-representative in charge of  
25 the staff and operations of the Tribe under the



1 supervision of the Council?

2 A Yes.

3 Q Do you have a staff?

4 A Yes.

5 Q How many are on your staff?

6 A In the immediate Tribal office, I have an executive  
7 secretary, a bookkeeper, a Tribal clerk; then we go  
8 to the different branches, and I have at least some  
9 supervisory capacity over, which would be the alco-  
10 holism program, surplus store program.

11 Q Are you a member of the Tribe?

12 A Yes, I am.

13 Q Your folks were members of the Tribe?

14 A My mother was a member of the Spokane Tribe.

15 Q How many employees does the Spokane Tribe have?

16 A In calendar year 1973, we paid a total of 158 people  
17 for a payroll of approximately \$470,000.

18 Q Are you intimately connected with the affairs of  
19 Council in the drafting of resolutions and things of  
20 that kind?

21 A I believe in 1974 we had 280-some resolutions. I  
22 estimate that I wrote 90 percent of these.

23 Q Do you meet with the Council when they meet?

24 A Yes.

25 Q Keeping records and notes?

1 A Yes, we keep minutes of every meeting.

2 Q Going back, what is your education, Mr. Galbraith?

3 A I graduated from the University of Idaho in 1942. This

4 was--

5 Q What was your degree in?

6 A Pardon?

7 Q What was your degree in?

8 A My degree was in Fine Arts.

9 Q Did you have education beyond that point?

10 A Yes. 1942, during World War II, I went to Alaska with

11 the Army Engineers working on the railroads through

12 Alaska, Fairbanks to Prince George, from Alaska to

13 the Yukon Territory, British Columbia. Following that,

14 I served three years in the armed forces, largely in

15 Alaska, as an engineering draftsman. After World

16 War II, I returned to the University of Idaho and did

17 graduate work in the School of Education. I then went

18 to the University of Washington and acquired a teaching

19 certificate for the State of Washington. I taught

20 school for four years at Wellpinit, on the Spokane

21 Reservation, which I was a teacher and a high school

22 coach. I then went three summers, I believe, at

23 Eastern Washington College of Education at Cheney and

24 minored in United States History, Education, and

25 Physical Education.

1 Q Did you coach all sports for Wellpinit?  
2 A Yes.  
3 Q What was the last year you taught and coached in  
4 Wellpinit?  
5 A 1952.  
6 Q Since that time, have you participated as an extra-  
7 curricular hobby in recreational activities of youth  
8 on the Reservation?  
9 A Yes.  
10 Q What have you done in this regard?  
11 A I worked continually with the youth program, and not  
12 only athletics, as we know them in school, in  
13 competitive sports, but working with the younger  
14 people, hunting, fishing, camping, and working with  
15 them in developing outdoor recreation sites.  
16 Q Who were the other members of your family; your sisters  
17 and brothers?  
18 A Well, I'm glad things were different in those days.  
19 I was the seventh child. There were nine of us.  
20 Q In a general way, what are they doing, the other eight?  
21 A My older brother is an assistant with Bonneville  
22 Power in Portland. He at one time was appointed by  
23 Governor Langley as the head of the Department of  
24 Conservation and Development in Olympia.  
25 Q What is his name?

1 A William A. Galbraith.

2 Q And do you have another brother by the name of Al?

3 A Yes, Al retired recently as the assistant director

4 of the Bureau of Indian Affairs in the Portland area.

5 Q What were some of the positions he held before he was

6 the assistant area director?

7 A He was a superintendent at the Warm Springs Agency,

8 before he went to Portland, he was superintendent of

9 the Hickory Apache Agency in the Southwest, and worked

10 on various reservations.

11 Q And do you have other brothers and sisters who worked

12 in the area of Indian reservations or resource

13 development?

14 A I have a brother residing in Wellpinit who is a

15 cattle rancher and logger. He has been a chief judge

16 of the Spokane Tribal Court.

17 Q When did you begin your direct service to the Spokane

18 Tribe?

19 A When I finished coaching high school, Alex Sherwood

20 approached me and asked me if I would work for the

21 Spokane Tribe, and I accepted the position in 1953,

22 21 years ago.

23 Q As what?

24 A At that time, it was called a "Tribal clerk and

25 credit officer".

1 Q And what has been your positions with the Tribe since  
2 that time?

3 A I worked in this capacity until 1955, at which time I  
4 purchased the general store on the Indian Reservation  
5 and went into private business; however, at the same  
6 time, I was elected as a member of the Spokane Tribal  
7 Council, a position I held for six years. Following  
8 that, I--

9 Q You were on the Council itself for six years?

10 A Yes.

11 Q What period of time?

12 A 1955 to 1961.

13 Q Then proceed from that date; to what position?

14 A 1962, I was elected chief judge of the Spokane Tribal  
15 Court. I held this position until 1968, when I again  
16 came back to my present position of the Spokane Tribe.

17 Q As executive director?

18 A Yes.

19 Q Would you describe for the Court your activities on  
20 the Reservation with regards to hunting and fishing  
21 and things of that kind?

22 A As I point out, I grew up in this remote area. Hunting  
23 and fishing was probably the first thing I ever did, or  
24 ever remember. They have always played an important  
25 part of my life. I might mention that, I guess, from

1           the amount of experience I have had in the different  
2           committees I have served on, I was appointed by the  
3           governor of the State of Washington in 1971 as a  
4           game commissioner for the State of Washington.

5       Q     Have you had any other appointments in the State of  
6           Washington?

7       A     I was appointed by the governor's original, on the  
8           original Committee of Law and Justice. I served on  
9           that until I was appointed on the Game Commission.  
10          And I have held numerous committee appointments with  
11          the State and county.

12       Q     What are some of those; what were some of those?

13       A     I was at one time on the Council of Aging, appointed by  
14           Governor Rosellini. I worked in various county rural  
15           resources development programs, and was appointed by  
16           the Commissioner of Indian Affairs, on a national  
17           committee, to help assist some of the smaller tribes  
18           of the United States on their development programs.

19       Q     What are your general duties as a member of the  
20           Washington State Game Commission?

21       A     State Game Commission is a six-man board. It's their  
22           responsibility to propagate, protect and enhance the  
23           fish and game for the State of Washington; they set  
24           the hunting and fishing seasons, they enforce game  
25           violation, they have authority to purchase and sell

1 land, and generally take care to administer fish and  
2 game of the State of Washington--  
3 Q Is there any--  
4 A --other than the--  
5 Q Is there any other person on the Game Commission that  
6 has any affiliation with an Indian tribe?  
7 A No.  
8 Q Mr. Galbraith, is there any part of the Spokane  
9 Reservation that you have not seen or walked on or  
10 know pretty well?  
11 A I like to believe that I have been on every square  
12 mile at some point on the Spokane Reservation.  
13 Q Handing you what has been stamped and marked as  
14 Plaintiff's Exhibit 82, I will ask you to go through  
15 that and tell the Court what it is.  
16 (Whereupon, Plaintiff's Exhibit 82 was marked  
17 for identification.)  
18 A The first picture is a--  
19 Q Well, start at the title page and describe the thing  
20 over. I won't have you go through each picture.  
21 A Well, this is an aerial tour of the Spokane Indian  
22 Reservation, showing the resources, and it shows many  
23 of the things in the interior of the Reservation, but  
24 it also starts at the northeast corner of the  
25 Reservation, down Chamokane Creek to Spokane River,

1 west to the Columbia River, north to the northwest  
2 corner, back to points of interest within the  
3 Reservation, ending on views of the main timberlands  
4 and the Spokane Agency.

5 Q Does it purport to show, pretty much, aerially, from  
6 aerial photographs, the entire Reservation?

7 A Yes, it does.

8 Q By the way, do you know who took most of those pictures?

9 A I would say Bob Dellwo, the Tribal attorney, took most  
10 of them.

11 MR. DELLWO: I offer Plaintiff's Exhibit 82 in  
12 evidence merely for illustrative, demonstration  
13 purposes, to show the Reservation pictures.

14 MR. REKOFKE: When were those taken, counsel?

15 MR. DELLWO: Those were taken in 1968.

16 MR. CERUTTI: And the time of the year?

17 MR. DELLWO: In the spring of the year.

18 Q (By Mr. Dellwo) While they're looking, I will also  
19 hand you what has been marked as Plaintiff's Exhibit  
20 83. Let me ask, by way of preparation for this, if  
21 you recall the period of time, '66 to '68, when the  
22 Tribe was receiving its claimed judgment award of  
23 about 6.6 million, and the planning that took place  
24 in order to qualify for this award, were you active  
25 with the Tribe at that time?



1 A Yes, I was.

2 (Whereupon, Plaintiff's Exhibit 83 was marked  
3 for identification.)

4 Q And would you describe to the Court what you're looking  
5 at, Plaintiff's Exhibit 84, is it?

6 A 83.

7 Q 83.

8 A This is a resource development study of the Spokane  
9 Indian Reservation, prepared for the Spokane Tribe by  
10 Barrett & Follevaag, real estate appraisers and  
11 consultants, here in Spokane.

12 Q What does it purport to be?

13 A This is a general, basic study of the Spokane  
14 Reservation with recommendations for future development  
15 for the Spokane Tribe. It includes the areas of  
16 mining.

17 Q Is it pretty much a geographic, shows the geography of  
18 the Reservation?

19 A Yes, it does. The photographs in here describe the  
20 various areas of the Spokane Reservation. As I recall,  
21 there was quite a lot of emphasis at that time on  
22 recreation at Roosevelt Lake, for one thing.

23 Q Do you remember why this study was, in effect,  
24 purchased, or provided for with the Barrett &  
25 Follevaag firm?

1 A Yes.

2 Q Why was that?

3 A This was required by the United States Congress, as  
4 I recall, in preparation for the use of our judgment  
5 award, and we had to demonstrate to Congress that we  
6 were going to use this money for the various projects,  
7 this was a required study, and it did satisfy Congress.

8 Q As far as description of the Reservation, general  
9 analysis of the population, general analysis of the  
10 various areas on the Reservation, do you find that  
11 it's an accurate representation?

12 A Yes, I feel it is an accurate representation.

13 MR. DELLWO: I offer 83, also purely as a  
14 description, an impartial description of the  
15 Reservation.

16 Q (By Mr. Dellwo) While they're looking at that, Mr.  
17 Galbraith, going back, now, I would like to have you  
18 direct your testimony to the Court to your observation  
19 of the Chamokane Creek-Spokane River area of the  
20 Reservation from the time you remember to the present  
21 time, being quite general and brief in your discussion,  
22 and you may approach the plaintiff's exhibit here, if  
23 you would like to, in order to show some of the things  
24 you will testify to. I think perhaps you should  
25 approach it now and show the Court where you were born

1 and raised and begin your description of the  
2 Chamokane Creek.

3 A I'm looking at Plaintiff's Exhibit 10.

4 Q You might point out first the town of Wellpinit.  
5 There is a pointer there, Mr. Galbraith, so you can  
6 stand back.

7 A This is the town of Wellpinit, and I was born  
8 approximately north here, about, we don't have the  
9 number of the section right here, which was nine miles  
10 by road at that time. My closest point to Chamokane  
11 Creek was in this area. I started when I was seven  
12 years old to start fishing in there. I had to walk  
13 and either keep up with my Dad and older brothers or  
14 stay home, and so I walked it. I fished all my life  
15 to this area to where Chamokane Creek starts, to  
16 where it is no more.

17 Q What kind of fish did you catch?

18 A They're still there today; native trout.

19 Q Go ahead and briefly describe your experiences of  
20 fishing from there and on down the confluence.

21 A As I grew older, we moved down to Wellpinit, probably  
22 1937, when I was in high school, I graduated from high  
23 school, and I became more familiar with this particular  
24 area, from Ford to the mouth of the creek.

25 Q And did you fish in that area?

1 A Yes, I fished in this area.

2 Q Going back to 1937, to the 1937-40 year, would you

3 tell the Court what the fishing was like in those days,

4 and describe the creek as it was then?

5 A Fishing in the Chamokane at that time was probably

6 some of the better periods of time that I knew fishing

7 in the Chamokane Creek. There seemed to be more water

8 at that time, fish were more abundant.

9 Q What has been your observation of the changes in the

10 stream from 1937 to the present time?

11 A I was gone in World War II a period of over three

12 years. It seems like even then, when I returned,

13 fishing perhaps wasn't as good as it used to be, but

14 I fished it consistently from 1945, to today, almost

15 30 years. The Ford fish hatchery was put in around

16 1940. There was an immediate increase in fishing

17 around the falls. In fact, the hatchery did stock

18 this, they stocked it in about 1966.

19 Q What kind of fish did you catch in the main stem of

20 the Chamokane above and below the falls before that

21 hatchery was put in there?

22 A What we call the "native trout".

23 Q What have you caught since then?

24 A Since the hatchery came in there, their large plants

25 have always been rainbow trout. However, I would guess

1           about 10 or 12 years, there has been an increase in  
2           abundance of German brown trout in the area. I  
3           understand these more or less escaped from the fish  
4           hatchery, rather than they were planted. They raise  
5           them there, in the hatchery spring, some of the trout  
6           do escape, they go down the stream and get into  
7           Chamokane Creek.

8       Q     Have you been fishing in the last, right up to the  
9           present time, on Chamokane?

10      A     Well, I fished in one of the ponds yesterday.

11      Q     As a matter of fact, you own land on the Chamokane?

12      A     I think Mr. Woodward brought in the name here of  
13           Galbraith Springs.

14      Q     Would you describe Galbraith Springs?

15      A     It's a series of springs about three-quarters of a  
16           mile from Chamokane Creek, that is, the stream that  
17           is formed from these springs travels about three-fourths  
18           of a mile before it enters Chamokane.

19      Q     Would you describe those springs and the immediate  
20           environ--

21      A     The springs are a series of bubbles of water where  
22           the water actually bubbles out of the ground. It's  
23           a piece of land that was in Indian heirship for many  
24           years, very little done to it, sat there idle, because  
25           of the number of heirs that own it.

1 Q You have actually purchased it?

2 A Yes.

3 Q Would you describe with regard to any pools or  
4 improvements available on that land for yourself or  
5 Tribal members?

6 A I believe it was 1970 I worked out an agreement with  
7 the Department of Agriculture, AHCS, whereby they will  
8 assist in building ponds, we did build three ponds  
9 there. These ponds have created additional fishery  
10 and recreation for the Tribal members. A lot of our  
11 young people fish there. Through our agreement with  
12 the State of Washington, these ponds are stocked, and  
13 they are open to all Tribal members.

14 Q Do you know the temperature of the water in those  
15 ponds?

16 A I have made one temperature check with a thermometer,  
17 acquired from the Hatchery Springs, of Galbraith  
18 Springs, in December of 1972, and the temperature was  
19 47 degrees.

20 Q And just describe, generally, the coldness of the  
21 water over the period of a calendar year.

22 A This water apparently stays roughly at this temperature  
23 throughout the year. These ponds, therefore, in the  
24 wintertime, are warmer than the area around, and they  
25 do not freeze.

1 Q How much water eventually accumulates out of these  
2 springs and flows out of your property into the  
3 Chamokane?  
4 A I think Mr. Woodward started measuring this in 1971,  
5 and I believe the average was .  
6 Q These go over a series of weirs, or falls, as it  
7 leaves your property?  
8 A He pointed out he has a weir below the lower dam where  
9 the fence line of this property ends.  
10 Q Would you testify as to the purity of this water, your  
11 observation of it?  
12 A I haven't had it checked, but as it flows out of the,  
13 bubbles out of these waters, it's absolutely clear.  
14 To me, it appears to be pure water.  
15 Q How about fishing on the Spokane 25 miles from the  
16 Spokane arm, and the Columbia River, during your  
17 lifetime; would you generally describe that to the  
18 Court?  
19 A Spokane River on the Roosevelt Lake?  
20 Q Spokane.  
21 A 1948, another member of the Tribe and myself acquired  
22 a boat. I think we had probably the only boat being  
23 used on the Spokane arm of Roosevelt Lake, we didn't  
24 see any others. The river was highly polluted. We  
25 fished purely for recreation.

1 Q What kind of fish did you catch?

2 A There was an abundance of squaw fish.

3 Q Did you find any trout?

4 A I have never caught any trout in the little arm.

5 Q Have you fished in Little Falls Lake?

6 A Yes.

7 Q What has been your experience in Little Falls Lake?

8 A I last fished in Little Falls Lake in 1972, in July,

9 four of us were fishing, we fished approximately two

10 hours, got 30 squaw fish, and two perch.

11 Q Was that about the size of your fishing in Little

12 Falls?

13 A I was merely testing this for the Tribe,

14

15 Q What has been your experience in the last several years

16 with regard to any improvement in fishing on the

17 Spokane arm?

18 A As I mentioned, the earlier portion of this time, we

19 fished purely for sport. Members of the Spokane Tribe,

20 to the best of my knowledge, quit eating fish out of

21 there shortly after the lake came up, because of

22 pollution. This didn't give a very good impression.

23 Even if you wanted to fish out of there, nobody did.

24 Nobody would eat any fish out of there.

25 Q What about any new fishing-- Go ahead.



1       A     I acquired a piece of property across from Porcupine  
2             Bay. We had a trailer house there, we did boating,  
3             and through the years, there was an abundance of  
4             people moving in from Lincoln County, and it has  
5             developed into a large water skiing area, and swimming  
6             area, although, as Alex Sherwood said the other day, we  
7             warned our people not to swim in this water, and we  
8             haven't done it too much, but I continue to fish.  
9             In 1966, across to Porcupine Bay on the Reservation  
10            side, I caught the first walleye that can be proven  
11            that was ever caught in Roosevelt Lake. We released  
12            this information to the public, and walleye fishing  
13            has been a prominent fishery in the lake since that  
14            time.

15       Q     There's been a gradual-- Could you locate the Spokane  
16             arm on that map, or is it not on it?

17       A     It's in the lower area of a map that shows-- Perhaps  
18             in this area right here.

19               THE COURT REPORTER: And that is Exhibit No. what?

20               MR. DELLWO: He was looking last at Plaintiff's  
21             Exhibit 12. First, on 10.

22               THE COURT REPORTER: Thank you.

23       Q     (By Mr. Dellwo) Porcupine Bay is about 10 miles above  
24             the confluence, is it not?

25       A     Yes.

1 Q And the whole Spokane arm is about 25 miles?  
2 A Yes.  
3 Q That takes off at Little Falls, which is how long?  
4 A Pardon?  
5 Q How long a lake is Little Falls Lake?  
6 A Little Falls Lake, I believe, in the last study made,  
7 was approximately a mile and a-half.  
8 Q Would you testify to the Court in the narrative--  
9 Would you resume the stand, Mr. Galbraith-- as Tribal  
10 judge, member of the Council, and now executive  
11 director, have you been familiar with the law and order  
12 program of the Spokane Tribe?  
13 A Yes, I have.  
14 Q Very briefly, would you describe its evolution, up to  
15 its present status?  
16 A Prior to the adoption of the Spokane Law and Order  
17 Code, the jurisdiction of the Reservation was controlled  
18 by the federal government and somewhat by the State  
19 of Washington. The Bureau of Indian Affairs had what  
20 is called the "Code of Federal Regulations", which they  
21 had a Bible, or laws pertaining to all the tribes of  
22 the United States.  
23 I would like to point out that every tribe  
24 is different, there are no two tribes anywhere alike,  
25 they all have geographical differences, and they

1 practice, maybe, different religions, and their  
2 people, the Spokane and Calispells are different,  
3 so there is not one code that could cover all Indian  
4 tribes.

5 Q Did the Spokane Tribe adopt the Law and Order Code?  
6 A Yes, this was adopted in 1959. This was designed by  
7 some members of the Council, myself, Tribal attorney,  
8 all working together and drafting a Law and Order Code  
9 for the Spokane Indian Reservation.

10 Q And did you organize a court system?  
11 A Yes, a court system was organized and has been in  
12 operation since that time.

13 Q How many judges?  
14 A At this time, we have the chief judge and three  
15 associate judges.

16 Q How many police?  
17 A I currently have four Tribal police, two people, two  
18 ladies who can serve as matrons, and the Bureau of  
19 Indian Affairs has one officer.

20 Q Can you tell the Court what the Tribe has done with  
21 regard to hunting and fishing codes, in a general way?  
22 A The Hunting and Fishing Code became a part of our  
23 Law and Order Code. This became necessary just in  
24 the State of Washington, and getting more people, it's  
25 become necessary to impose laws on our own members.

1 Q Does this regulate hunting and fishing by Tribal  
2 members?  
3 A Yes, it does.  
4 Q Does it make provisions for members of other tribes to  
5 hunt and fish on the Reservation?  
6 A Yes, it does.  
7 Q Are these limited or restricted rights?  
8 A These are limited to tribes that have entered into a  
9 reciprocal agreement with us. The Calispells and the  
10 Coeur d'Alenes in Idaho, they're the only tribes.  
11 Q As a hunter and fisherman, bearing in mind the size  
12 of the Tribe is approximately 1800 members, what,  
13 would you generally discuss with the Court the hunting  
14 and fishing potential on the Reservation, as to the  
15 numbers of people?  
16 A We are getting more Tribal members returning to the  
17 Reservation all the time because we like to feel through  
18 the judgment award, we have developed many things out  
19 there. We have educational programs that help our  
20 members, we have a reasonably good employment at this  
21 time, we have a housing enterprise whereby we are  
22 able to get more housing for our people, and through  
23 sanitation projects, we are equal or comparative to  
24 an area similar to this, or anyplace, but this does  
25 make a need for being more careful, more watchful of

1           our fish and game.

2       Q     And this is primarily for Tribal members?

3       A     Yes, it's restricted largely to Tribal members. We  
4           do give permits to a spouse of a Tribal member, we  
5           give permits to the Bureau of Indian Affairs, and  
6           Public Health Service, who are working on the Spokane  
7           Reservation.

8       Q     What about Tribal attorneys?

9       A     We haven't given any as yet.

10      Q     What is the present state of the Reservation as regards  
11           being open or closed to the public for hunting and  
12           fishing?

13      A     The Spokane Tribe has closed the Spokane Indian  
14           Reservation to the general public for hunting and  
15           fishing.

16      Q     What is the status of Chamokane Creek and the  
17           immediate areas as to hunting and fishing by the  
18           general public?

19      A     I might say Chamokane Creek, in itself, Spokane Tribe  
20           left open for many years. I would just like to  
21           mention that Spokane Tribe, I feel, has been one of  
22           the more generous tribes, always worked well with our  
23           neighbors, and for years shared what we had with them,  
24           with regard to hunting and fishing. It didn't work  
25           to particular back in the older days, anybody that

1 lived there and wanted to come generally hunted and  
2 fished, but the time came when resources were being  
3 depleted so things had to change, and we left Chamokane  
4 open until two years ago. We didn't charge any permits.  
5 They had the, the Ford Hatchery men helped supervise  
6 it, and supervised it under the same laws as the  
7 State of Washington.

8 Q Generally describe, other than your own activities,  
9 which have been rather intense, the use made by members  
10 of the Tribe, by Chamokane Creek and its immediate and  
11 adjacent Tribal land areas.

12 A Chamokane Creek, in itself, has always been thought  
13 of as only, one of our best fresh water fishing areas.  
14 The only place we had native trout. We have felt, and  
15 maintained, over the period of years, as far back as  
16 I remember, keeping it a natural, free-flowing stream.  
17 We have only one place where we have ever done any  
18 development, this is at the main bridge where there  
19 are a few tables and sanitary facilities. Other than  
20 this, there is nothing been changed, and people use it  
21 for picnicking, hunting, fishing and recreational  
22 purposes.

23 Q Have you been aware of the attitude of the Tribe and  
24 the Council towards using the Chamokane for irrigation?

25 A Yes, I'm aware of their attitude.

1 Q What has been the policy and attitude of Council?

2 A We have never considered using, pumping water from

3 Chamokane Creek for agricultural purposes.

4 Q Are you generally familiar with what has been called,

5 "Chamokane Flats"?

6 A Yes.

7 Q Would you describe Chamokane Bench, I should say, the

8 Flats--

9 A The Bench.

10 Q --by reason of terminology, I believe when we say

11 "the Flats", we mean the area around Mr. Smithpeter,

12 the Bench, we mean the area up here, which is in pink,

13 as testified to by Mr. Woodward, as Plaintiff's

14 Exhibit 34. So, calling your attention to the pink

15 area on 34, known as "Chamokane Bench", would you

16 generally describe that to the Court, as far as land,

17 type of land, type of timber?

18 A This is generally not considered to be one of our better

19 timbered areas. I might point out that much of the

20 Chamokane area was heavily logged in the 1920s. It's

21 not the faster-growing timbered area. Probably the

22 timber is not as good a quality as we have in the more

23 westerly area or central portion of the Reservation.

24 Q From your knowledge of it, do you consider it poten-

25 tially irrigable?

1       A     I believe it certainly could be irrigated.

2       Q     What would be the policy of the Council with regard  
3             to pumping water from the Chamokane onto the Chamokane  
4             Bench?

5       A     As I pointed out, we have never considered using  
6             Chamokane waters. It would be other means of pumping  
7             it.

8       Q     Mr. Galbraith, you testified to the gradual drop in the  
9             flow of the Chamokane, did you not?

10      A     Yes.

11      Q     Would you describe that in a little greater detail to  
12             the Court, what you personally observed in this  
13             regard in the last 10 or 15 years?

14      A     Most of my observations have been in fishing, and, and  
15             fished this stream when it's first, earliest in the  
16             spring, generally, to fall, and it would appear that  
17             over the period of years, there has been a decline in  
18             the water. The water flows, the holes, the good  
19             fishing spots, are just not as good as they used to  
20             be.

21      Q     Mr. Woodward testified to his employment by the Tribe  
22             in 1970; do you know what it was that triggered the  
23             Council into this investigation of Chamokane?

24      A     Well, up until that time, I think the Council had  
25             wondered some about the different flows of the stream,



1           and Al McCoy, who testified the other day, has been  
2           one of our leaders of people saying for the last  
3           several years, we had better make some water studies  
4           of the total Reservation, and Chamokane, to see what  
5           is happening, and what we're going to do with our  
6           water. After we did employ Walter Woodward, his  
7           studies have shown that this pumping, apparently, is  
8           depleting the flow of the Lower Chamokane.

9       Q     Did the Council have any knowledge of that before this  
10           study?

11       A     No, they didn't.

12       Q     Did they have any notice of permits being given to  
13           anybody to pump from the aquifer?

14       A     None that I know of.

15       Q     Did they connect the pumping from the aquifer into the  
16           drop in the stream?

17       A     No.

18       Q     Did the Smithpeter permit have anything to do with  
19           this study?

20       A     I would say that when we learned that he was pumping  
21           from the stream, we certainly got concerned about it.

22       Q     That's when you began to move?

23       A     Yes.

24       Q     This was really the first important direct diversion  
25           from the stream?

1       A     That's right, the first we know of anyone taking  
2             surface water from the stream.

3             MR. DELLWO: I want him to testify briefly from  
4             Plaintiff's Exhibit 82 as to several of the photographs,  
5             so we offer it again.

6             THE COURT: Anybody objecting to 82?

7             MR. DUFFORD: Excuse me, it's unclear to me what  
8             the initial photograph purports to show.

9             MR. DELLWO: It's a map, a billboard.

10            MR. DUFFORD: It has some blocked-out area.

11            MR. DELLWO: Let me glance at it. Oh, that's a  
12               map from the meeting room of the  
13            Tribal Council. It shows ownership according to a  
14            color code. We're not going to make any reference  
15            to that. That map is already substantially in evidence.

16            MR. DUFFORD: The purpose of this exhibit is just  
17            a map showing the outline of the Reservation?

18            MR. DELLWO: That's right.

19            MR. DUFFORD: We have no objection.

20            THE COURT: Plaintiff's 82 will be admitted.

21               (Whereupon, Plaintiff's Exhibit 82 was admitted  
22            into evidence.)

23            THE COURT: Mr. Galbraith, you testified some  
24            few years ago the Chamokane Creek was closed to  
25            fishing. Was it closed just to the public, or to the

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Tribe?

A No, just to the general public.

MR. DELLWO: The Tribe still fishes on it.

A I thought I pointed out that the Tribal members, certain Indians--

THE COURT: You did generally on the Reservation, but I wasn't sure about the general public.

Q (By Mr. Dellwo) Mr. Galbraith, going through what has been identified as Plaintiff's Exhibit 82, I wonder if you would label several of these pictures, write on the blank portion of the photograph? Approximately the second picture, I wonder if you would testify to what that shows; I think the third picture in the book.

A Yes, this would show areas above the, near the north Reservation boundary.

Q North of the Reservation boundary?

A North of the Reservation boundary.

Q I wonder if you would write on it, "Chamokane", or "North of Northeast Boundary", and you're making a grease pencil entry on the third picture?

A (Does so.)

Q And the next picture, I wonder if you would testify to that. That's the fourth picture in the book.

A This appears to be more or less the boundary line.

1 Q Which boundary line?

2 A North boundary.

3 Q Looking from what direction?

4 A To the, to the west.

5 Q From the northeast corner?

6 A From the northeast corner.

7 Q Why don't you mark that "North Boundary Line from the

8 Northeast Corner of the Reservation"?

9 A (Does so.)

10 Q Does that picture show the north end of what we

11 refer to as "Chamokane Bench"?

12 A Yes, I would say it does.

13 Q The lower, timbered area?

14 A Yes.

15 Q Would you say, without going through them, that the

16 rest of the pictures show the Chamokane down to the

17 confluence from the east boundary?

18 A Yes, they do. They show the main portion, the major

19 portions or points of identification.

20 Q Look at approximately the fifth and sixth pictures;

21 would you show, tell what they represent?

22 A These would show the bench where Mr. Smithpeter and--

23 Q Would they show the Smithpeter farm and the adjacent

24 lands?

25 A Yes, it does.

1 Q From what direction?  
2 A You're looking--  
3 Q From across the Chamokane?  
4 A East side to the west.  
5 Q Would you write on each of those pictures, "East of  
6 Chamokane at Smithpeter Lands".  
7 A (Does so.)  
8 Q Then just write, "Same", on the second one.  
9 A (Does so.)  
10 Q Looking at about the eighth picture, would you describe  
11 what that picture represents?  
12 A This would be looking downstream from where the  
13 Chamokane Creek enters the Spokane River.  
14 Q It shows the confluence of the Spokane?  
15 A Shows the confluence of the Spokane.  
16 Q From what direction?  
17 A You're looking basically north-to-south, southwest.  
18 Q Would you write on that, "Confluence of Chamokane from  
19 Northeast"?  
20 A (Does so.)  
21 Q About the ninth picture, would you tell what that  
22 represents?  
23 A This is a picture of the Little Falls power plant.  
24 It shows the Upper, the, what we call the "Little  
25 Falls Lake".

1 Q Would you write across the top, "Little Falls Dam"?  
2 A (Does so.)  
3 Q From what direction?  
4 A Looking from the east to the west.  
5 Q Would you say looking from southeast, actually?  
6 A From the southeast.  
7 Q Write "From the Southeast".  
8 A (Does so.)  
9 Q About the tenth picture, would you say what that  
10 describes?  
11 A This is a picture of the Little Falls Flat. It shows  
12 a highway from Wellpinit going on to Little Falls, and  
13 the road going on down to the Spokane River, to what  
14 is called "Little Falls Campground", and on down to the  
15 Bull Pasture.  
16 Q Is that the area Mr. McCoy testified was the first  
17 part of the present reclamation project?  
18 A Yes.  
19 Q Would you write, "Little Falls Flat -- Reclamation  
20 Project"?  
21 A (Does so.)  
22 Q Now, would you say the rest of the pictures are  
23 following the Spokane arm down to the confluence?  
24 A Yes, they do.  
25 Q Now, going back to the, about the twelfth or thirteenth

1 picture, I will ask you what that shows?

2 A The area of the second area described by Mr. McCoy, or

3 the second Bureau of Reclamation irrigation project

4 and the Bull Pasture.

5 Q You call that the "Bull Pasture project"?

6 A Yes.

7 Q Would you make an "X" where the Bull Pasture is?

8 A (Does so.)

9 THE COURT: Which picture is that?

10 MR. DELLWO: It's about the twelfth picture, of

11 the Bull Pasture.

12 A The Bull Pasture originally covered quite a lot of

13 territory.

14 Q (By Mr. Dellwo) Just make an "X" in the center of it,

15 or make an outline, roughly.

16 A It would cover this whole north area.

17 Q Just kind of make an outline, and write, "Bull Pasture

18 Project".

19 A (Does so.)

20 Q I might ask you to testify to the Court, the Little

21 Falls Flat, what direction is it from the confluence

22 of the Chamokane?

23 A The Little Falls Flat?

24 Q Yes.

25 A It would be south and west.

1 Q Down the river?

2 A Downstream, yes.

3 Q About how far from the confluence with Chamokane?

4 A Probably a mile and a-half.

5 Q And it has no relationship with Chamokane Creek, does

6 it?

7 A No.

8 Q It's barred by a mountain, more or less, is that

9 correct?

10 A There is a series of ridges that come off that larger

11 mountain.

12 Q Now, just picking up several in the book as a whole,

13 about the middle of the book, we notice a bridge and

14 a point; would you tell the Court about that picture,

15 about the twenty-fourth picture?

16 A This is a bridge at Miles, or Fort Spokane, and the

17 confluence of the Spokane and Columbia Rivers.

18 Q Confluence of the two rivers? Would you write at the

19 top, "Confluence, Columbia and Spokane"?

20 A (Does so.)

21 Q Would you say that the next series of about 10 pictures

22 are up the Columbia on the west side of the Reservation?

23 A Yes, they are.

24 Q Now, I'm many pictures down; there is a sparkling

25 little lake on the photograph, what is that lake?



1 A This would be McCoy Lake, on what we call the "west  
2 side of the Reservation".  
3 Q Would you write "McCoy Lake" on it.  
4 A (Does so.)  
5 Q And a couple of pictures after that, there is a pic-  
6 ture of another lake?  
7 A This is Turtle Lake, about five miles from Wellpinit.  
8 Q Would you describe to the Court the importance of these  
9 lakes as fisheries to the Tribe?  
10 A Spokane Tribe only has three interior lakes of any  
11 consequence; they are McCoy Lake, Turtle Lake and  
12 Benjamin Lake.  
13 Q How big are those lakes?  
14 A I believe they would make a combined total of  
15 probably only 50 or 60 acres of surface water during  
16 the summer season.  
17 Q Are they fishing lakes?  
18 A Yes, they are.  
19 Q Are there, other than Chamokane and these three lakes,  
20 and the Spokane and Columbia Rivers, are there any  
21 other fishing sites on the Reservation?  
22 A Other than the ponds that were created, and a very  
23 few isolated spots where we have attempted to plant  
24 trout, and last year we did plant some black crappies,  
25 and, there is a very small lake out of Wellpinit,

1 largely for test purposes, but by and large, these  
2 three lakes and the Chamokane Creek are the fishing  
3 areas for the Spokane Tribe, other than the Roosevelt  
4 Lake.

5 Q A few pictures down, I show you another picture, which  
6 is a line through the woods; would you tell the Court  
7 what that is?

8 A This line is the north boundary of the Spokane  
9 Reservation, looking west to east.

10 Q Right. Write, "North Line Looking East".

11 A (Does so.)

12 Q Finally, I show you another picture with a little city  
13 in it; would you tell the Court what that is?

14 A This is the city or town of Wellpinit, Washington.

15 Q And all the other-- Would you say, as a package, these  
16 constitute an aerial view of the entire Reservation?

17 A Yes, it does.

18 Q Have you participated in the discussion with the  
19 Council in their plans with regard to irrigation of  
20 the Reservation?

21 A Yes, I have.

22 Q Would you generally summarize when they began to talk  
23 about that and its present plans?

24 A They may have discussed the irrigation of Little Falls  
25 Flats as long as 20 years ago. Been very little done

1           until the last few years, probably the last three or  
2           four years, when the Tribe was able to obtain some  
3           planning funds, and work with Jack McDermott, our  
4           planner, and through the 701 Program, and with the  
5           work with Walter Woodward, we became aware that we  
6           probably should irrigate these, especially these two  
7           places mentioned, the Little Falls Flats, and the  
8           Bull Pasture, and we would make studies for the total  
9           Reservation to look toward the future, but these would  
10          be the two immediate projects.

11       Q    I wonder if you could come to the board, Mr. Galbraith.

12       A    (Does so.)

13       Q    Looking at Plaintiff's Exhibit 10, I wonder if you  
14           would point to Little Falls Flats.

15       A    Little Falls Flats would be this portion here.

16       Q    I wonder if you could write there, "L.F.", for Little  
17           Falls.

18       A    (Does so.)

19       Q    And I wonder if you would point to the approximate  
20           location of what you refer to as the "Bull Pasture"?

21       A    The Bull Pasture, where the name came from, this would  
22           be cattlemen back in the 1940's put in a fence in  
23           approximately one of these points here across. They  
24           used the river as a natural boundary, and this became  
25           an area where they kept their bulls, and that has been

1 known for years as the Bull Pasture.

2 Q Would you put right in there, "Bull Pasture"?

3 A (Does so.)

4 Q You may resume the stand.

5 A (Does so.)

6 Q Are the Little Falls and the Bull Pasture projects,

7 would they be classified as pilot projects?

8 A In the sense that this is the first irrigation we have

9 ever had, I would think they would be.

10 Q There has never been any federally-funded irrigation

11 project on the Spokane Indian Reservation?

12 A No.

13 Q Do you have a general overview idea of the Council

14 policies and decision as to the direction irrigation

15 will go on the Reservation?

16 A I believe so.

17 Q What was your answer?

18 A I believe so.

19 Q Would you describe that?

20 A I'm not sure if I understand your question exactly.

21 Q Well, I think I would rather say the phase of this

22 would go through and how approximate might be the

23 irrigation of the higher lands above the Bull Pasture?

24 A I would assume that this depends somewhat on the

25 success of these two programs, what funding is

1           available, and certainly studies have been made and  
2           will continue to be made, and we're sure that records  
3           will be kept and maintained on the better crops, and  
4           what might best be raised in certain areas, and studies  
5           for temperatures, winds, soils and so forth.

6       Q     It would be a step-by-step development?

7       A     Yes, it certainly would.

8       Q     Are you generally familiar with the 20,000 acres  
9           spread over the Reservation that Mr. Woodward testi-  
10          fied to as being generally irrigable in the long  
11          range?

12      A     I believe so, yes.

13      Q     Would you kind of describe those, just how they lay,  
14          and what type of lands, with regard to--

15      A     Well, of course, these two large areas are close to  
16          the river, and some of the other lands he recommended  
17          moves up the other benches, and some, of course, could  
18          be the               portion. Even some of the Chamokane  
19          areas, I think, have probably been recommended for  
20          irrigation, but when you total all of these together,  
21          there are various portions and patches of land here  
22          and there that are suitable for irrigation and would  
23          be included in the total study. It's difficult to  
24          point out some of them.

25      Q     Where would the water come from for this area?

1 A It was planned to use water from Lake Roosevelt.  
2 Q What has been the attitude of the Council as far as  
3 using water from the Chamokane for irrigation?  
4 A They never planned to use water from the Chamokane for  
5 irrigation purposes.  
6 Q What is the reason for that?  
7 A There has always been the policy and intent of the  
8 Tribal Council to preserve Chamokane Creek in its  
9 natural status and to keep it a free-flowing stream.  
10 MR. DELLWO: We'll let 83 go for a while, Your  
11 Honor. That's all.  
12 THE COURT: Does the Government have--  
13 MR. DELLWO: Give me a second.  
14  
15 DIRECT EXAMINATION, Continuing:  
16 BY MR. DELLWO:  
17 Q Mr. Rudolph was wondering if you would testify a  
18 little more clearly to the fishing below the falls  
19 in the last few years, as compared to fishing in the  
20 past years?  
21 A Fishing below the falls and in the Big Chamokane?  
22 Q Yes.  
23 A I would say in the last three or four years, the  
24 fishing below the falls has deteriorated and is  
25 certainly not as good as it used to be. I would say

1           about 50 percent of what it used to be.

2           MR. DELLWO: That's all.

3           THE COURT: Does the Government have any Direct?

4

5                               DIRECT EXAMINATION

6   BY MR. GERMERAAD:

7   Q    I understand your testimony, Mr. Galbraith, to be that  
8       the Tribe in the past has not considered using water  
9       from Chamokane for irrigation. If irrigation was to  
10      continue on the east side of Chamokane Creek, would  
11      it be your estimation that the Council might  
12      reconsider its position at some date in the future?

13       MR. REKOFKE: I'm going to object to this, as  
14      calling for a conclusion. I think it has been  
15      testified they never plan to use Chamokane Creek.

16       MR. CERUTTI: I would further point out the  
17      question is leading.

18       MR. GERMERAAD: Your Honor, I understood the  
19      testimony was that they never had, so I felt that was  
20      up to the present date, and so I, I don't believe he  
21      was given a hypothetical situation where the defendants  
22      would keep continuing to irrigate, and so I believe  
23      this is a new question.

24       THE COURT: Well, it's a new question, but how  
25      can this witness testify to what the Tribal Council

1           would do under some different set of facts in the  
2           future?

3           MR. GERMERAAD: I would rephrase the question,  
4           if I could, Your Honor.

5           THE COURT: You can try that.

6       Q    (By Mr. Germeraad) In your position as executive  
7           director, do you at times make recommendations to the  
8           Tribal Council, uh, as to policies that the Tribe  
9           might pursue?

10       A   Yes, I do.

11       Q   And in your position as executive director, and given  
12           the hypothetical that water from Chamokane Creek is  
13           being used for irrigation to the east of Chamokane  
14           Creek, and was so depleting Chamokane Creek so that  
15           you would not have a quality trout fishery, what would  
16           be, do you think, your recommendation to the Tribal  
17           Council on alternative uses of Chamokane Creek?

18           MR. REKOFKE: I object to that. First of all, the  
19           hypothetical assumes facts not introduced into evidence,  
20           no testimony whatsoever. It seems to me the witness  
21           has testified unequivocally that there were no plans  
22           in the past, or there are no plans in the future, to  
23           ever use Chamokane Creek for irrigation, if I under-  
24           stood his testimony correctly.

25           MR. GERMERAAD: Your Honor, I believe Mr. Rekofke



1           says there is nothing in evidence at this point. I  
2           believe for Mr. Rekofke to make that statement, he  
3           would have to assume that none of the defendants in  
4           this case would continue to use any irrigation water,  
5           or any other water. I believe that will be the  
6           contention of the defendants, so I think I should be  
7           entitled to be able to ask that question.

8           THE COURT: I will let him answer.

9       A    I feel that the major springs, the Galbraith Springs,  
10           and the Fish Hatchery, come within the interior  
11           boundaries of the Reservation, without question. It's  
12           still my feeling, being a fisherman, that we would,  
13           I would feel that we would still make a great effort  
14           to keep this water free-flowing. I feel that through  
15           absolute control of those springs, where they don't  
16           form a part of the boundary itself, the Tribe could  
17           make some developments to control this body of water  
18           and continue to have fish in the water.

19           MR. GERMERAAD: Thank you.

20           THE COURT: Mr. Dufford?

21

22                               DIRECT EXAMINATION

23       BY MR. DUFFORD:

24       Q    Mr. Galbraith, directing your attention to your  
25           testimony about Galbraith Springs, you stated, I

1 believe, that that spring area is owned by you, is  
2 that correct?

3 A Yes.

4 Q And what is the nature of your ownership, is there any  
5 trust status, or--

6 A This is trust lands, yes, it is.

7 Q Now, I think you said that this spring was developed  
8 a couple of years ago, is that right?

9 A We made a series of ponds there, to improve the  
10 fishing, largely; have more, an increased supply of  
11 water for stock, or for emergency purposes, for fire-  
12 fighting, or whatever we might need a greater abundance  
13 of water for.

14 Q Did you do anything to the spring itself when those  
15 ponds were created?

16 A Some of these, as I said, there are a series of springs,  
17 we had a dragline in there, and over a period of years,  
18 some of these had been trampled by livestock, and lots  
19 of them, debris has accumulated in there, and we  
20 opened up these springs, and if anything, probably  
21 increased the flow somewhat. These springs would be  
22 a pond now, and the springs bubble up in the ponds.

23 Q In the past, could you observe the springs bubbling  
24 up?

25 A Yes, in certain instances, the larger ones. Some of