

**Hearing  
before the  
United States  
Commission on Civil Rights**

**AMERICAN INDIAN ISSUES  
IN THE STATE OF WASHINGTON**

**HEARING HELD IN  
SEATTLE,  
WASHINGTON**

**OCTOBER 19-20, 1977**

**VOLUME II: Exhibits**

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## U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

## MEMBERS OF THE COMMISSION

Arthur S. Flemming, *Chairman*  
Stephen Horn, *Vice Chairman*  
Frankie M. Freeman  
Manuel Ruiz, Jr.  
Murray Saltzman  
Louis Nuñez, *Acting Staff Director*

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*Exhibit No. 1***CIVIL RIGHTS COMMISSION****WASHINGTON****Public Hearing**

Notice is hereby given pursuant to the provisions of the Civil Rights Act of 1957, 71 Stat. 634, as amended, that a public hearing of the U.S. Commission on Civil Rights will commence on October 19, 1977, at the Federal Building, Courtroom 514, 915 Second Avenue, Seattle, Wash. An executive session, if appropriate, may be convened at any time before or during the hearing.

The purpose of the hearing is to collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning American Indians; to appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning American Indians; and to disseminate information with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning American Indians.

Dated at Washington, D.C., September 9, 1977.

ARTHUR S. FLEMMING.

*Chairman.*

*Exhibit No. 2*

STATEMENT BEFORE CIVIL RIGHTS COMMISSION  
OCTOBER 19, 1977

By Gordon Sandison

The apparent concerns of the Commission involve activities of the Fisheries Department which I head rather than my personal involvement, which has only been four months since I took office in June of this year. Thus, I have familiarized myself with the actions of the Department and my predecessors.

As Judge Boldt himself recognized in his decision (beginning at page 389), Fisheries had long recognized treaty Indian fisheries in response to other court decisions which long predated his. Indian fisheries were authorized in areas closed to others. Some of these special Indian fisheries predating the Boldt decision are listed in Judge Boldt's decision.

The decision also noted additional efforts Fisheries had made which improved Indian fisheries and increased the number of fish available to them. Those efforts included directly giving surplus fish from hatcheries to Indians (he noted 256,194 pounds in 1972), improvements in the wild habitat, and probably most significantly, extensive hatchery plants which in Judge Boldt's words "have contributed significantly to Indian catches of salmon." Those efforts continue at an increasing pace today. It would be unfortunate if the attention of this Commission focused on the controversies in the courts and overlooked these efforts of the Department to increase fish available for everyone.

As to that court controversy, the continuous effort has been made to comply with all lawful court rulings, while pursuing appropriate judicial remedies. In this light, I believe it appropriate to remember the difficult situation I and my predecessors have been in, with court order following court order - sometimes apparently conflicting orders on the same or following days. On only one occasion to my recollection has a move been made in a federal court to formally suggest citation for contempt for failure to comply

with that (Boldt) court's orders. That action was dropped. The same has occurred twice in state courts - once to each of two of my predecessors (neither of those resulted in citation for contempt either).

These court controversies continue even today. It should not be overlooked by this Commission, however, that much of our litigation is supported by, and even joined in by Indians. A prime example are cases where we enter into litigation to protect the resource for all - to accomplish mitigation for losses caused by the U.S. Government either directly through construction of projects or indirectly through licensing dam projects. Indian tribes have joined with us in litigation involving projects on the White River, Skagit River, Columbia River, Nisqually River, Skokomish River, and Puyallup River.

Hopefully, each of these actions will result in more fish for everyone. A balanced view, then, is that the Department, its previous directors, and I myself have and continue to work with, and to the benefit of the Indians of this state and all citizens, as we are obligated to by law - and we do comply with the law, including the courts.



*Exhibit No. 3*

This exhibit is on file at the U.S. Commission  
on Civil Rights.

(

95TH CONGRESS  
1ST SESSION**H. R. 9054**

## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 1977

Mr. CUNNINGHAM introduced the following bill; which was referred to the  
Committee on Interior and Insular Affairs

**A BILL**

To direct the President to abrogate all treaties entered into by the United States with Indian tribes in order to accomplish the purposes of recognizing that in the United States no individual or group possesses subordinate or special rights, providing full citizenship and equality under law to Native Americans, protecting an equal opportunity of all citizens to fish and hunt in the United States, and terminating Federal supervision over the property and members of Indian tribes, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Native Americans Equal  
4       Opportunity Act".

5       SEC. 2. (a) The President of the United States shall, as  
6       soon as practicable after the date of enactment of this Act,

1 abrogate all treaties entered into between the United States  
2 and any Indian tribe.

3 (b) The President, in carrying out the provisions of  
4 this Act, shall—

5 (1) provide that any real property which is held  
6 in trust by the United States on behalf of an Indian tribe  
7 and to which such Indian tribe is entitled, on the date  
8 of enactment of this Act, to exclusive use and occupancy  
9 shall be (A) allotted, in fee simple and in severalty,  
10 to the individual adult members of the tribe (as deter-  
11 mined by an enrollment) with priority being given to  
12 those individuals with the greatest amount of Indian  
13 blood; or (B) conveyed, if a majority of the adult  
14 members of the tribe so indicate in an election, in fee  
15 simple to a tribal corporation for the purpose of enabling  
16 such corporation to hold such property in trust for the  
17 tribe;

18 (2) provide that all property allotted or conveyed  
19 under paragraph (1) (and all persons residing thereon  
20 and all acts committed thereon) shall be subject to the  
21 laws of Federal, State, and local governments;

22 (3) provide that any funds deposited to the credit  
23 of the tribe in the United States Treasury shall be  
24 (A) allotted to the individual adult members of the  
25 tribe; or (B) transferred, if a majority of the adult

1 members of the tribe so indicate in an election, to the  
2 tribal corporation described in paragraph (1) for the  
3 purpose of enabling such corporation to hold such funds  
4 in trust for the tribe;

5 (4) provide that hunting and fishing rights derived  
6 by the Indian tribe from a treaty shall be abrogated,  
7 and the members of such tribe shall be subject to Fed-  
8 eral, State, and local laws governing hunting and fish-  
9 ing; and

10 (5) provide that there be no taking without just  
11 compensation of any property right specifically created  
12 for a particular individual by any such treaty.

13 (c) After the completion of the abrogation of the treat-  
14 ies with an Indian tribe under this Act, the President shall  
15 publish in the Federal Register an appropriate proclama-  
16 tion of such completion. Thereafter individual members of  
17 the tribe shall not be entitled to any of the services per-  
18 formed by the United States for Indians because of their  
19 status as Indians, all statutes of the United States which  
20 affect Indians because of their status as Indians shall no  
21 longer be applicable to the members of the tribe, and the  
22 laws of the several States shall apply to the tribe and its  
23 members in the same manner as they apply to other citi-  
24 zens or persons within their jurisdiction.

25 (d) In the case of any Indian tribe with respect to

1 which treaties have been abrogated prior to the date of  
2 enactment of this Act or with respect to which no treaties  
3 were entered into but which remain under the supervision  
4 of the Federal Government, the President shall, as soon  
5 as practicable after the date of enactment of this Act, take  
6 steps to assure that such supervision is terminated, the  
7 completion of such termination is published in the Federal  
8 Register, and the provisions of subsection (e) apply to the  
9 members of such tribe.

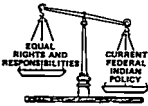
10 (e) The President shall issue whatever regulations are  
11 necessary to carry out the provisions of this Act.

12 (f) For purposes of this Act, the term "Indian tribe"  
13 means any Indian tribe, band, nation, or other organized  
14 group or community, including any Alaska Native village or  
15 regional or village corporation as defined in or established  
16 pursuant to the Alaska Native Claims Settlement Act.

*Exhibit No. 5*

This exhibit is on file at the  
U.S. Commission on Civil Rights.

# NATIONWIDE BACKLASH AGAINST THE INDIAN TRIBES



Interstate Congress For Equal Rights And Responsibilities

## Anti-Indian backlash growing; tribes, groups form defense tactics

BY RICHARD LA COURSE

**WHAT IS "BACKLASH"?** It is the sharp, abrupt political receding of one group of people against the interests of another group of people who are considered hostile, threatening or dangerous to the well-being of that group of people. Backlash—or "whirlwind," as it is sometimes called—is a definable happening sweeping across the United States and its target is the American Indian people.

Most observers of the national Indian scene state that the source of backlash is the long and significant train of court victories supporting tribal rights which has emerged from the courts in the 1970s. Others say that a massive state of filters has developed over Indians as a result of dramatic para-military occupations in the east, midwest and west through the same amount of years.

Whatever its source, backlash is a national phenomenon whose evidence is now apparent in organizational fashion throughout almost all

states where there are significant Indian populations, Indian land holdings, and points of legal conflict between Indian and non-Indian citizens, although Indians may not view specific issues like jurisdiction or taxation as "conflicts."

Backlash organizations in the various states carry names like "Mashpee Action Committee," "Citizens United for Resource Emergencies," "Montana on Discrimination," "Oregon Territorial Committee," and "White Earth Equal Rights Committee." In 1975 these new coalitions of upset citizens formed a national organization—the Interstate Congress for Equal Rights and Responsibilities (ICERR). ICERR has now rented an entire floor of a Washington, D.C. office building just blocks from the capitol. It is retaining lawyers, presiding for appointments in the White House, the Justice and Interior Departments, and keeps tight rein over disclosure of its financial contributions.

ICERR, as the great mother of backlash concerns over Indians, is making its views felt with the congressional delegations from member states. Majority public opinion is the wellspring for reelection of congressmen, and ICERR's impact—through Capitol Hill—is being felt in the home districts of congressmen from Oregon, Montana, Maine, Utah, Arizona and virtually all states with large Indian populations.

The most visible congressman succumbing to the pressures of the backlash lobby is Rep. Lloyd Meeds, D-Wash., but there are others and the list is growing. Three direct backlash bills are now before the 95th Congress, and the effect of backlash is being felt on other central bills.

The backlash philosophy believes Indians are a protected political astoratory "more equal" than others and protected by just-bearded liberalism. P. Samuel Martone, Standing Rock Sioux director of the American Indian Law Center at the University of New Mexico, described the backlash dynamics to the National Congress of American Indians a few weeks ago with three principal lines of argumentation:

Current Indian claims such as those in Maine, New York and Massachusetts are "false claims brought too late"; injustices against Indians in the past leave the current white generation innocent and the current Indian generation benefitting in either land or money without merit; and tribal governments are "incompetent, corrupt and don't represent their people," while tribal courts will unfairly tip the balance toward unfair justice for Indians.

Tribes and national Indian organizations are preparing strategies and tactics to counter the backlash. This special eight-page supplement of the Yakima Nation Review is designed to pierce the fog of emotion and to determine the landscape of the opposition.

The Editorial Page "Perspectives" in this issue is devoted to views on backlash, and "Out of Our Mouths" carries correspondence from Rep. Meeds to an unhappy non-Indian constituent in Seattle.

# Yakima Nation review 77

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SPECIAL AUTUMN SUPPLEMENT

## Cunningham, Meeds have bills to abrogate treaties, restrict tribal jurisdiction

WASHINGTON—A bill which proposes abrogation of all treaties between the U.S. and American Indian tribes and abolition of the Bureau of Indian Affairs (BIA) was introduced into the House of Representatives Sept. 12 by Rep. John Cunningham, D-Wash., and Rep. Lloyd Meeds, D-Wash., has announced publicly he will introduce his Omnibus Indian Jurisdiction Bill either right before or after the winter recess of the U.S. Congress. This twin package of bills will doubtless dominate the attention of Indians nationally for the coming 12 months.

### Cunningham's proposal ends treaty era

Yakima Nation Review

The "Native Americans Equal Opportunity Act," introduced in the U.S. House of Representatives Sept. 12 by Rep. John Cunningham, D-Wash., provides for the abrogation of all treaties between Indian tribes and the U.S. government and the abolition of the Bureau of Indian Affairs (BIA).

Cunningham, 47, is the junior congressman from his home state of Washington. He was elected this past May 17 to replace Brock Adams, whom President Jimmy Carter had named Secretary of Transportation in the Carter administration.

The Cunningham treaty abrogation act requires the President to establish procedures for the liquidation of the trust responsibility and dismantling of the BIA, and requires the President to publish a "proclamation" when all tribal termination is completed.

Targets for termination, in the Cunningham bill, are all current federally recognized tribes, all currently terminated tribes, and tribes whose reservations were established by means other than treaties.

The bill provides for transfer of all holdings of tribal land assets to tribes themselves directly for allotment to adult members and liquidation of common trust title.

Included as targets in this bill are "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation...."

All hunting and fishing rights of the tribes will also be dissolved, with Indians becoming subject to all federal, state and local laws governing hunting and fishing, as well as all other jurisdictional areas in common with non-Indian citizens.

Stimulus for the Cunningham bill was the so-called "Fish War" in Cunningham's home Seventh District, an urban and suburban area in the

(Continued on Page 7)

### Meeds plan will limit sovereignty

Yakima Nation Review

An "Omnibus Indian Jurisdiction Bill" covering a wide range of legal areas from tribal jurisdiction to tribal water rights, tribal courts and powers of taxation will be introduced in Congress by the end of October, according to Rep. Lloyd Meeds, D-Wash.

The bill will be aimed at "bolting" those areas in which the courts are currently making decisions and forming law apart from the input of Congress. "The courts are enacting 'judicial legislation,'" said Meeds in an exclusive interview with the Yakima Nation Review (see Page 7).

Meeds said "the principal purposes" of his proposed bill "will be to have Congress legislate on the extent of Indian jurisdiction over non-Indians."

Meeds also told United Press International on announcing his new bill: "Indians have gone too far on land claims. They're asking for too much."

Meeds said his omnibus bill will include concepts in his dissenting views in his Minority Report for the American Indian Policy Review Commission (AIPRC) issued last May 12. He damned the AIPRC Majority Report as "undemocratic, unrealistic, very distasteful and not good legal doctrine."

Meeds said his bill "will attempt to come to grips with recent developments in Indian policy, and will take up the issues of Indian water rights, tribal courts, and taxation rights."

The Yakima Nation Review, meanwhile, learned that Phoenix Atty. Frederick J. Martone was doing the actual drafting of the bill. (Meeds subsequently denied to the Review that Martone was working for him in mid-September. "I haven't even hired him," said Meeds.)

Reached in Phoenix by telephone, Martone said:

(Continued on Page 7)

# What people have formed backlash groups?

BY CAROLE WRIGHT  
Albuquerque Before Columbus

**ALBUQUERQUE**—The Interstate Congress for Equal Rights and Responsibilities (ICERR) "comes from a shogun school of criticism," says John Redhouse, associate director of the National Indian Youth Council (NIYC).

"How else can a person describe an organization that makes unsubstantiated attacks upon a people they know very little about? They're using the old McCarthy tactics—but this time going after a different shade of red."

ICERR, formed in 1975, has as its intention "to bait a nationwide drive by professional Indians and attorney groups from taking over vast natural resources." The Indians, on the other hand, say that ICERR is merely "wanting to take something they can't get from the Indians legally." Redhouse said he feels that "interstate's concerted effort to deprive us of what has been ours for thousands of years may be a blessing in disguise because it is exposing the hypocrisy and greed of many and exposing the closet racism."

Environmentalists, sportsmen, local governments, corporations, ranchers and farmers, homeowners, and law-and-order types are the most active in ICERR and the most vocal. They are organizing locally, regionally and nationally (against Indians) and have been successfully exploiting the aid of the mass media.

## 1. Environmentalists

Legally, organizations like the Sierra Club, Friends of the Earth and the Isaac Walton League should be assisting the tribes that are attempting to buy back their lands to protect them from further destruction.

Instead, they work at preventing tribes from obtaining lands that tribes have lived on for centuries, claiming instead that the Indians will ruin the environment.

Only two examples demonstrate their attitude towards Indians. They opposed letting the Havaapai of Arizona in 1974 remain living in the Grand Canyon. And according to the National Congress of American Indians (NCAI), "the environmentalists) really pulled some dirty tricks against the tribe."

When it became publicly known that House Rock Valley in Arizona was being considered as a possible site for the Navajo who were to be moved out of the old Hopi-Navajo disputed land use area, the environmentalists denounced the proposal because they said the Navajos would destroy the land. "Environmentalists came into existence after their own people destroyed more than 200 species of animal and plant life," said Redhouse, "not because we did."

## 2. Law & order vigilantes

Most of the law-and-order individuals are holdovers of the 1973 Wounded Knee occupation in South Dakota and are basically right-wing militaristic vigilante types who probably would not hesitate to break the law in the name of law and order.

Originating from a group of 100 ranchers who own or lease 75 percent of the Pine Ridge Reservation in South Dakota, they call themselves the Civil Liberties for South Dakota Citizens (CLSDC). Their concept of law and order has attracted other farmers and ranchers who make a substantial living off Indian lands.

Morton Schultz, co-founder of CLSDC, admitted that increases while control of reservation lands is satisfying, and that the abolishment of reservations is their goal.

Expanding rapidly to other states, they

are being assisted by the John Birch Society and the Minutemen. South Dakota's members have bought guns and ammunition, locations equipment for their "protection," and are encouraging others to do the same.

## 3. Sportsmen's groups

Generally concerned with the preservation of wildlife for sporting purposes, the sportsmen contend that Indians' hunting, fishing and gathering rights that are provided for in treaties will destroy "their" wildlife.

The drive to eliminate those treaty rights began a couple of years ago in Pittsburgh, Pa., when Hewitt Wells, an architect of Reno, Nev., introduced a resolution to a convention of federal and state gaming personnel which would abolish Indian hunting and fishing rights.

Following the 1974 Boldt federal court fishing decision in Olympia, Wash., fishermen—mostly commercial—began a campaign to get the Indians' fishing rights abolished because the Indians "will destroy the fisheries if they are allowed to ignore state fishing laws."

"They then expanded their campaign to include "other" birds and big game." Such groups as Washington state's Citizens United for Resources Emergencies (CURE) and State Sportsmen's Council and their chapters, the Northwest Steelhead-Salmon Council and Trout Unlimited are just a few.

The Washington groups and the National Wildlife Federation (NWF), a coalition of clubs with a membership of 3.5 million, notified Michigan Congressman John Dingell to introduce House Joint Resolution 208 which would allow any state to enforce state gaming laws upon Indians hunting or fishing outside reservation boundaries.

## About the author

CAROLE WRIGHT, author of the 3-volume piece of investigative journalism, began her research last January and completed it in June. "I wanted to find out who the real friends of Indians are," she said. "Traditionally, eastern white folks are friends as long as you do what they think is best for you. But the genuine best friends are those who are left-headed but who can argue with you, with mutual respect for ideas and opinions." Mother of five, the Shastons Investigative Journalist was born at Stewart, Nev., and was educated in Nevada schools. She became editor of the Native Newadan in 1969, became a stringer for AP and UPI and co-founded the American Indian Press Assn. in 1970. She became co-editor of Idaho's Native Gain in 1973 and in 1975 became co-director and instructor of the Indian Investigative Journalism Project for the National Indian Youth Council in Albuquerque, training 25 Indian journalist interns in investigative techniques.

## About NIYC



THE NATIONAL INDIAN YOUTH COUNCIL is 16 years old, established in 1961 to preserve, enrich and strengthen Indian communities and groups. This year it has 55 chapters across the U.S., with 15,000 members. NIYC's executive director is Gerald Wilkinson, a modest intellectual and a Cherokee. Today NIYC is involved on several fronts: select litigation, publications, research on natural resources issues of tribes, film production, statewide manpower programs across New Mexico, a statewide ex-offender program and other efforts. It maintains offices in other locales besides its national headquarters in Albuquerque, N.M.

A new publication entitled "Indian Treaties—American Nightmarer" is one of the products of this campaign. Published by Outdoor Empire Publishing Inc. of Seattle, it is jointly authored by outdoors writer C. Herb Williams and former state game enforcement chief Walt Neudorck.

## 4. Ranchers, farmers & homeowners

This groups presents an interesting situation in that they either lease or own lands within reservation boundaries. Research is currently underway by NIYC to determine how much of that land is trivially owned and how much is allotted land under use or ownership by non-Indians.

Groups such as the Quidasat Land Owners Association (QLOA) and the Lamont Property Owners (LPO) in Washington's Puget Sound and Olympic Peninsula areas are blaming the Bureau of Indian Affairs (BIA) for misleading them into thinking they had a right to buy Indian lands.

## 5. Local governments

Local governments which have extended their city limits into reservation lands are now becoming aware that they may possibly lose some of their tax base if the tribes apply tribal jurisdiction over lands legally still within their reservation boundaries.

In addition, people who now live in these lands with questionable ownership status really do not want tribal jurisdiction or pay tribal taxes since they cannot participate in tribal government.

Towns such as Roosevelt, Utah, New

Town, N.D., Roman and Polson, Mont., and Espanola, Bernadillo and Albuquerque in New Mexico are just a few which have expanded into Indian-owned lands.

Then there are counties where the Indian voters outnumber the non-Indians such as Navajo and Apache Counties in Arizona and Big Horn County in Montana which are voting the same concern about the loss of a tax base, and citing the "taxation without representation" theme.

## 6. Business corporations

Like the ranchers, farmers and homeowners, business corporation interests formerly viewed Indian lands as relatively easy to get control of and exploit the natural resources and yet pay the tribes minimum royalties.

However, since the tribes have been hiring management analysts and tribal members are moving towards the business management ICERR organization, they are beginning to realize that the practice of exploiting the tribes and their resources is no longer a vend.

Various oil companies and gas companies are presently suing the Biscuita Apache of New Mexico for trying to sue on the companies. Coal companies wishing to strip-mine the eastern portion of the Navajo Reservation have been hindered from actually carrying out their plans because the Navajo people living in the area are opposing the industry—and, in fact, being forced on another "Long Walk," the people are not going to move.

"Educating tribal members in the various fields of business and community education is starting to pay off for their respective tribes," stated Redhouse. "Legal training and the corporations will soon have to start paying the same price for the resource they give to non-Indians."

In an attempt to interview Jack Freeman, ICERR's president from Falls, S.D. about the ICERR's membership, this caller first had to state that she was not a collection agent. Freeman refused to give a listing of ICERR's membership, stating that "a head count is needed only for revolutionaries."

ICERR does not give out public financial statements—only to its board of directors. One avenue from which they derive their income is from paid memberships. National charter memberships are \$50 plus, national memberships are \$10 plus, and supporting memberships are \$2 plus. Supporting members cannot vote.

Freeman further stated that ICERR does not take any money from corporations, the American Indian Movement (AIM), Methodists, foundations or universities.

An attempt to interview Earl Mettler, ICERR's legal counsel in Washington, D.C. has been fruitless thus far. He has an office in Washington but is "never in." He is not a registered Washington lobbyist. His phone-answering service is the Washington Legal Foundation located at 1712 "I" St. NW. Mettler has an address in downtown Pierre, S.D., has no phone there and is a member of the South Dakota Bar Assn.

Several national Indian organizations are currently studying the various components of the ICERR. The information will be made available to tribes and organizations so that they can deal with the ICERR in their local areas using factual data.

According to several people who attended a recent ICERR meeting in Washington, D.C. the delegates appeared to be "mildly confused" farmers being orchestrated with emotional sympathy.

NIYC's research staff is currently conducting an in-depth study into ICERR, and tribes and organizations will be notified of its completion and availability.

Persons interested in contacting NIYC may write to them at 201 Hermosa Ave. NE, Albuquerque, NM 87108 or call (505) 266-1966.



## OPPOSITION:

# The five prime voices

WASHINGTON—Five national organizations are presently or potentially the most formidable opponents to assertions of Indian rights and interests today, according to the National Congress of American Indians. These are:

Interstate Congress for Equal Rights and Responsibilities (ICERR), Indian Affairs Task Force of the National Association of Counties (NAC), National Wildlife Federation (NWF), Trout Unlimited (TU), and International Association of Fish and Wildlife Agencies (IAFWA).

Following are profiles of these groups:

### 1. INTERSTATE CONGRESS FOR EQUAL RIGHTS AND RESPONSIBILITIES (ICERR)

The ICERR is somewhat of a confederation of local organizations situated predominantly within or adjacent to Indian reservations. ICERR is incorporated under charter from the state of South Dakota with principal offices located at 422 Main St., Winner, S.D. 57580. Officers and directors are shown as follows:

President Jack Freeman, Faith, S.D.; First Vice Pres. Hollis G. Hurlinger, Roosevelt, Utah; Second Vice Pres. Rolland A. McLaters, New Town, N.D.; Third Vice Pres. Hewitt C. Wells, Reno, Nev.; Fourth Vice Pres. Mitchell Platt, St. Johns, Ariz.; Secretary-Treasurer Kim F. Wanser, S.D.

Chairman of the Board Blair K. Richendier, Walthill, Neb.; and Board Members F.W. Rockwell, St. Ignace, Mont.; Howard Gray, Seattle, Wash.; Elmer Winter, Ahnapeon, Minn.; Frank Lawyer, Idaho Falls, Ida.; and Albert C. Cook, Riverton, Wyo.

Article III of the corporation's "Articles of Incorporation" states the following declaration of purpose:

"This congress is created to insure that all citizens of this country shall achieve equal rights and bear equal responsibilities under the law.

"We believe that constitutionally guaranteed rights should be protected without regard to race and that all citizens should bear equally the responsibilities and burdens of citizenship as described under the laws of the states and their political subdivisions. We hold taxation without representation and representation without taxation to be unconstitutional. It is fundamental that a governing body may not assert jurisdiction and power over those who have no voice in that government and similarly, that one should not participate in a government to which he owes no allegiance and to which government he is not subject.

"To implement these principles in furtherance of greater justice and better relations between Indian tribes and their non-Indian neighbors, it is hereby resolved that all state and local laws shall apply within all reservations and to all tribes and tribal members. If this policy cannot be fully implemented, then it is further resolved:

"1. That the constitutional rights of all Americans must supersede treaty rights of some Americans.

"2. The Indian Reservations shall not be enlarged by boundary changes, by grants, by the power of eminent domain, or by any other means.

"3. That the jurisdiction of tribal governments over non-members of the tribe, who have no vote or voice in tribal government, shall be pro-

hibited.

"4. That members of Indian tribes should not have the right to participate in non-tribal governments unless they are subject to the laws and responsibilities of that non-tribal government.

"5. That grants of public funds to any group of people based upon their race and denial of public funds to other groups because of their race must be prohibited."

ICERR claims affiliated local organizations in 26 states, some of them multiple.

### 2. NATIONAL ASSOCIATION OF COUNTIES

The "Indian Affairs Task Force" of the National Association of Counties (NAC) is open to participation of members of the parent association nationwide. Practically, however, active participation is principally among county Commissioners from Indian Country.

Fred Johnson of Out Bank, Mont. 69477 is chairman of the Indian Affairs Task Force, which is concerned primarily with the exemption of Indians from taxation by county governments of certain real and personal property.

### 3. NATIONAL WILDLIFE FEDERATION

The National Wildlife Federation (NWF) became a party to "backlash" originally from involvement of some of its local and state chapters, especially in the Pacific Northwest. The national organization's involvement is becoming more general, however, with the entrance of affiliates from other areas.

National headquarters for the federation are at 1412 16th St. NW, Washington, DC 20036. Among its most active affiliates is the Region 11—including Alaska, Oregon and Washington. Director of this region is Carl N. Krause, Olympia, Wash. 98501.

Because of its diverse and broadly based membership, this organization, although concerned almost solely with Indian hunting and fishing rights, is a potentially powerful and influential adversary.

### 4. TROUT UNLIMITED

Headquarters of Trout Unlimited (TU) are at 4260 East Evans Ave., Denver, Colo. 80222. Its national chairman is William Loch, 9212 North Reno, Portland, Ore. 97203.

Its most vigorous arm in backlash against Indians is a subsidiary called Northwest Steelheaders Council, whose chief executive—Charles Voss, P.O. Box Q, Woodland, Wash. 98674—is also western states director of the parent organization.

While its interests are narrower than those of the other groups mentioned, Trout Unlimited possesses a potential for creation of adverse publicity in regard to Indian fishing rights.

### 5. INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

This fifth group, the International Association of Fish and Wildlife Agencies (IAFWA), perhaps should be classified with the foregoing, although its scope and involvement are less clear. During membership from at least some of North America's State Fish and Game Commissions, it shares a headquarters address with the National Wildlife Federation in Washington, D.C. John Gottschalk is editor of its newsletter.

## Four major 'backlash bills' in Congress

BY JUNE ADAMS

WASHINGTON—Four separate bills before the U.S. Congress are currently introduced to seriously compromise Indian legal rights directly or to modify them indirectly, and many observers are watching the fate of the bills.

These are the Meeds bill to buy out Indian fishing rights in the Pacific Northwest, the Dingell bill to provide state conservation control over Indian use of natural resources and game, the Maine bill to extinguish early legal Indian title to Maine lands, and the upcoming congressional debate over the pending Indian omnibus jurisdiction bill soon.

Let's look at these backlash bills one by one:

#### MEEDS BILL

The Meeds bill, H.R. 1 introduced in January, offers substitution, buyout or tradeoff of Indian rights in the steelhead and salmon fishery "for equivalent rights and values."

It also proposed an Off-Reservation Indian Treaty Fishing Rights Commission to make a comprehensive study of the 1974 Boldt decision and 1974 Bellon decision upon the commercial, sports and recreational Northwest fishery industry. (See cartoon.)

#### DINGELL BILL

The Dingell bill, H.R. 206 also introduced in January, aims to set "congressional guidelines" in the face of "unconducive" court actions empowering the states to regulate Indian fishing and hunting outside Indian reservations through control of the seasons and manner of hunting and fishing for "purposes of conservation."

The Dingell bill—introduced by Rep. John Dingell of Michigan—leans heavily on a court decision in 1973 relating to Washington state and the Puyallup.

#### MAINE BILLS

In March Rep. Cohen and Emery of Maine introduced H.R. 4169 and Sens. Hataway and Muskie introduced S.842 in relation to the two tribes in the lines and legal actions—which which may restore to them large portions of Maine land in 1977.

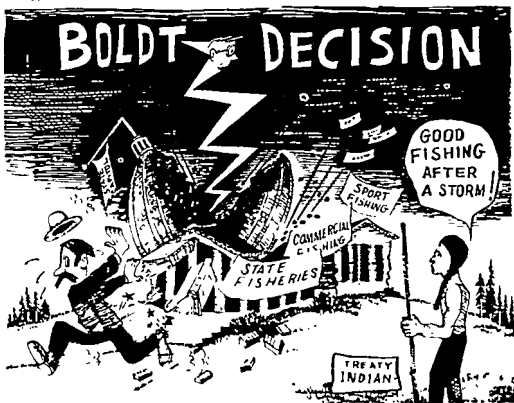
The Maine Penobscot Passamaquoddy Land Claims Act throws the whole land matter before the courts, extinguishes title to land, provides payment of monetary damages to the tribes, extinguishes de facto land titles and orders the district court to determine monies to be paid to tribes.

#### JURISDICTION BILL

In late fall or early spring Rep. Lloyd Meeds will introduce the Indian Omnibus Jurisdiction Bill, which will doubtless draw a platoon of hostile tribal witnesses against it from across the country, as well as others.

Authored by Phoenix Atty. Frederick J. Martone (who authored Meeds' Minority Report), the bill will cover tribal jurisdiction over non-Indians, tribal water rights, tribal courts and powers of taxation. (See Story, Page 1.)

It will also determine the legal definition of Indians, powers of sovereign tribal governments, and relationships with surrounding governments. "Indians have gone too far," said Meeds. "They've asked for too much."



# ICERR's Gray: militancy triggered backlash



A DIALOGUE OF OPPOSING MINDS

SI WHITMAN, founder and editor of the journal "From Where the Sun Now Stands" since late 1975 in the Nez Perce Reservation in Idaho (left), is among the very first Indian journalists to approach an ICERR member directly for interviews and perspectives. In July he tape-interviewed Howard Gray (right), a naturalist and filmmaker in Seattle, Wash., and national board member of ICERR. Gray is principal author of the pamphlet "Are We Giving America Back to the Indians?" (Photos by Yakima Nation Review and From Where the Sun Now Stands.)

WHITMAN: When do you feel the "Indian problem" started?

GRAY: In the '60s with the 1969 Alcatraz Island takeover in San Francisco.

WHITMAN: Why Alcatraz?

GRAY: In my opinion that seemed to create a feeling among the younger Indians that they could get away with something which was an illegal act. Then of course, we went from that point to the very well known Wounded Knee Incident, which, you know, was a sad experience.

WHITMAN: Do you think then that actions of these people involved in militant displays were actually the reasoning for a lot of the present backlash?

GRAY: I feel that the activists in the non-Indians, when the younger generation came along, they rebelled about certain things they didn't like. They rebelled against laws, they went about themselves and violated many of our laws, and then they kind of took over. Of course, at that time the Vietnam War was on and an awful lot of people felt the same way [the activists] did. We shouldn't have this.... [The activists] were sympathetic towards [militant Indians], and it seemed to me it exacerbated their activities to a point where they went beyond this particular point.

WHITMAN: Do you kind of get the feeling that the persistence of the 1950s contributed to the militant activists of today?

GRAY: Yes, I believe that this was the catalyst that started all this. We never had these kind of problems before....there were....no problems existing. If there were, they were minimal.

WHITMAN: Do you feel that century-old injustices are minimal?

GRAY: I don't doubt at all, in reading a lot of history, that there has been an awful lot of injustices done to our people....with-out any question. But we get to certain points where they [the Indians] seem to assume some authority and when you realize that a lot of money in the form of grants that went to pay for attorneys that were fighting, of that were with the tribes, that were good attorneys. They went in and discovered a lot of injustices, but there was no stopping point.

A prime example is the now-famous Boldt decision in my area. This stated that all Indians were allowed 50 percent of all salmon and steelhead for their own purposes and ceremonial on the reservation—

which in many cases, specifically steelhead and trout, has resulted in the taking of 65 to 75 percent of the resource. In other words, to allow one segment of our citizens (and you have been citizens since 1924) violates the 14th amendment of the Constitution which states specifically that we should have equal rights for all citizens, regardless of race, color or creed.

Then this [Boldt decision] hit us pretty hard. This was not equal rights. There was nothing in those treaties that stated that the Indians were to receive 50 percent. The treaties said that the Indians shall fish in common. "In common," which according to Black's Law Dictionary states that "in common" doesn't say apportionment at all. It means equal opportunities and equal rights to enjoy or participate in, equally. But that essentially no percentages were to take place.

WHITMAN: Actually, then, what you feel it boils down to is the fact that the basic law of the land [the Constitution] is in inequity? That is has gone to extremes?

GRAY: Yes, extremes. But how do you stop all this? How do you solve the wrongs that have been festering all this time?

WHITMAN: If the U.S. Congress were to take a look at the processes of abrogating the treaties, they would have to consider renegotiation of those treaties. What then would you see for consideration for that contractual agreement?

GRAY: I don't believe it would be necessary to abrogate the treaties. I think it's necessary to take another look at certain phases of the treaties. No, I don't see any reason....I don't think it would be too bad if you abrogated the treaties if we all abided by the 14th amendment of the Constitution. I think in a renegotiating of the treaties we could give you all the land you had but it certainly can't give you sovereignty.

WHITMAN: Will the Interstate Congress as probably the leader in this movement to "right the wrong" ever all down in an attempt to negotiate with each individual tribe?

GRAY: Yes, and I'll tell you why. In the case of Indians versus non-Indians, what the Indians have taken, what they're doing, what the tribes are doing are various phases of these actions. We by our own initiative now are going to get away from this. The wrong was non-Indian this. We would like very much to put in some actual facts before our people, not taking

## FROM WHERE THE SUN NOW STANDS

Publication of the Nez Perce Tribe of Idaho

VOLUME 1 NUMBER 0 LAPWAI, IDAHO 83500

into consideration anything that has to do with the Indians being wrong and we [non-Indians] being right. But to bring in some of the facts that your people can look at, that Congress could look at and have it make some sense.

WHITMAN: A lot of local citizens on the reservations have gained property in very underhanded ways. Not a hundred years ago, but as little as 20 or 30 years—within my lifetime, and certainly within the time that you were a young man. Even some tribal attorneys have turned their backs on the tribes that made their careers. This has really set a lot of tribesmen into becoming "militant." They would refuse to sit down and negotiate with the rancher who maybe had destroyed from 80 to 90 percent of a valuable local water resource by allowing his cattle to wander unchecked. It would then take your people to come in and all down and map out the problems with each individual tribe. Now if you had initially taken this action, do you feel you would have averted a lot of the problems that you are having now?

GRAY: Yes, if we had had the proper organization. But I think this all stems around the fact that people getting together in a large group, then the other minority had got to listen. Then when you come to a decision which to you and I [sic] makes sense, and if we're properly organized and have the control over the decision, then we have to follow through with it....

[WHITMAN CONDENSES THE responses of Howard Gray on other issues. Among them:

### ['DISESTABLISHED LANDS']

GRAY: The recent case in South Dakota [Rosebud Sioux Indians decision] is one that you are going to hear an awful lot

of because the land in the reservation that was sold off to non-Indians in 1905, 1906 and 1907 is now disestablished. This is a serious fact. It is no longer a reservation. The Indians may be able to stop it. But [Supreme Court Justice] Thurgood Marshall dissented, stating that a great hardship will be inflicted upon the Indians. This will also open up questions on reservations all over the country.

Five million acres of land are now in jeopardy because tribes want complete jurisdiction over these [non-Indian] people; they want to tax it, they want civil and criminal jurisdiction over this land. This is not right. Money is not prime thing for tribes today. They want the land!

### [TRIBAL WATER RIGHTS]

This is not right! This would cause a war! Farmers and ranchers in Eastern Washington are getting hostile. They "Do I have to go to that Yakima Tribe and beg them for water? This is my land. I pay taxes on this land."

A lot of tribes are taking for a fact that this is their water, with any court case at all. There's contradiction throughout court cases. One Supreme Court case contradicts another.

### [TRIBAL JURISDICTION]

There's been no backlash whatsoever up until this activist group got going. Then you [Indians] started to dig in, taking money!

We can't forever drop our tears as to what happened 150 years ago.... No one denies that this has happened, but it can't go on forever; we have got to have every-one live together. What's yours is yours; what's mine is mine. But what is mine, you can't dictate to me.

## Editor Whitman assesses Interstate

The Interstate Congress for Equal Rights and Responsibilities....the name invokes anger and immediate hostile reaction. Indian people throughout the nation have come to compare the ICERR to the Ku Klux Klan, John Birch Society, Minutemen and Joe McCarthy all rolled into one package. In essence the ICERR has ties to each group in various ways. An action group of concerned Indian people will be publishing an expose of ICERR activities and membership soon. The group findings will help to rectify certain adverse situations created by reactionaries in the Interstate Congress who are purportedly using the ICERR for their own jealous ends.

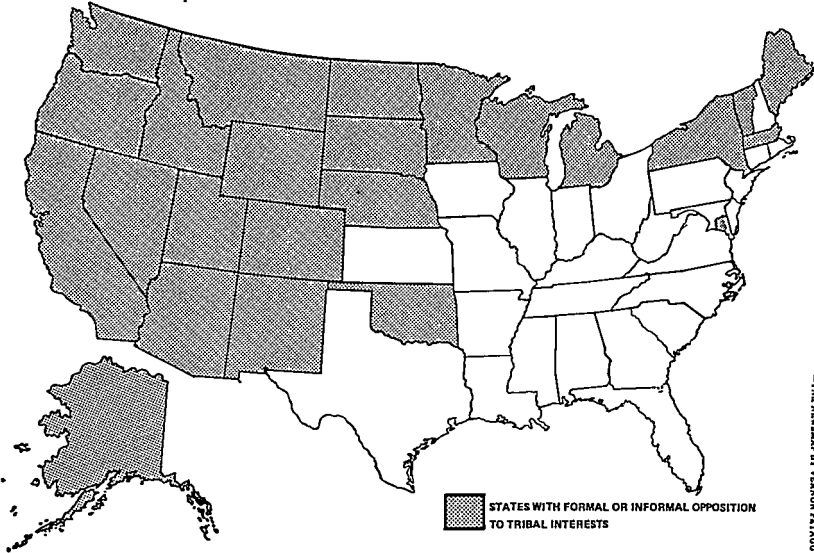
In obscuring the information which the Interstate continually refers to in the reports and discussions evolving around the Tribes, From Where the Sun Now Stands contacted the Interstate representative who seemed to be the most knowledgeable in the entire group. [Howard Gray's] work may be seen in the publication of the Interstate Congress, "Are We Giving America Back to the Indians?" Gray himself has promised another publication soon coming into print that will be devoted to court cases and legal decisions created by reactionaries in the Interstate and expose the "sneaky sympathy" given to Indian tribes by the U.S. Congress and courts.

What you see during the ensuing interview was a person who has a major portion of his opinions against the bias of "public officials." Much the same as found in the missionaries and school teachers spread throughout the Nez Perce Reservation

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# Backlash barrage erupts across U.S.



DOUGLAS HONDEGA, AS APPEARING THIS...

BY JUNE ADAMS AND RICHARD LA COURSE

Groups organizing on a state-by-state basis are:

**REGIONALISM ACROSS THE U.S.** is determined by the separate geographic concerns of people, and the political landscape affecting the relationships of Indians and their neighbors must be understood in the context of regional concerns.

In a period of political receding against tribal interests by groups popping up all over the nation, regional concerns play a major role in the political language of debate and issues.

In the Pacific Northwest, the code word is "fish," with accompanying stress on state powers of taxation and jurisdiction over Indians. In the Great Lakes there is opposition to the hunting, fishing and wild rice gathering of Chippewas outside their own reservations as violations of the principle of conservation.

In the Southwest the key word of political debate is "water," the lifeblood of the area.

On the Eastern Seaboard—particularly in Maine but also in Massachusetts and New York—property owners and real estate firms are distraught over land claims by tribes and communities which interrupt the flow of land transactions.

On July 13 in Washington, D.C. before the Senate Select Committee on Indian Affairs, it became evident that state agencies are also formally opposing certain Indian issues. The small Siletz Tribe of Oregon, terminated in 1953, is seeking restored status as a federally recognized tribe. Ben John Donaldson, Oregon fish and wildlife director, opposed the bill because in his view it would confer some legal advantages on the Siletz if they ever try to claim unregulated hunting and fishing rights. "We've said if we lose on this," said Donaldson, "there goes the whole coast. We feel we have to dig in our heels."

In late May in Utah conflicts over property near the Ute Reservation are spawning talk of abseconites, and Sen. Mike Garm, R-Utah, criticized local legislators from seeking help from the federal government. "There are too many breeding bears in Congress," said Garm. "You might not like the kind of help you get from the federal government."

Towns, counties, state agencies and national congressmen are all being drawn into the opposition. Last April, the National Association of Counties in Helena, Mont., mailed recommendations of the American Indian Policy Review Commission and said: "County governments have the capacity and willingness to represent and provide services to all citizens within their boundaries..."

**NORTHWEST**

**ALASKA:** There is unorganized opposition to the 1974 law authorizing Alaska Natives to select 40 million acres of ancestral lands. **WASHINGTON:** Citizens United for Resource Emergency, Seattle; Puget Sound Vessel Owners Assn., Seattle; Quinalt Land Owners Assn., La Push; Lummi Island Property Owners Assn., Bellingham; Washington Reef Net Owners Assn., Lummi Island Northwest. **TROLENS ASSN.,** Port Angeles; **West Coast Trollers Assn.,** Westport; **Association of Pacific Fisheries, Seattle;** **Northwest Steelheaders Council, Woodland, OREGON;** **Oregon Territorial Committee, Pendleton.**

**WEST**

**CALIFORNIA:** Unorganized opposition in Humboldt County against Hoopa Reservation and in Riverside County against Mission rancheries. **COLORADO:** Trout Unlimited, Denver. **UTAH:** Unorganized opposition in Roosevelt, Utah near Utah & Ouzy Reservation.

**NORTHERN PLAINS**

**MONTANA:** Montana Opposing Discrimination, Roman; C.R.O.W., Billings. **SOUTH DAKOTA:** Legislative Congress for Equal Rights and Responsibility, 422 Main St., Winner 57551, phone (605) 842-2500.

**GREAT LAKES**

**MINNESOTA:** White Earth Equal Rights Committee, Mahanoy; Leech Lake Citizens Committee, Leech Lake. **MICHIGAN:** Michigan United Conservation Club, Sault Ste. Marie. **WISCONSIN:** Concerned Citizens for Equal Rights, Ashland; National Troutery Alliance, Ashland; Citizens League for Civil Rights, Hayward.

**EASTERN SEABOARD**

**MAINE:** Unstructured opposition to Penobscot and Passamaquoddy land claims. **NEW YORK:** Developing opposition to Justice Dept.-backed claims of Oneida, Mohawk and Cayuga in upstate area; opposition to resolution of three-year occupation by Mohawks with tract of state-owned lands in May. **MASSACHUSETTS:** Mashpee Action Committee, Mashpee. **DISTRICT OF COLUMBIA:** Interstate Congress for Equal Rights and Responsibilities; International Association of Fish and Wildlife Agencies; National Wildlife Federation; Trout Unlimited; National Association of Counties.

## FORUM

THOUGHTS THE INTERSTATE CONGRESS LIVES BY

From pamphlet "Are We Giving America Back to the Indians?"

"During the Eisenhower Administration a policy of termination of the reservations was instituted. This policy has now been changed to the reinforcement of the reservation system. The reservation system makes Indians second-class citizens and it should be terminated. After more than 200 years of a system that has kept the Indian people dumb, it is time that they become emancipated and become full-fledged citizens."

—MARK J. FUHRMAN

"Nearly everyone in the United States has ancestors who lived off the land—farming, fishing and hunting—but they have by necessity moved from the land to the urban environment. That is a fact of the 20th century life, and to insist on retaining all ancestral forms of livelihood is to insist that history not only halt, but that it reverse itself."

—ARCHIE SATTERFIELD

"Wherever the Indians have gotten concessions through the courts, the added incentive exists to make ever increasing demands to see just how many additional rights can be obtained."

—HEWITT WELLS

"In many cases if your water is anywhere within a drainage area where the reservation borders it or encompasses it, the Indians have a claim to your water no matter if you are a thousand miles downstream, or upstream. They are not claiming only surface waters; they are claiming subsurface waters as well."

—LLOYD ENGRAHAM

"The most effective way to influence your government is through group efforts and your legislators. The liberal treatment of minorities at the expense of taxpayers has reached astronomical proportions. At the same time legislation is continuously introduced in Congress which would take away your constitutional rights and enlarge the powers of racial groups in the name of tribal sovereignty. Only continued support and concerted efforts by citizen groups such as the Interstate Congress for Equal Rights and Responsibilities can turn the trend around."

—ICERR "Educational Pamphlet"

**EXCLUSIVE INTERVIEW:**

# Behind Meeds' omnibus proposal

REP. LLOYD MEEDS of Washington's Second District agreed to a taped telephone interview on his upcoming Omnibus Indian Jurisdiction Bill with Yakima Nation Review Managing Editor Richard La Course this past Sept. 12, a Monday morning. Following is the transcript of that interview.

**MEEDS:** I think you are looking forward to a long interview about legislation which hasn't even been introduced in Congress yet—it hasn't even been written yet. I think it is way too early to speculate on monitoring what it might or might not do. I can tell you the purpose of it and that's all.

**YNR:** What are the principal purposes to be achieved through the bill tentatively titled the Omnibus Indian Jurisdiction Act which may be introduced at the end of this session [of Congress] or early in the next session?

**MEEDS:** The principal purposes will be to have Congress legislate on the extent of Indian jurisdiction over non-Indians.

**YNR:** The bill will have national application to each and every reservation, is that correct?

**MEEDS:** Yes.

**YNR:** Do you feel that various decisions coming from the courts, specifically in the area of jurisdiction and perhaps in other areas, are preempting the plenary powers of Congress to determine Indian policy and the limits of Indian policy? Is there currently a conflict between the courts and Congress?

**MEEDS:** Primarily, the courts are even enacting "judicial legislation."

**YNR:** Has Congress permitted itself to be preempted?

**MEEDS:** Mostly. You are getting far ahead.

**YNR:** On the recommendation of your staff member John O'Leary, I have spoken with Atty. Frederick Martone in Phoenix by telephone and he gave the major structure of the proposed jurisdiction bill. He anticipated that it could be introduced in Congress by the end of this session. He said he could have the draft of the bill done within six weeks. I would like to ask you through what normal salary procedure is Martone being paid, now that his services for you in drafting the [American Indian Policy Review Commission] Minority Report is now completed?

**MEEDS:** I haven't even hired him. I don't know where you got all this information. I haven't even hired him.

## WHO TO CONTACT

REP. LLOYD MEEDS, D-WASH.  
U.S. House of Representatives  
2352 Reyerum Building  
Washington, DC 20515  
(202) 225-2605

REP. JOHN CUNNINGHAM, D-WASH.  
U.S. House of Representatives  
1009 Longworth Building  
Washington, DC 20515  
(202) 225-3105

HOUSE SUBCOMMITTEE ON INDIAN AFFAIRS  
AND PUBLIC LANDS  
U.S. House of Representatives  
Room 421 - House Annex No. 1  
Washington, DC 20510  
(202) 225-1894

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS  
U.S. Senate  
Room 5331 - Dirksen Senate Office Building  
Washington, DC 20510  
(202) 224-2251

**YNR:** Is Martone doing the work voluntarily or as a specialist who has worked with you in the recent past?

**MEEDS:** I haven't asked him to do that.

**YNR:** His remarks were directly contrary to what you are telling me.

**MEEDS:** I don't understand. Have you called Martone? What did you ask him?

**YNR:** The lead upon which this interview is based is another interview with yourself by United Press International...in which you stated there would be an Omnibus Indian Jurisdiction Act in the offing very soon. On the basis of the UPI story I called your office and spoke with Mr. O'Leary and on his recommendation with Mr. Martone [in Phoenix].

Basically, what Martone is doing now [he says] is taking care of the draft of the bill. He expects it to be done within six weeks. Its introduction is contingent upon your own decision. It would not be structured into large titles, but concentrate primarily on the matters of jurisdiction. He said at the present he is researching points of probable conflict with existing laws so that this bill doesn't collide with any particulars of any other existing legislation on the books.



LLOYD MEEDS OF WASHINGTON'S SECOND DISTRICT "we don't meet your qualifications as 'architects of backlash'."

**MEEDS:** There is a reason that I haven't hired him on this time—because I want the staff to put him on.

**YNR:** Martone did most of the actual writing for your Minority Report, is that correct?

**MEEDS:** Yes.

**YNR:** Can you say what range of issues that are reflected in the Report can be expected to be reflected in the new legislation?

**MEEDS:** I thought we started this conversation with the indication that I just give you a very general idea. I have given you the general idea... And now we are going into a whole bunch of specifics that I haven't even considered yet, are?

**YNR:** I am depending on the remarks of Mr. Martone.

**MEEDS:** What I'll do is when I get a chance to talk with Martone and get this thing set up so that we will be drafting some kind of legislation—as soon as the content of that legislation or even the publication of that content is made public, I will personally call the Yakima Nation Review and let you know.

**YNR:** I have a few other items closely related to the issue of jurisdiction. May I try those?

**MEEDS:** Hold on. Does this have to do with legislation? Let's see if I can answer your questions.

**YNR:** On another bill you have introduced, H.R. 1 [providing for the buyout or tradeoff of Indian fishing rights] can you say what the source of the apparent "hold" on the bill is at present in Congress?

**MEEDS:** Did you say "hold"?

**YNR:** Right. There has been no committee action on either the House or Senate side, and there is a White House Fisheries Task Force out here on the matter.

**MEEDS:** This is a very busy committee. But I would say I would not push ahead with that legislation as long as the [White House Fisheries] Task Force is working. The Task Force is doing primarily what is intended by that legislation.

**YNR:** Congressman, can you say for the record whether there is any common mapping of strategy on different is-

sues such as fishing and jurisdiction among the congressional delegations of the various Northwest states?

**MEEDS:** I'm afraid we don't meet your qualifications as "architects of backlash." You just gave us a lot more direction and power and a lot of other things that we never had.

**YNR:** [This newspaper] gets a volume of mail and calls from so-called backlash groups in numbers of states including Vermont, Maine, Rhode Island and so forth. The people who have generally formed the Interstate Congress for Equal Rights and Responsibilities are lionizing you across the country.

**MEEDS:** And I don't like it either.

**YNR:** Do you have any personal or political direct contact with any of them?

**MEEDS:** No, I do not.

**YNR:** How do you view their support?

**MEEDS:** I don't like to be lionized by anyone.

**YNR:** On the flip side of that question, there is the general belief on the Puget Sound side [in Washington state] that you have made a "turn-around" on Indian policy questions and are coming up on the other side of the Indian policy line. Tribes are claiming...they were instrumental in your close reelection last year, and they are now considering alternative candidates. Do you think this is justified?

**MEEDS:** If that is the case, that would be the best thing that could happen to me politically. Then we have to be realistic now. If the Swinomish [Tribe] ran a candidate against me from the Second District, if that was the case, it would be greatly advantageous to me politically.

**YNR:** Congressman, do you think any type of rump reaction of anti-Meeds organizing on the part of Indian groups has any real basis of fact to act on?

**MEEDS:** Richard! Do you think that they could get John Nance Gardner to be their candidate? [Gardner was Meeds' opponent in 1976.]

**YNR:** I have not heard any specific talk about names, but my assumption is that it would not be an Indian at this time, based on news conversations.

**MEEDS:** John Nance Gardner was the guy who ran against me the last time, and damned near beat me on the Indian fishing issue! If you could get him to run against me and have the Indians run against me that would be great.

*"My views on jurisdiction and sovereignty, I am sorry to say, have been the same for a long, long time: that jurisdiction and sovereignty shouldn't be asserted on non-Indian citizens and taking them to trial, and that it constitutes a violation of other people's constitutional rights."*

**YNR:** How would you answer this question? Why, in the view of your own record in Congress in the 1970s, have you done an apparent turn-around on major Indian issues as Chairman of the House Indian Affairs Subcommittee, eventually resigning that chairmanship?

**MEEDS:** You name one turn-around I made. You name one and I'll answer your questions.

**YNR:** I would think the drift of the passage of the Indian Self-Determination and Education Assistance Act just approximately two years ago, and its principal design around self-determination, the powers of sovereignty, the right of tribes to contract and operate their internal business in their own fashion is somewhat contrary to your apparent proposed theme on the restriction of jurisdiction within the external borders of reservations.

**MEEDS:** Not at all. Not at all. My views on jurisdiction and sovereignty, I am sorry to say, have been the same for a long, long time: that jurisdiction and sovereignty shouldn't be asserted on non-Indian citizens and taking them to trial, and that it constitutes a violation of other people's constitutional rights.

**YNR:** How do you characterize the various principal judges that you say are "legislating judicially"?

**MEEDS:** Let's slow down. I have not progressed as far as I would like on the jurisdiction bill. And when I get that, I will get it to you. ....I don't have a lot of time to answer a lot of questions on my philosophy. You come up with some questions on how you think I have changed, give me a call and I will talk to you about it.

**YNR:** This newspaper did not tell your staff our questions would be limited to the pending jurisdiction bill. I am sorry there was a misunderstanding. I would like to ask one final question on the proposed bill. Do you have a tentative schedule in your own mind for the proposed omnibus bill?

**MEEDS:** Just before the end of the first session [of the 95th Congress]. Have you read my dissenting views [in the AFTRC Minority Report]?

**YNR:** Yes. Our newspaper has printed the entire report in 10 to 12 parts, word for word, without comment. We have given your report immense circulation.

**MEEDS:** That's good.

# Assault on the treaties

(Continued from Page 1)

south section of Seattle, Wash., including Auburn, Kent, Renton, South Bellevue, Mercer Island and south Seattle, where many non-Indian fishermen have raised Indian fishing rights guarantees to a number one controversy.

Cunningham in announcing introduction of the bill Sept. 12 in Washington, D.C. said there was "achieving two goals that I talked about during my campaign." He said those two goals were to resolve the controversy surrounding the Boldt decision "regarding fishing on Feb. 12, 1974" "by providing to all citizens an equal opportunity to fish and hunt without discrimination of ethnic background."

His second goal, he said, was "to end the paternal and protection role currently being played by the Bureau of Indian Affairs" which holds Indian lands from being assimilated into the U.S. work force and confines Indians as a "special class which causes discrimination."

The Cunningham bill is introduced as H.R. 9054.

Cunningham said the "good thing" about his bill "is that it allows the tribes a chance to decide their own future instead of having it forced on them" by the BIA. "Indians may choose to divide" their lands "among tribal members, or form tribal corporations to manage the land with tribal members as stockholders."

The proposal—which sets no final deadline for the President to abrogate the treaties—would dissolve tribal land bases by allotments to adult members within each tribe, and provide the outside opportunity for each tribe to choose to establish a corporation for tribal assets and land, with each enrolled member becoming a stockholder. Priority to acquire land would go to those "with the greatest amount of Indian blood."

Tribal sovereignty and jurisdiction would be dissolved completely and all jurisdiction would fall to federal, state and local governments beyond tribal powers.

The treaty abrogation bill is only the second bill Cunningham has introduced since he was sworn into the Congress May 23. (His first was a bill calling for a study on competition in the telephone industry.)

Merrill Jacobs, Cunningham's press officer, told the Yakima Nation Review Cunningham has approached other members of the Washington congressional delegation to co-sponsor his bill, but thus far none has accepted.

Cunningham is seated on the House Government Operations Committee and House Subcommittee on Environment and Energy, and Intergovernmental Relations and Human Resources.

Jacobs said the bill would be referred to the House Indian Affairs and Public Lands Subcommittee and perhaps the House International Relations Committee.

On the Senate side, it would undoubtedly be referred to the Senate Select Committee on Indian Affairs. There, said one source, "it would never pass. It is not necessary to war ourselves out over it. It's a fore-runner for the upcoming Meebs bill."

Jacobs told this paper House Full Legislative Counsel Joe Womack authored the bill for Cunningham, and the staff offered a



A FAST HAND: Rep. John Cunningham, D-Wash., was in the U.S. House of Representatives only 113 days—since last May 23—when he introduced H.R. 9054, the bill to abrogate all American Indian treaties and abolish the Bureau of Indian Affairs. His fledgling staff did not draft the bill, but instead called upon House Full Legislative Counsel Joe Womack to write it.

"few corrections and changes."

Jacobs said "we'd like to have a lot of positive criticism while the many positive parts of the bill are weighed."

Cunningham earlier owned a lumber firm, then a manufacturing firm for plastic containers. In the fall of 1972 he was elected to the Washington State House, and in 1974 was elected to the state senate.

## CUNNINGHAM TREATY ABROGATION BILL

[H.R. 9054 — NATIVE AMERICANS EQUAL OPPORTUNITY ACT]

### A BILL

TO DIRECT the President to abrogate all treaties entered into by the United States with Indian tribes in order to accomplish the purposes of recognizing that in the United States no individual or group possesses subordinate or special rights, providing full citizenship and equality under law to Native Americans, protecting an equal opportunity of all citizens who fish and hunt in the United States, and terminating federal supervision over the property and members of Indian tribes, and for other purposes.

BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled, that this act may be cited as the "Native Americans Equal Opportunity Act."

SECTION 2. (a) The President of the United States shall, as soon as practicable, after the date of enactment of this act, abrogate all treaties entered into between the United States and any Indian tribe.

(b) The President in carrying out the provisions of this act shall:

(1) Provide that any real property which is held in trust by the United States on behalf of an Indian tribe and to which such Indian tribe is entitled, on the date of enactment of this act, to exclusive use and occupancy shall be (A) allotted, in fee simple, and in severalty, to the individual adult members of the tribe (as determined by enrollment) with priority being given to those individuals with the greatest amount of Indian blood; or (B) conveyed, if a majority of the adult members of the tribe so indicate in an election, in fee simple to a tribal corporation for the purpose of enabling such corporation to hold such property in trust for the tribe;

(2) Provide all property allotted or conveyed under Paragraph (1) and all persons residing thereon and all acts committed thereon shall be subject to the laws of the federal, state and local governments;

(3) Provide all property allotted or conveyed under Paragraph (1) in the United States Treasury shall be (A) allotted to the individual adult members of the tribe; or (B) transferred, if a majority of the adult members of the tribe so indicate in an election, to the tribal

## Meebs would limit jurisdiction

(Continued from Page 2)

"My efforts to date are still in the formative stage. I'm coordinating research so that the impact of this bill on existing legislation will be measured.

"It's conceivable the work could be completed within six weeks," Martone said, while disclaiming any expert awareness of the habits of Congress relating to introduction of the bill before the mid-October winter recess.

He said the bill was not yet divided into titles or sections. "It measures issues of jurisdiction and the areas of regulatory powers of tribes," he said. The bill "is still in the formative stage—I can't predict when it will be introduced."

Martone in April of 1976 published an article in the Notre Dame Law Review entitled "American Indian Tribal Self-Government in the Federal System: Inherent Right or Congressional License?" Martone found his answer in the latter option. That article brought him to the attention of Meebs, who then hired him in February of this year with a retainer fee of \$21,000 to write Meebs' Minority Report to accompany the Final Report of the AIRPC.

The Meebs Minority Report is devoted principally to problems of tribal sovereignty and jurisdiction, recommends decreases in social welfare program funding for Indians, seeks final solutions to filing of "state land claims," claims only Congress can define who is Indian, and places in federal hands the control of property rights of tribes.

Following completion of the report, Martone returned to the Phoenix law firm of Jennings, Strouss & Salmon on 111 West Monroe.

Martone told the Yakima Nation Review that there were serious legal conflicts between Indian and non-Indian citizens in Arizona. "The ones in the last year which have enjoyed the most publicity are those in the northern counties in which reservation Indians predominate and pay no taxes," he said.

The key Arizona Indian-non-Indian issue, according to Martone, is "control of counties, a political sub-division of the state, by people who are not subject to the powers of those sub-divisions."

He said over the years he had undertaken research and given advice to many in the area of Indian law. Since completing the Meebs report, he said he had "printed nothing since. I've been busy in the area of private practice—giving advice to clients and being involved in litigation."

Still unclear was the avenue of funding for Martone to author the upcoming Meebs bill since he is outside congressional staff.

When the Meebs bill is introduced into Congress, it will be referred to various committees for hearings. It is almost certain that large numbers of tribes affected by the proposed legislation will turn out to offer their own testimony on the projected impact and evaluation of the bill.

On the House and Senate sides—because of the nature of the bill—it may be referred to other than Indian Affairs committees alone. In that case, Indian witnesses from tribes and organizations may be making their first appearances in history before new committees in Congress.

corporation described in Paragraph (1) for the purpose of enabling such corporation to hold such funds in trust for the tribe;

(4) Provide that hunting and fishing rights derived by the Indian tribes from a treaty shall be abrogated, and the members of such tribe shall be subject to federal, state and local laws governing hunting and fishing and

(5) Provide that there be no taking without just compensation of any property right specifically created for a particular individual by any such treaty.

(c) After the completion of the abrogation of the treaties, with an Indian tribe under this act, the President shall publish in the Federal Register an appropriate proclamation of such completion. Thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe, and the laws of the several states shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

(d) In the case of any Indian tribe with respect to which treaties have been abrogated prior to the date of enactment of this act or with respect to which no treaties were entered into but which remain under the supervision of the federal government, the President shall, as soon as practicable after the date of enactment of this act, take steps to assure that such supervision is terminated, the completion of such termination is published in the Federal Register, and the provisions of Subsection (d) apply to the members of such tribe.

(e) The President shall issue whatever regulations are necessary to carry out the provisions of this act.

(f) For the provisions of this act the term "Indian Tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act.

# PERSPECTIVES

## INTERSTATE CONGRESS:

### 'Nightmare of a neurotic few'



PETER MACDONALD, chairman of the 148,000-member Navajo Nation, in the accompanying text provides a promotional Indian leader's evaluation of the developing white backlash against Indian tribes, and illustrates its contours from a committed Navajo point of view. America's largest tribe is subject to the backlash because in 1971, as are most other tribes.

BY NAVAJO CHAIRMAN PETER MACDONALD

WINDOW ROCK, Navajo Nation—THERE IS A VERY well known book entitled "Animal Farm" by the late author George Orwell in which a group of animals took over a farm and ran the farmer and his family who had mistreated them for years.

Like so many revolutions, this one began with the most idealistic statements of liberty, freedom and equality. In fact, the motto of the newly freed animal farm was "All Animals are Equal."

AFTER A WHILE—as with other revolutions—the concept of equality rapidly began to gain more and more authority, and as the freedom and rights of the rest of the people are diminished. One day the animals woke up to see that the sign has been changed and now reads: "All Animals are Equal, but Some Animals are More Equal than Others."

These concepts of pigs and equality come to mind when I read in the White Mountain Independent of April 22 of this year that some 30 Navajo and Apache County residents had voted to join the so-called Interstate Congress for Equal Rights and Responsibilities.

THIS RACIST ANTI-INDIAN GROUP apparently now has members in at least 15 states and is dedicated to opposing the efforts of Indian nations to seek to assert their sovereignty and to obtain a decent life and standard of living for their members.

Like so many other organizations, this one hides behind its title. The last thing that these people want is "equal rights and responsibilities."

IT REMINDS ME of a story Abe Lincoln once told. He asked someone, "If you call a cow's tail a leg, how many legs does the cow have?" The person responded, "One." "No." Lincoln. "The right answer is four. Calling a tail a leg doesn't make it one."

I cannot believe that any person who has spent any time within the Navajo Nation or on almost any other Indian reservation can genuinely believe that somehow we possess rights in excess of those of the non-Indian citizens of this country.

IF HAVING LESS EDUCATION, higher unemployment, higher infant mortality, shorter life spans, worse roads, worse schools, less water and hundreds of other deficiencies with respect to the rest of the population of this country makes us somehow privileged citizens who do not fulfill their responsibilities, then I am at a loss to understand how "privilege" and "penalty" are defined by the Anglo mind.

The Indian Claims Commission (ICC) has held that our lands encompassed not only the present Navajo Reservation but extended to

the Rio Grande River on the east, to the White Mountains in Arizona on the south, and as far west as Willis ans, Ariz. In addition, our lands included most of southern Colorado and southeastern Utah.

IN RETURN FOR THESE LANDS we have obtained rather limited exemptions from state taxation. If this misguided group which is seeking equal rights and responsibilities would like to return our lands, then we might think about paying its state taxes.

The presence of U.S. Attorney for Arizona Mitchell Platt is particularly interesting since his father is probably the single largest private landowner in Apache County in Arizona and controls one-third of all Bureau of Land Management (BLM) leases. Mr. Platt has lost battle after battle with the Navajo Tribe and its members as he has attempted to deny Navajo people equal protection of the laws in the areas of election to public office, voting, in elections, and equal appointment.

I am hopeful and confident that his leadership in this ragtag group of racists will indicate the quality of the people it attracts, as well as the likelihood of it achieving, any success.

FOR YEARS AND YEARS, Navajo people have welcomed non-Navajo onto our lands. Many of these people have made large amounts of money from their activities on our lands. Many have helped our people, others have taken advantage of them. But our doors have been open to these strangers and visitors.

If they don't like our laws; if they don't like our government; if they don't like our culture and our way of doing our business, there is a solution. There is no Navajo law I know of which prevents a person who is dissatisfied with the way we govern ourselves from leaving. There are no locked doors to prevent these people from finding a more hospitable environment in which to live.

AS LONG AS THEY ARE OUR GUESTS, however, and as long as we extend to them our hospitality, the least that we can ask is that they be gracious guests and not both damn their host and take advantage of the people at the same time.

As is true with so many other "scare groups" with "scare tactics," I know of no example of any wrong which has been done to non-Navajos within our lands. If there are such wrongs, let them bring those wrongs to our attention and we'll try to solve real problems and not waste our time on the nightmares of a neurotic few.

FINALLY, I AM HOPEFUL and confident that the Congress which after years of neglect has finally begun to move towards Indian self-determination will not be sidetracked by the whining and complaining of a group of people who have always been among the privileged few rather than the oppressed many.

## FROM GAIN TO LOSS:

# The disturbing cycles in Indian history

BY RICHARD LA COURSE

INDIAN NATIONS in the United States over the past 200 years have been caught in repetitive patterns of history since the arrival of the Europeans on this continent, and the events of the past year or so only remind us once again of that cyclical pattern.

This time—and Indian people are almost certainly moving into a new period of Indian history—the code phrase is "white backlash." Historians in a decade or two will have fashioned a proper name for this period of time we are entering, fraught with dangers, anxieties, a particular kind of blues which can almost be defined as a "state of siege."

PHILIP SAMUEL DELORIA three weeks ago told the National Congress of American Indians in Albuquerque: "This is a fight to the death, as far as I can see. This isn't fun anymore. This is survival. We've got two chances—blin and none. It isn't like the last 10 years when people were trying to show money down our throats." Deloria was characterizing the proliferating groups of "whitelash" organizations coalescing on the local, county, state and national levels in reaction to the recent chain of court victories for Indian tribes and in reaction to the Indian militancy of the 1970s.

The cycles of Indian history since 1776—the distinctly AMERICAN Indian part, that is—reflect repeated upwings and downwings. We may be heading toward a new valley.

A PERIOD OF SOVEREIGN INHIBITION was followed from the late 1400s by repeated wars against tribes, calamity, death, displacement and dispossession reaching beyond the independence of the U.S. until the late 1800s. That period of war and death yielded to the reservation period, a reprieve from tragedy and the reassembly of tribes.

Then, in the late 1880s, came the Land Allotment Era, another sleep piecemeal tribal lands in an ef-

fort to absorb Indians into the murky midstream of America. Another dark period, it lasted until 1934 as official federal Indian policy.

THE REORGANIZATION ERA bloomed in the mid-1930s, strengthening tribal governments and assuring the cultural and religious rights and practices of tribal societies. This short-lived period continued until after World War II. When the war was over, the U.S. Congress succumbed to the Termination Era, and nearly 100 tribes were dispossessed of their lands, paid paltry sums of money, and were dispersed into a no-Indian's land. Threats of termination plagued nearly all tribes in the U.S.

THE SELF-DETERMINATION ERA was launched in the early 1950s, recognizing the rights of Indians to make their own controlling decisions for their own people. Money, community experimentation, political sophistication, cultural revivals flourished. A new middle class of Indian technicians emerged. A centipetal motion, returning scattered peoples to their own reservations, became evident.

That brings us to the doomstep of today. The "whitelash era," for want of a better phrase, is making a new epoch of white hostilities, aggressiveness against Indians in the state and federal courts, in the state and national capitals. This lause of the Yakima Nation Review charts the movement of these whiterash efforts in some detail.

BUT INDIAN PEOPLE TODAY, with a political sophistication equal to, or are not involved in, are in order to lose. It is the stakes of history, the stakes of peopledom and the rights of law which are in question. While the outcome of this historical downturn cannot be gauged with accuracy yet, it will be interesting, fateful and significant how it goes.

As Mel Tomuschat, NCAI president said recently: "Indian people have wraparound tribes because we have been stabbed so many times in the back." That 360-degree vision will serve us all well.

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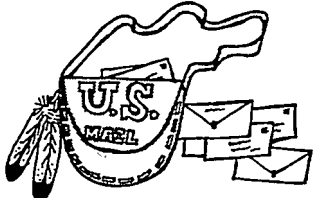
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# OUT OF OUR MAILBAG

Human rights



## Meeds-constituent debate on 'minority report'

REP. LLOYD MEEDS, Democratic congressman from Washington's Second District, this past May 17 issued his minority report dissenting from majority findings of the American Indian Policy Review Commission (AIRC). As AIRC's Vice Chairman, Meeds is giving this report circulation equal in num-

bers to that of the majority report. It's striking cards among all sorts of people. Below is reprinted a set of correspondence made available to the YNR which shows in detail how Meeds responds to white critics—and white friends, as well as middle-of-the-roads—on his controversial anti-Indian report.

Dear Congressman Meeds:  
I usually do not take the time to write persons who I feel will not seriously consider alternative thinking.

I cannot believe that a person could turn as quickly as apparently you have from a supporter and "friend" of Native American concerns to an advocate of selling out treaty rights. Did you recent narrow victory (last November in your home district) prompt you to reconsider certain "unpopular" issues?

It is interesting to note the support you received from Tulalip, Swinomah and other reservation tribes during your election. Have you taken the time to assess their opinions about your "Minority Report" to the American Indian Policy Review Commission's Report by suggesting to limit jurisdictional questions on the reservations to only Indian people? I presume not.

Please be assured that within my limited sphere of influence in church and social service institutions I will actively work for your defeat in the next general election. As a white person, I feel that social justice should no longer be a gift of social whim but the inheritance of humankind. I pray that you will someday also.

JOLYON RAYMOND  
3017 14th Ave. South  
Seattle

Dear Mr. Raymond:  
I recently received your letter of June 9 in which you expressed considerable displeasure with my minority dissent to the report of the American Indian Policy Review Commission. You say I have turned on the native Americans and their concerns.

I have enclosed a copy of a letter to the editor of the Everett Herald, written by Norman G. Clark, president of Everett Community College (in Everett, Wash.) and a person who obviously has a high regard for social justice. He reacts to my dissent differently than you do. It is clear from reading his letter that he read the dissent. Before you turn on me, I would ask only that you do the same. I think you will find that you are wrong.

My regard for Indian rights is as strong as it has ever been.

I am also enclosing another letter to the editor from the Bellingham World. Perhaps you would like to try to convince this

person that I am "an advocate of selling out treaty rights."

LLOYD MEEDS  
Member of Congress  
House of Representatives  
Washington, D.C.

[NOTE: Following are the texts of the two letters Meeds sent to Raymond on the matter of the Meeds Minority Report:]

EVERETT HERALD:  
I would like to emphasize for your readers that Representative Lloyd Meeds has raised objections to the work of the American Indian Policy Review Commission—objection which deserves the serious attention of both Indians and non-Indians. Meeds has in fact offered a brilliant and scholarly analysis of the commission's report and his critique lays a basis for reasonable and enduring congressional legislation.

Most importantly, Meeds' critique sets straight the commission's effort "to convert a romantic political nation into a political doctrine." The fundamental error of the commission, Meeds says, "is that it perceives the American Indian tribes as a body politic to the nature of a sovereign [sic], as that word is used to describe the United States and the states, rather than as a body politic which the United States, through its sovereignty [sic] power, permits to govern itself and order its internal affairs, but not the affairs of others."

Meeds is in no way attacking Indian rights, for which he has high regard. He writes of the wishes and misdeeds of Indian culture and insists that Indians "should be given every opportunity to practice that culture." And he makes it clear that Indians should have authority to make substantial decisions "over events which control their lives." But he also insists that Congress cannot legislate "out of a sense of guilt or excessive zeal to cure all sins of the past." "Distorting the present and future to atone for the past," he notes, "cannot be the basis of a stable policy." Doing justice to Indians, he concludes, "does not require doing injustice to non-Indians."

The report is lengthy and complex—as is Meeds' dissent. But the difficult reading should not obscure Meeds' real contribution to an intelligent Indian policy that can promote the interests of all citizens.

NORMAN G. CLARK  
President  
Everett Community College  
Everett

BELLINGHAM HERALD  
Dick Beardsley's column on his interview with Congressman Meeds' view on the Washington fisheries problem makes me wonder if the congressman skipped too many classes during his law school days.

The State Department and the congressman are very ignorant of the facts if they state "Judge Boldt's decision is the law of the land." Until the U.S. Supreme Court rules on the merits of the "Boldt Decision" it is not the law of the land. The mere fact that the court denied certiorari is not tantamount to an approval of the decision.

The law is well settled that denial of certiorari imparts no implication of inference concerning the U.S. Supreme Court's view of the merits of the case. Justice Frankfurter, in Maryland v. Baltimore Radio Show (1946) drew this point home quite forcefully. A denial to hear a case carries with it no implication whatever regarding the court's view on the merits of a case which it has declined to review. The court has said this again and again; the admonition has to be repeated "again and again."

The Washington State Supreme Court has disagreed with the "Boldt decision." It appears to me that our own court is now the law of the land.

Congressman Meeds speaks of compromise. You cannot compromise the United States Constitution or the Bill of Rights. You only compromise with foreign countries and I believe both Indians and non-Indians belong to the USA.

PETER ZUNNICH  
125 Lawhorn Rd.  
Captain, boat "Admiral"  
Bellingham

## Canadian educator asks

REVIEW:  
We'd very much appreciate receiving six complimentary copies of your next publication. We in turn will present several publications to a committee for their personal use.

BILL WHITE  
Indian Education Coordinator  
Office of Special Education  
430 Setby St.  
Nantuxo, B.C.

REVIEW:  
The National Indian Education Association is extremely anxious to be informed concerning what is available a June 10 letter sent to President Jimmy Carter by our organization:

Dear Mr. President:  
The National Indian Education Association is extremely anxious to be informed concerning your administration's policies in reference to Indian affairs. It is now six months since you have been elected to the Presidency and still you remain silent.

As you well know, the President retains tremendous power over Indian affairs. Yet virtually every key position relating to Indian affairs within your administration remains unfilled. You have not requested adequate funding for federally sponsored Indian programs. And no American Indians have been appointed to high level positions within your administration.

It is little wonder that when you speak of the sanctity of human rights that American Indians raise cynical eyebrows. Mr. President, in the history of this planet, has there been a people more deprived of their human rights than the American Indian? We were slaughtered by European settlers as inhumanly as the Jews were dispatched at Auschwitz and Dachau. Our culture has been subjugated more so by our oppressors than even that of black Americans. Our human rights have been trampled upon more so than those of any people whose champions you are attempting to become today.

Hollow words, Mr. President, eventually reveal the true nature of any man and subject him to the scorn of history. I remember quite well that Mr. Nixon, in his first inaugural address, stated that "no man can be truly whole until he becomes involved in something greater than himself." I, sir, score these words in 1977 which I think me so much in 1968.

I ask you now, help Indian people NOT to despise a government upon which they depend more so than other Americans to help preserve their very dignity.

In conclusion, sir, we realize that national security in its real sense must be your first priority. But as "human dignity" surfaces on your list of priorities, do not forget the American Indian.

ANDREW P. LAWSON  
Executive Director  
National Indian Education Association  
1115 Second Ave. South  
Minneapolis, Minn.

## Chief Bitterroots

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## AND NOW.... 'FRONTLASH'

# Counter-force coalition now backs treaties; group, born in Northwest, spreads East

SEATTLE—(Staff)—Its name is the National Coalition to Support Indian Treaties (NCSIT) and its purpose is to do just that.

Formed this July in Seattle, NCSIT came into being as a new counter-force to the significant national political backlash against Indian tribes across the U.S.

NCSIT will, in a kind of stellar balance, provide—among non-Indian—a push-for-push opposition to the nearly two-year-old Interstate Congress for Equal Rights and Responsibilities (ICERR).

NCSIT in October will disclose its coalition members consisting of numerous pre-existing national organizations such as the American Civil Liberties Union, National Council of Churches and a variety of other concerned organizations.

NCSIT also plans to have liaison personnel in all states where the backlash is mushrooming, where it will "conduct a program of public education regarding Indian rights."

NCSIT is growing from the Pacific Northwest, where there is the highest number of separate special interest backlash organizations of various sorts in one state.

NCSIT will also support tribes and organizations in their efforts to protect treaty and tribal rights, as well as cooperating with all such groups in the public education effort.

The Seattle area residents who formed NCSIT, moreover, are not newcomers to Indian-non-Indian conflicts. Many are former members of the now-defunct Citizens for Indian Rights (CFIR), a non-Indian support group in the Puget Sound area which from 1970 till 1974 was active in the area of public education in western Washington while the federal court suit, U.S. v. Washington, was heading toward its conclusion.

Dr. Richard Briggs of Seattle, a practicing physician, formed CFIR. And now he's in the forefront as executive director of NCSIT.

NCSIT Board Member Elizabeth Furse told the Yakima Nation Review:

"He is the person who has sort of been the catalyst for the national coalition. What CFIR did is just what we hope the national coalition will do.

"We got speakers' bureaus into areas and then people would be come educated about the full backgrounds of treaties and Indian fishing rights in this area.... We would send our 'soldiers' to churches, service organizations— wherever—then we would go in as speakers to put across the point that non-Indian people need very much to be supporting the treaties which were signed in their name, and also explaining what the fishing rights struggle was all about."

She feels CFIR ended its tasks too early. "Unfortunately in 1974 when Judge (George) Boldt made this fishing decision, we thought that the job



NCSIT'S ELIZABETH FURSE READY FOR NATIONAL KICKOFF

was over. That was an obvious mistake, of course. We thought, "Well, that's okay now. Fishing rights are taken care of." But of course that didn't happen.

"And now we see this enormously growing backlash and we feel that there is definitely a very strong need for non-Indian people to be involved under the obligation of conscience and in opposition to the backlash of such special power against tribes and treaties."

In the planning stages, the core people who created NCSIT met in homes and kept strong liaison with their own church groups. In late July the Church Council of Greater Seattle adopted a resolution of some significance.

It followed adoption of similar resolutions by various bodies of Lutherans in the Northwest and Texas.

Said the Seattle resolution: "The honor of a nation and of its citizens is cheapened by any suggestion that treaties are to be set aside whenever they seem inconvenient to special interest groups." The resolution compared denial of Indian rights to anti-Semitism, the World War II Japanese internment camps, black slavery and the classic Cherokee Trail of Tears. It insisted: "Abrogation of rights should not be the way, to solve differences."

(For NCSIT purpose, goals and structure, see accompanying box. For church resolutions, see facing page.)

Various prominent and widely accepted Indians—including Mel Tonasket, Joe de la Cruz, Ramona Bennett and Bernie Whitebear—assisted the core planning group in its early stages, and they with two others are now

members of the Indian Oversight Board, which will be increased by six members soon.

The present non-Indian Board of Directors will also be increased to 12 in the coming months.

In early October Elizabeth Furse will be in the nation's capital to complete contacts with other national organizations, and then will make a public announcement—probably at the Davis House—of who coalition members are and what they stand for.

"That will be a good place to kind of 'kick off' so that people all over the country who are 'pro' Indian rights and 'pro' treaties will know the organization is in effect and beginning to get organized around the country."

The American Friends Service Committee (AFSC) will set up the Washington, D.C. base with a "legislative monitor" to watch Capitol Hill activities. A national office may also be opened there as funds permit.

NCSIT's Seattle address will be its principal contact point for the coming several months, however.

The ICERR, counterpart for the new coalition, maintains its national address in Winster, S.D.

The National Congress of American Indians, National Tribal Chairmen's Assn. and the Informal National Indian Alliance have all welcomed NCSIT's birth. The faces of NCSIT people will doubtless become quite familiar around Indian country—and their names will doubtless be remembered more fondly than those of the principals of ICERR.

## FACTS ABOUT THE COALITION

**GOAL:** The National Coalition to Support Indian Treaties will work to combat backlash and will be a positive non-Indian voice in support of Indian treaties and Indian tribal sovereignty.

**PURPOSES:** The purpose of the National Coalition to Support Indian Treaties is:

—To conduct a program of public education regarding Indian rights, tribal sovereignty, sanctity of treaties between Indian nations and the United States, Indian tribal self-determination in jurisdiction, and aspirations of tribes to their cultural and physical preservation;

—To support Indian tribes and organizations (Indian and non-Indian) who are dedicated to opposing those who seek abridgment or destruction of Indian rights and property, and the treaties which guarantee those rights;

—To create and encourage a coalition of organizations and individuals to seek and provide education to the general public on Indian treaty rights.

**ORIGINS:** Prior to the forming of NCSIT in July of 1977, letters were sent to a number of Indian persons around the country. Responses were overwhelmingly favorable to the idea of such a support organization and the concept was then discussed at the 1977 Mid-Year Conference on Indian Affairs sponsored by NCAI in Albuquerque in June.

The NCAI felt that the coalition could be an important factor to combat the backlash. At the first meeting of interested persons in Seattle this spring, both Indian and non-Indian, the Indian persons present suggested that the best strategy would be that the officers and Board of Directors of NCSIT should be non-Indian. Because its work is to combat the backlash, it was felt that non-Indians ought to be doing the work of this organization. Such a decision was reached to eliminate charges of "conflict of interest" since the organization is non-Indian in makeup. As a result of early meetings and consultation with various Indian leaders, the structure of the coalition has been completed.

**STRUCTURE:** The structure of the NCSIT will consist of:

—INDIAN OVERSIGHT BOARD of 12 members to assist the Board of Directors and the officers in "prioritizing issues," planning strategy and tactics, and analyzing NCSIT's responses to crises. Present oversight board members are: Mel Tonasket, Colville, NCAI President; Joe de la Cruz, Quinault, NCAI President; Ramona Bennett, Puget Sound Chairwoman; Bernie Whitebear, Colville, Director of United Indians of All Tribes Foundation, Seattle; Jacqueline Delahunt, Rosebud Sioux; and Bob Matt, Sisseton-Wapeton.

—BOARD OF DIRECTORS of 12 eventual members who will be non-Indian, representing member organizations within NCSIT. Present members of the Board of Directors are Rev. Loren Arnett, Washington Association of Churches; Marilyn Bode, Native American Task Force of the Lutheran Church; Elizabeth Furse, Western Washington Indian Program, American Friends Service Committee; Ruth Sterling, Economic Metropolitan Ministry; and Ann Sauer, Chairperson, Pacific Northwest Region, American Friends Service Committee.

—STAFF: Staff will be selected to set up support and educational units throughout the U.S. The NCSIT at present is drawing from persons in the Washington state area. It is expanding to be "truly national in nature."

**NATIONAL ORGANIZATION:** The national announcement of the formation of NCSIT was set for Davis House in Washington, D.C. in the first two weeks of October. Membership of a multitude of national organizations in the coalition was also stated for announcement. The American Friends Service Committee will retain a person as a "legislative monitor" in Washington, D.C.

**CURRENT ADDRESS:** National Coalition to Support Indian Treaties  
1435 N. 3rd St.  
Seattle, Wash. 98106  
Tel: (206) 632-0500



## NATIONAL INDIAN ALLIANCE

### Strategies to stem riptide of reaction

ALBUQUERQUE, N.M.—(Staff)—"Indians must deal with facts, explanations and legal arguments. We can no longer afford to deal with emotional arguments."

That was the essence of an address by Phillip Samuel Deloria, a Standing Rock Sioux and director of the University of New Mexico's American Indian Law Center here as part of a national Indian panel which has formed an ad hoc National Indian Alliance (NIA) to combat so-called backlash groups across the U.S.

Deloria kept it colloquial. "Avoid actions which forge coalitions of ranchers, fishermen, environmentalists and the like," he told about 400 elected Indian leaders.

"Tone down your rhetoric—that only turns off support. Form alliances of cooperation with groups across the United States without sacrificing principles true to the Indian world. Work with precision concerning tribal goals of jurisdiction, zoning, planning and development on your reservations."

Deloria said that some backlash groups across the U.S. were expending only "benign antagonism" toward Indians rather than direct hostility. "They have honest and sincere questions, and some of those people are frightened of their own leadership and the potential for violence."

People responded to Deloria's observations. Oregon's Umatilla Board Chairman Leslie Minthorn said one group, the Oregon Territorial Committee, is opposing a Umatilla land consolidation bill now before Congress. "We have good relations with the Umatillas," he quoted one member saying. "We're here to oppose them." OTC worries were taxation without representation, loss of tax base, and "fore-close" of white residents.

Ruby Black of Utah's Uintah and Ouray Tribes said he was being told about the Indian position in Utah, using a false interpretation of facts. The mayor of Roosevelt, Utah is claiming that the reservation is "disestablished." They have a propaganda machine."

Montana's Northern Cheyenne Chairman Alan Rowland said the group Montana on Discrimination (MID)—tagged as the "Hox Squad" by Montana Indians—"practically controls the state legislature. Of 35 bills introduced this year affecting Indian people, only one passed."

Walter Green, a black special assistant to

Interior Undersecretary James A. Joseph, told assembled Indians "your first obligation is to communicate with those who disagree. There is a tremendous ignorance of the Indian experience across America."

Mel Tonasket, president of the National Congress of American Indians (NCAI), said the American public was unaware of the economic clout of tribes state by state. He said a recent study indicated that Washington state's Quinault, Colville and Yakima Tribes alone had a \$9 billion annual impact on the state economy with their timber resources. Tactics of boycotts and temporary shutdowns of Indian resource industries—timber, mining, oil and gas—could bring state economies to a halt, he said.

"I don't know what's revolutionary about assuring an Indian future in America," said Leader Vernon Belmont of the American Indian Movement (AIM).

National Indian Alliance members Dufast include NCAI, Americans for Indian Opportunity of Albuquerque, National Indian Lutheran Board, United Indian Planners Assn. of Washington, D.C., Indian Rights Assn. of Alaska, and AIM.

What tactics were decided upon for use by the alliance?

"Community action" was at the heart of the discussions. Use of specially prepared tapes for play at community gatherings, petitioning of Indian men and women on local and regional TV talk shows, travelling notable speakers and formation of linkages with professional, political, ethnic, religious and civic groups across the country were accepted as options.

"Visit your state assembly general," said AIO's La Donna Harris. "Make contact

with environmental groups and civic clubs. Explain legal concepts. Indian legal concepts are not in the vocabulary of the white public. Point out the emergence of tribes as an economic force."

NCAI as part of its efforts this September will publish many copies of a new pamphlet on contemporary issues and concerns and give it "saturation distribution" to environmental groups, political groups, associations of governments and media.

Andy Eboza, Third director of United Indian Planners Assn., offered creation of speakers bureaus packets, and said a TV film of Indian concerns was under preparation by the Public Broadcasting System.

Eugene Crawford, director of the National Indian Lutheran Board and a Sisseton Sioux of Chicago, said:

"The U.S. Congress has the legal right but not the moral right to abrogate treaties. We can play a role in neutralizing churches to this peril. Churches are the most valuable manifestation of moral and ethics in white America today. The Joint Stanley and Action Committee in New York has five executives who speak to 70 million white Americans. NILE reaches 17 million Lutherans. The National Council of Churches reaches 150 million Christians in America."

Churches have indeed responded. Below are resolutions adopted by various Lutheran bodies across the U.S. In March, June and July. And the Church Council of Greater Seattle on June 14 adopted its own resolution to counter "anti-treaty sentiment" and "unethical and unchristian" actions "uphold the honor of the nation" by assuring treaties are upheld.

## 1. The Lutheran Churches

### RESOLUTION ON INDIAN TREATY RIGHTS

**PREAMBLE:** THE NATIONAL INDIAN LUTHERAN BOARD, the majority of members being American Indians, adopted a resolution at their annual board meeting on February 26, 1977, in Tempe, Arizona, which emphasized the importance of maintaining treaties. The NILB group expressed wholehearted support for the courts in their decisions which uphold treaty rights. At the same time they expressed concern for non-Indians who may be adversely affected by these decisions.

Following the model of the NILB resolution, the Region No. 19 Consultation (LC-USA), in a meeting on March 16, 1977, adopted the following resolution and, by consensus, urges each judicatory in the Northwest, to provide an opportunity for their Annual Convention and for the congregations to consider this resolution:

**WHEREAS:** the decisions rendered by the courts of the land increasingly have recognized the rights of the Indians secured for them in treaties, and

**WHEREAS:** such decisions, while redressing life-damaging experiences suffered by Indians, may adversely affect some non-Indians who derive livelihood from situations which deprive Indians of their rightful penonhood and property, be it

**RESOLVED:** That the Pacific Northwest Synod, LCA; North Pacific District, ALC; or Northwest District, LCMS, in convention, adopt and commend to its congregations, the principle of "support for the pursuit of justice" as it especially involves the nation's

treaties with Indians, and be it further

**RESOLVED:** that following the example of Indians themselves, the Pacific Northwest Synod, LCA; the North Pacific District, ALC; or Northwest District, LCMS, advocate a genuine concern for non-Indians who experience personal loss or hurt when Indian claims are recognized, urging both public and private compensation similar to aid given to disaster victims, and be it further

**RESOLVED:** that the Pacific Northwest Synod (North Pacific District or Northwest District) memorialize the LCA (ALC or LCMS) to support and adopt as their own the provisions and commitment inherent in the aforementioned resolve; and that it be further

**RESOLVED:** that we urge our members to express gratitude to God when justice, mercy and truth prevail, and, to participate in and support all endeavors to effect reconciliation, understanding and cooperation between Indians and non-Indians in the Name and Spirit of Christ Jesus.

Resolution passed: Region No. 19 Consultation (LCUSA) in Seattle, March 15, 1977  
LCA Northwest Convention, Tacoma, June 11, 1977  
ALC Northwest Convention, Tacoma, June 12, 1977  
LCMS Convention, Dallas, July 23, 1977

## 2. Seattle's Church Council

### RESOLUTION ON INDIAN TREATY RIGHTS

**PREAMBLE:** THE CHURCH COUNCIL OF GREATER SEATTLE affirms its support of treaties signed by Indian tribes and the U.S. government. The U.S. Constitution (Article VI, Section 2) guarantees that treaties are the supreme law of the land. Treaties are the promise of a nation and on them rests the honor of a nation. Recognizing the need to address the current climate of anti-treaty rights sentiment among certain groups in the nation, the Church Council deplores the suggestion that the abrogation of treaties is the way to resolve conflicts arising from court decisions affirming these treaties and calls upon member churches throughout the nation to affirm and support the Indian treaties and the rights of tribes to the jurisdiction over their lands, the lands reserved by the tribes for their exclusive use.

**WHEREAS:** The churches have historically sought to provide moral leadership. Church Council of Greater Seattle feels that treaty keeping is a moral issue and consistent with its role of moral leadership. The honor of a nation and of its citizens is cheapened by any suggestion that treaties are to be set aside whenever they seem inconvenient to special interest groups.

**WHEREAS:** Church Council of Greater Seattle deplors the repeated attacks upon tribes and their treaty rights. At the time of the treaties, Indian tribes gave up vast areas of land which non-Indian people have enjoyed and benefited from. The tribes reserved lands and certain rights, which they already owned, for the benefit of their own people. At the time of the treaties the tribes reserved 150 million acres, by land area through various acts in the United States, has been reduced to 50 million acres on 128 reservations. Church Council of Greater Seattle deplors efforts to further reduce the land and also the rights of the tribes to assert their jurisdiction over the land. The Church Council refuses to silently acquiesce to such actions.

**WHEREAS:** THE DECISIONS RENDERED BY THE COURTS have increasingly recognized the rights of tribes reserved for themselves—rights of Indian tribal govern-

ments to exercise jurisdictional powers—the Church Council of Greater Seattle supports such decisions and also recognizes that if treaty rights upheld can be set aside by those who oppose them, so can all other rights guaranteed by the Constitution: freedom of religion, freedom of speech, etc., etc. Abrogation of rights should not be the way to solve differences. Recognizing integrity of covenant the Church Council reaffirms the principle that we keep our word.

**WHEREAS:** There are numerous instances in our history of groups denying the rights of others less powerful or numerous than themselves, e.g., Anti-Semites, the Japanese-American internment, slavery of African people, the Cherokee Trail of Tears. Church Council affirms its concern for all peoples and their need for self-determination.

**RESOLVED:** THAT THE CHURCH COUNCIL OF GREATER SEATTLE adopt and commend to its member congregations, the principle of support for Indian treaties, as it especially involves the nation's treaties with Indian tribes. It is vital that all citizens work together to preserve the honor of this nation and the integrity of the Indian tribes by upholding the treaties.

**RESOLVED:** Church Council of Greater Seattle pledges itself to support the rights of tribes to maintain their lands and governments and their inherent rights to exist both politically and culturally as a people.

**RESOLVED:** Church Council of Greater Seattle goes on record that it will work to support the principle of treaty keeping. The principle of Indian tribes is not confined; and that it will urge its members to participate in and support all endeavors to effect reconciliation, understanding and cooperation between Indians and non-Indians, and to express gratitude to God when justice, mercy and truth prevail.

Adopted by Board of Directors  
Church Council of Greater Seattle  
June 14, 1977

# SPEAKERS BUREAU

## NTCA forms voice for public Indian concern



THE PHOTO BY CAROL WALKER

NTCA PRESIDENT JOSEPH DE LA CRUZ ON THE OFFENSIVE WITH FACTS

**Yakima Nation Review**

WASHINGTON—"As I see it," says Joseph De la Cruz, president of the National Tribal Chalmers Assn. (NTCA), "state and county governments and ourselves are going to be here for a long, long time, and we have to work out relationships to continue to coexist."

"To some people—both non-Indians and Indians—black is black and white is white. But few things are all one or the other. We have to all down and start a series of negotiations."

NTCA's De La Cruz, elected to the national position this past May, knows whereof he speaks. A Quinault on Washington state's Olympia Peninsula, he has served as chairman of his tribe since 1972.

As a tribal leader, he has met continuously since 1972 with county and state people, and with the Kiwanis, Rotary and other social, religious and political groups to acquaint them with the tribes and its legitimate concerns.

"I met by a great many anti-Indian fishing groups too," said De la Cruz. "Now they are saying, 'We don't have any problems with the Quinaults. Everybody should be like the Quinaults.' But we have explained to them what it is like to be under five decades of oppression, and we explain our legal rights."

De la Cruz, 40, is a high-energy individual, highly gifted and articulate. He says he had no such direct contacts prior to being elected chairman. "But this backlash is making us all go for broke," he adds.

NTCA, established in 1971, five years later in Albuquerque, N.M. at its fourth annual convention established what it calls "Objective 10"—which calls for the "development of programs where possible to acquaint state and local subdivisions [of government] and citizens generally of the nature and scope of tribal sovereignty."

That objective at the fifth annual convention in Atlanta, Ga. this past May was reported on and De la Cruz, in the NTCA presidency for the beginning of his first term, was already primed for the concept.

NTCA calls its "new direction" a "community relations effort," according to staff members Fran Ayres and Aviva Kempner, who maintain contacts with Capitol Hill and the executive branches of government in Washington, D.C.

Kempner says this new effort, and the creation of an NTCA Speakers Bureau,

is "an attempt to match people geographically and subject-wise." Kempner is an attorney. Speaking junksies are now being arranged for numbers of willing tribal leaders and tribal people in and near their areas. And it's a week-by-week thing.

In August, De la Cruz took part in a person to person debate in Olympia, Wash. with C. Herb Williams, co-author of the controversial "Indian Treaties—American Nightmares." There, he says, "essentially through the debate, the students then asked Williams a number of questions. They said I pointed out fallacies and incorrect facts, and asked him if he was planning to rewrite the book."

In late summer, De la Cruz has also participated in conferences of the Western Attorneys General, National Association of Counties and the National Conference of State Legislatures. Into that mix he brings the legal nature, powers and range of tribal governments under law, and the result is a new level of political dialogue.

De la Cruz told the Yakima Nation Review: "It's not just a redneck environment. The reception I found was very open, and that's how I approach them. We have many points of conflicts, but I try to be a reasonable person."

Were there serious stereotypes about Indians among these groups? "These



NTCA'S AVIVA KEMPNER Monitoring movements of Congress

people are pretty familiar with the situations in their states," he said. "They know that much of what they say is just rhetoric—and you can point out the rhetoric. I don't lump all people together by any means."

NTCA currently is exploring contracts with a number of film production groups to develop a documentary on the area of legitimate tribal interests and backlash. It is also opening liaisons—together with the National Congress of American Indians and other groups—with a number of nationally represented groups. These are:

—Natl. Assn. of Counties (NACo): NACo has established an "Indian Affairs Task Force" to determine specific points of conflict and areas of clouded jurisdiction between the sovereign powers of tribes and surrounding county governments. NTCA has provided both speakers and position papers to the group, and contacts are continuing.

—Natl. Conference of State Legislatures: At a September meeting in Denver of NCSL, De la Cruz joined a panel exploring relations between states and tribes—one not totally defined in law yet—and discussed "agreements of cooperation" among the two political bodies.

—Natl. Coalition to Support Indian Treaties (NCSIT): De la Cruz was involved in early discussions for the new coalition and now sits on its Indian Oversight Board to monitor and advise.

"I look on that coalition as necessary for us to go to the wall with (any with any others) with the facts as we see them, and enlist them to stand by us, and we with them. People in the coalition are very serious people standing behind



treaty rights," he said.

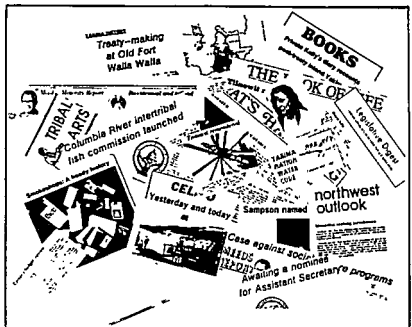
—Church organizational contacts: The Washington Inter-Religious Staff Council (WISOC), an organization of Christian churches and Jewish synagogues, has a Native American Task Force and a publication, "Impact." "Impact" is carrying the NTCA Speakers Bureau listings and topical areas of Indian concern for its national membership. Methodist, Lutheran and Roman Catholic groups are also being contacted.

—U.S. Congress: Legislation—both introduced and proposed—is the object of monitoring, evaluation and direct contact by NTCA's Kempner as staff legislative specialist. She is currently busy with information lines on the new Quinault treaty abrogation bill and the upcoming Nields omnibus Indian jurisdiction bill, as well as other important pieces of Indian-related legislation.

—Citizens communications groups: Media access, media distortions and "stockola" of media coverage are the direct concerns of a wide number of citizens' groups in the capital and outside it. NTCA, together with NCAI and the BIA information specialists, have already contacted the major TV networks and public television in these areas of access and "stockout," and contacts are continuing.

It's a different ballgame in 1977, and in part NTCA is making it happen.

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## AREA DIRECTOR ARTICHOKE:

# 'Forget the past and bury the hatchet—preferably in some Indian's head!'

BIA AREA DIRECTOR JOHN H. ARTICHOKE JR. delivered these now-famous remarks before the Federal Regional Council Conference in Carson City, Nevada on July 14, 1977. The observations are worth examination and scrutiny.

### [MOOD OF THE 1970s]

AS THE COUNTRY and its Indian tribes emerged from the unsettled era of termination [of tribes by the U.S. Congress] in the 1950s and 1960s a curious turn of events occurred. It was suddenly fashionable to be an Indian.

Wayne Newton strapped on a concho belt and reached back into his genealogy to tell everyone that he was a Cherokee.

Melvin Brando became a staunch advocate of the Indians and decided he would rather tell the Indian story than receive an Oscar.

Fashionable ladies from New York to Palm Springs did not consider themselves dressed to go out unless they were decked down with Indian turquoise jewelry. There was a craze to the word "Indian," and in less than a decade the magic all but disappeared.

THE AMERICAN INDIAN MOVEMENT (AIM) started largely as an Indian organization. Its leaders argued that the time was right for Indian activism and they reached boldly for the headlines in the daily newspaper and the nightly newscasts on television.

On November 2, 1972, a group of AIM supporters sacked the Bureau of Indian Affairs building in Washington, D.C. For nearly a week militant Indians occupied BIA headquarters, doing damage and making demands.

On February 27, 1973, many of these same activists took control of a small hamlet on my home reservation of Pine Ridge [in South Dakota]. The name of the hamlet is Wounded Knee. For 71 days the battle between Indian militants and the United States government continued.

WHEN IT WAS OVER, and the smoke had cleared, leaders of the takeover were arrested by a federal court even though only a small percentage of the Indian population agreed with AIM's revolutionary methods and hard line. The pages of newspapers throughout the country did not differentiate between those who believed and those who did not. They were all Indian.

Indians managed to stay in the public eye

through a series of court cases which are still going on as I stand here.

The Boldt decision giving Indians fishing rights in the Pacific Northwest, the Passamaquoddy and Penobscot claim to the state of Maine, Pyramid Lake's fight for better terms in Nevada, boundary disputes by the Utah and Oursy Utes in Utah and other tribes throughout the country. The list goes on and on.

### [THE BACKLASH FORMS]

AMID ALL OF THIS something happened. With the cries of "Red Power" still ringing in its ears, the dominant non-Indian society said "Enough!" The United States Congress listened to this one word: "Enough."

The grumbling of whites, particularly those living on or near Indian reservations, became louder. They formed groups, better known but no less powerful, to be reckoned with. From the local level, the groups grew to become statewide organizations and from these individual state groups came national organizations.

The Interstate Congress for Equal Rights and Responsibilities has become the prime voice on the national scene for this anti-Indian sentiment.

With a group of disgruntled ranchers and farmers in Montana and South Dakota leading the way, the group devoted carefully thought-out battle plans and marshaled their forces.

These people were something like the posse that stormed out of town in search of renegade Indians in the old Saturday afternoon western movies. But they weren't actors and their master plan was not silent motion with a great deal more sophistication than the gunlings of old.

Their first objective was to finance the battle. They quickly put together a roster of who-knows-how-many millions of dollars.

In effect, this money put a price on the head of every Indian in the United States. The Interstate Congress pleads differently, saying it is merely standing up for individual liberties. But the price is there just the same.

have gradually come to learn that the policies are being made concerning Indian affairs have a serious effect on their own lives.

The Interstate Congress was formed to speak out against these serious inequities. Any "war chest" that Mr. Artichoke refers to has been formed from the hard earned monies of the individuals of [ICERR].

Mr. Artichoke seems overly concerned with the Indian "tribal identity". All of the other people and races of this country consider themselves American. They bear all the rights of citizenship but also carry all of the responsibilities of it. All of these people have a different cultural heritage going back to their homelands which are different and varied. However, they do not insist on special privileges and immunities from laws and responsibilities of citizenship just because they are Swedes or Jewish or Black. If the Indian wants the rights of citizenship he should be willing to be treated equal without hiding behind the mask of "tribal identity".

MICHELLE PLATT  
St. Johns, Ariz.



### ABOUT THE SPEAKER

JOHN ARTICHOKE, Area Director for the Phoenix Area Office of the Bureau of Indian Affairs (BIA) since June of 1971, last April was named chairman of the BIA's Area Director's Steering Committee on Federal-Indian Relations. In that capacity he addressed the Federal Regional Council Conference in Carson City, Nev. last July. The remarks have been widely reprinted, and the ICERR is taking direct shots at him for those remarks. An Ogala Sioux, 47, he holds degrees in education from the University of South Dakota, where he also served as director of Indian education. He was BIA superintendent from 1963 to 1971 on the Northern Cheyenne, Papago and Colorado River Reservations. He is the author of two books.

### "INSIDIOUS MASTER PLAN"

Their ultimate goal is two-fold: One, destroy tribal governments and their relationship with the United States; Two, rid the American scene of Indian reservations.

Their master plan is insidious and their ultimate objective could be catastrophic.

For what will become of the Indian without his tribal identity? The term "Indian" is not his. It was applied to him by someone else. How a person feels about his tribal culture, his tribal traditions, and his tribal identity. So what have Papago, Navajo, Sioux, Washoe. . . What have you? We do not simply have Indiania.

When the Menominee Tribe in Wisconsin was terminated [in the 1950s], what did the people say? They said, "We are not white. We were Menominee. But there is no longer a Menominee Tribe. So what are we?"

The dissolution of Indian reservations is yet another ploy in the attempt to bring Indians into the mainstream of the dominant society by destroying the Indian land base. We have seen it all before.

The great experiment during the Allotment Era [from 1887 to 1934] cost Indian tribes 100 million acres of land and all but destroyed tribal government's ability to function. This policy was proclaimed by every thinking man to be a failure. Must we go through this again?

### [BATTLE IN HALLS OF CONGRESS]

To accomplish his goals and objectives, the Interstate Congress has chosen not to fight their battles in court, where the persuasive art of public relations is minimized, but in the halls of Congress.

The interesting thing about these latter-day bounty hunters is that they are conducting their fight in the name of justice.

In the name of justice they would undermine the single most important relationship of Indian tribes—a relationship with the federal government.

"Justice." It is a word Indian tribes are all too familiar with. And what would the Interstate Congress do with justice? They say—and I quote from their 24-page manifesto titled "Are We Giving America Back to the Indians?" "We cannot disaffirm the past nor can we change it. We must recognize that the past no longer exists and that we must face realities of the present. How much of the sins of our forefathers must we rightly bear?"

These are high-sounding words. It's an easy philosophy. Let's let bygones be bygones, forget the past, and bury the hatchet—preferably in some Indian's head!

But if you throw out the evilness, promises and the trust relationship which Indians believe to be good and just, then why not also dump the U.S. Constitution?

The Bill of Rights is a document written by a bunch of old fogies in white wig. It's history. Let's believe it.

I am being facetious, of course. But the hard fact of the matter is if the Interstate Congress has its way, the sins of their forefathers will seem as virtues by comparison. The problem is not so much that an

organization like this is reading history wrong. The problem is that these people are not reading history at all!

Their talk has all the flavor of genocide. Their intentions are exposed in terms of an unscrupulous land grab.

Because American Indian tribes are in peril it does not follow that they have to be paralyzed. The Interstate Congress and its followers are waging a sophisticated effort. Indians can answer with a sophistication of their own.

### [BARRAGE OF PROPAGANDA]

The Interstate Congress is laying down a barrage of public relations propaganda, attempting to sway public opinion with emotional taunts. Indians can combat this with the cool voice of reason.

America must never forget the proper place of the Indian in today's world. We must not forget the rights that are rooted in history and carved from the heritage of this nation.

Neither should the American Indians seek to widen the gap between himself and the dominant society. The gun-carrying Indians of Wounded Knee did not have the answer. Such a course of action is foolish and can only end in justifiable extinction for the Indian.

Indians should stand up for what is right and that which they believe in, as should every man, regardless of his color or creed. But Indians should remember that you cannot go out and spit in the eye of the majority population and expect to win in the long run.

Arrogance will never claim victory for Indian tribes. Tribes must stand up for their wise and right and willing to negotiate their problems as statesmen.

With sovereignty, with jurisdiction, with the rights Indians now possess, comes responsibility. Indians will not long have that which they have now unless they exhibit good management and good accountability in their programs.

Indians will not long fall if they assert jurisdiction and then fall victim to an inadequate or unfair court system.

Likewise, it is incumbent upon the federal government and federal agencies to fulfill their responsibility as statesmen in the operation of Indian programs and its dealings with Indians.

### [FEDERAL-INDIAN RELATIONS]

The care and feeding of the federal-Indian relationship is a two-way street. Both Indians and government need to be prudent and responsible. . . . Both sides must be everything and responsible.

Every Indian tribes possesses today can be taken away by the U.S. Congress. It is the knowledge that feeds organizations like the Interstate Congress for Equal Rights and Responsibilities.

But it does not have to happen.

If Indians understand the issues before them, if they are willing to work for better management and accountability at the tribal level, if they will look beyond the tribal level to the national level and let their voice be heard in the setting of national policy, then can yet be a happy ending to the long struggle of the American Indian.

# BOOKS

## Abrogate the treaties?

**INDIAN TREATIES: AMERICAN NIGHTMARE**  
By C. Herb Williams & Walt Neubrech  
Outdoor Empire Publishing Inc., 1977  
\$3.95

BY ATTY. TOM SCHLOSSER  
Indian Voice

"Indian Treaties: American Nightmare" by Williams and Neubrech is an impassioned attack on Indian sovereignty. It is a polemical account of litigation involving Indian tribes in recent years which argues for termination of treaty rights. It is a racist book, intended to make you angry at the Indians if you are not familiar with the facts, or angry at the authors if you are familiar with the facts they purport to tell.

The central misrepresentation upon which Neubrech and Williams base their book is the theory that Indian fishermen are destroying fish and game resources and that Indian litigation has left states powerless to protect the wildlife.

Both premises are blatantly false and the state, since the decisions of the U.S. Supreme Court in *Puyallup Tribe v. Department of Game* (1958) had the power to regulate all off-reservation fishing when necessary to protect the resource. This state power was upheld by the Boldt decision, because in the injunction of Mar. 22, 1974, the Judge provided that:

"Defendants may utilize procedures for making emergency regulations affecting taking of fish under their jurisdiction and control... emergency regulations are enforceable by the state upon filing with the court and service upon filing of the court and service upon the tribes affected..."

The authors distort the Boldt decision by asserting that the court permitted tribes to take their full share of on-reservation subsistence and ceremonial fish prior to setting aside the portion of the run needed for escapement. This hypothetical disregard of the needs of the fishery resources may be characteristic of the Department of Game's management of sport fisheries, but it is not an accurate description of treaty Indian fisheries management or the results permitted by Judge Boldt or the Court of Appeals.

The evidence presented in U.S. v. Washington after years of litigation by the state and the tribes showed that tribes both traditionally and in recent times had been careful managers of the fish resource. Fish stocks have been depressed only since the state of Washington has permitted severe environmental damage and overfishing by non-treaty fishermen to occur. Indian fishing has not endangered the resource. Although Indians have been blamed for the depressed salmon and steelhead runs since the decision in U.S. v. Washington in 1974, these runs come from brood years in which treaty right fishing has had no effect whatsoever. The low escapements, bad environmental conditions, and ocean mortality that has depressed present stocks have all occurred prior to the issuance of the Boldt decision.

Neubrech and Williams cite the example of the Skagit River steelhead run during the 1975-76 winter season as an example of over-fishing by the tribes. The authors, however, fail to point out that the sporadic stream surveys conducted by the Department of Game have produced no reliable evidence regarding the actual escapement of steelhead stocks during that year.

They have also neglected to point out that the tribes managed their steelhead fishery that year precisely as recommended by the Department of Game, that is, an intensive fishery was conducted on the entire part of the run, composed primarily of hatchery fish, and little fishing was conducted on the depressed wild stocks later in the season. The tribes took the correct share based upon the Department of Game's pre-season size estimates, as required by court order.

In seeking to justify their conclusions that all Indian tribes should be terminated, the authors rely upon a completely mistaken view of the legal status of Indian tribes. Rights possessed by tribal members by virtue of treaties signed by their tribes are not special rights based on race. They are rather rights which are incident to citizenship in a separate sovereignty—a sovereign Indian tribe. Indian tribes are political affiliations, not racial categories.

The U.S. Supreme Court has consistently recognized that special statutory treatment of Indians with treaty rights is not racial discrimination but is required by the United States' trust responsibility to tribes. State statutes and regulations which properly recognize treaty rights as distinctive have the effect of treating Indians not as a discrete racial group, but rather as members of a constitutionally recognized category of political entities.

The authors erroneously insist that the process of allotment of reservation land to individual Indians was not racial and expanded by the Indian Reorganization Act of 1934. In fact, allotment was forever halted by the IRA. The authors also argue that old federal legislation such as the Enabling Act and the Termination Acts of the 1950s represent the long standing and still existing policy of integrating Indians into American society and dissolving the Indian nation. There is, of course, no discussion of the Indian Self-Determination Act of 1975, or the numerous recent congressional enactments designed to strengthen Indian governments and tribal sovereignty.

This is not a book that one should read to find out the facts of the fishing rights controversy. If one can endure the racism and crude distortions of history however, it is perhaps one that should be read in order to understand the forces that have and the political pressure being generated by non-Indian sports groups and "states' rights" organizations. This book surely indicates the need for political dialogue, and education of the public by Indian tribes, if the termination legislation supported by these non-Indian groups is to be avoided.

## In Canada....

**SUNRISE ON MacKENZIE**  
By Dick Turner  
Hancock House, \$7.95  
Ottawa, Canada, 1977

PEOPLE MAY WONDER whether the backlash phenomenon against Indian peoples is as restricted to the United States alone. Canada's Prime Minister Pierre Trudeau and President Jimmy Carter have been dealing seriously on matters relative to the U.S.-Canadian natural gas pipeline from Alaska through Canada to the lower states and Native rights in Canada have posed serious blockage to some routes for the line. And in eastern Canada, treaty Indian lands are in conflict with the Mackenzie dam project.

A Canadian counterpart to "Indian Treaties—American Nightmare" is Turner's "Sunrise on MacKenzie." Turner insists that Indian treaty land claims were "settled in Canada many decades ago" with the treaty area system. There are, however, unsettled treaty areas in Canada's Northwest and Arctic which are providing the current blockage and he acts as if those treaties had no reality about them.

He also charges that "emotional liberals" in Canada are being used by Indians to gain land and "enormous cash settlements" for land that is not properly theirs. Turner claims that to use of modern methods of the past, and that non-Indian technology is the "best thing" that happened to today's Indians. "Sunrise" is the first major back-book to appear in Canada.



# INDIAN TREATIES AMERICAN NIGHTMARE

by C. Herb Williams  
and Walt Neubrech

Outdoor Empire Publishing, Inc.  
Seattle, Washington

*ICERR book's veneer of 'facts'  
cloaks thrust toward termination*

**ARE WE GIVING AMERICA BACK TO THE INDIANS?**  
By Internats Congress for Equal Rights & Responsibilities  
422 Main St., Winner, S.D. 57580  
1976, Free

Last year the now-famous "educational pamphlet" of the Internats Congress for Equal Rights and Responsibilities (ICERR) was prepared and published, then given nationwide circulation. Facts and figures concerning Indians from official publications of the U.S. government were compiled and structured to reflect a point of view—and what a view that is!

The cost-free pamphlet can be obtained at the above address describing the ICERR members' opinions and value judgments of Indians ranging from "boobie savages" to "members of the human race." Quite a choice.

ICERR as 90 of its own questions and answers them with figures and facts from the 1970s. One question asks: "Were't the Indians barked off to reservations and their land taken away from them?" They answer: "Yes, but you can't be not responsible for the terrible things their ancestors did to each other during their tribal warfare."

Another states: "Is your organization anti-Indian in any way?" Answer: "I object to your word 'anti-Indian.' It seems that every time someone asserts a legitimate right against someone of the Indian race, he is a bigot and anti-Indian."

This "educational pamphlet" has such notes as "nearly all Indian tribes kept slaves," and "we will always have the poor Indian to pity, because there will always be poor Indians."

Pamphlet notes assert "Indians have access to federal funds in the form of grants and free legal counsel!" But—needless to say—do blacks and Chicanos.

The pamphlet consists of a viper's tongue of prejudices, economic fears and protectionism, conventional stereotypes, mis-read statistics and population profiles, greed for natural resources, and clichés. One laughs at first, but this comic tragedy of shallow prose is, after all, a factual and literary

**Are We Giving America Back To the Indians?**



Continues Campaign For Equal Rights And Responsibilities

tragedy. It is an ideological tool for those who need to fill their prejudices with some ostensible content.

The "educational pamphlet" also interviews Billy Bipping, a Blackfeet rancher in Montana. "I am not a Benedict Arnold or an Uncle Tom!" claims Bipping, but yet he does not reflect Indian thinking.

ICERR, however, seems to fear Indians mastering the "white man's education." We were an educated people before the white man came, yet considered savage.

Chief Seattle of the Squamish, upon being ordered by the U.S. government to sell the tribe's ancestral territory perhaps put it best:

"How can you buy or sell the sky, the warmth of the land? Every part of this earth is sacred to my people. The sight of your rifles pains the eyes of the red man. There is no quiet place in the white man's cities. No place to hear the unfurling of leaves in spring or the rustle of insects' wings. The chatter only seems to insult the ears." What if he had heard rather like this?

# 'Third party interests,' Indians and Congress

## Three bills already victims of opposition

FORREST J. GERARD, Interior Assistant Secretary-Designate for Indian Affairs, last Oct. 19 in Salt Lake City, Utah chaired a panel of House and Senate professional staff members for the National Congress of American Indians to discuss the burgeoning political receding against Indian interests in the U.S. Congress. The situation has become more critical in recent months. He will head the OIA for the rest of the 1970s.

**DURING THE PAST SEVERAL YEARS,** particularly in the 93rd and 94th Congresses, a number of bills were enacted into law which formed the basis for a more constructive Indian policy. These included, among others, the Indian Finance Act, the Indian Self-Determination and Education Assistance Act, and most recently the Indian Health Care Improvement Act. Also, I believe the Congress demonstrated a clear repudiation of the termination policy by restoring federal recognition to the Menominee Tribe of Wisconsin.

Other positive bills affecting Indian tribes individually or collectively were approved by Congress during this era [from 1973 to 1974]. These measures were enacted into law part because of the favorable climate in Congress, and the willingness of key members in the House and Senate to support the legislation on a bipartisan basis....

**NOW WE BEGAN TO DETECT** a change in the winds during this period of time, however. .... I think part of it is attributed to the fact that Indians, Indian tribes, in pressing some of their ancient and temporary claims, began winning very favorable judicial decisions, as they relate to questions of jurisdiction and natural resources. And I think here is where some of the "backlash" began to emerge.

We did get involved during the 93rd Congress (1973-1974) with one bill which we had a great deal of outside resistance to the Indians interested in. In the 93rd Congress, legislation was introduced to authorize the expansion of the Grand Canyon National Park boundaries.

The Havasupai Tribe has lived for many years on the floor of the Grand Canyon. The tribe and their friends seized the opportunity to sponsor an amendment to that bill that would have authorized the addition of 165,000 acres to the Grand Canyon's land base. And the whole purpose was to give them the opportunity to move out of the canyon if they desired, to establish a village on the rim that would be more compatible for social development and so on.

**THE ENVIRONMENTALISTS,** who sort of look on parks and wilderness areas and other recreation areas as their private domain, opposed the Havasupai amendment.

A prolonged battle followed on that particular piece of legislation.

But it's an example of the outside, or 'third party' interest that I think we're going to have to be concerned about in the future. Also, this bill went to conference committee [for completion]. The difference between the House and Senate versions required that the two bodies get together to work out those differences, and we found that battle through conference, and even right down to the wire, before President Gerald Ford signed the bill.

**IN THE 94TH CONGRESS (1975-1976),** several bills failed enactment, and I want to identify three of them which will form the basis of a question, because I think they are illustrative of how Indian legislation can become captive to the third party interests that get involved in the legislative process.

*"These are the signs and signals that we see coming down the road. Less than candor with you would be dishonesty on our part."*

I refer to S.2801 specifically, which would have restored federal recognition to the Confederated Tribes of the Siletz in Oregon. I want to say that this was a straightforward bill, and the main objective on the part of the tribe was to obtain recognition so that they could begin utilizing some of the human services now available through the Bureau of Indian Affairs and the Indian Health Service to overcome the problems that have followed them since termination [in 1953]. They have a mineral land base, so it didn't mean bringing a lot of land back into trust status.

But there was a question of what their residual fishing rights are [in Oregon], and this contributed to some problems for that legislation.



CONGRESSIONAL EXPERT GERARD The meaning behind the winds of change

**THE NEXT BILL** I want to mention is S.2102—the NCAL Public Law 280 bill, which would have authorized Indian tribes and the U.S. government to reacquire jurisdiction that they gave up pursuant to P.L. 850 in 1951. We really did not look for enactment of that legislation in the 94th Congress. What we were aiming for was the development of a thorough hearing record [before Congress], then to try and build on that in the forthcoming Congress in 1977.

During the testimony from the [Ford] administration on Mr. G. 1976, both in refer and Justice Departments endorsed the concept of restoration. However, they expressed some reservations about the provisions of S.2010, and testified that they would be submitting a substitute bill to the Congress, and a time span of 30 days was mentioned.

**THE END OF THAT CONGRESS** has come and gone and that substitute bill never reached us, and there are some reasons for it. The so-called Interstate Congress on Equal Rights and Responsibilities. This is a non-Indian group, one of our adversaries who are opposed to Indians receiving jurisdiction. They're also looking at natural resources issues as well. They paid a visit to Washington, D.C., and I attribute the fact that the Ford administration failed to send that substitute bill to the Congress to the lobbying that ICERN was able to exert.

**THE THIRD BILL** is S.3298, which was addressed to the water rights needs of the

five central tribes of Arizona. Now again, we didn't really expect to enact this bill into law. It grew out of a set of overnight hearings on the lands that were conducted by the Senate Interior Committee just about a year ago.

And everything in those overnight hearings pointed to a negotiated legislative settlement to resolve the issues surrounding those five tribes and their water rights. The bill was introduced by Sen. Edward M. Kennedy, D-Mass., and others, and when we attempted to hold hearings on the legislation in August of 1976, the opposition to that legislation was able to shoot us down on procedural grounds.

**WE WANT TO EXPLORE** why those bills ran into trouble, because we think the more serious are going to influence the legislative process in the 95th Congress (1977-1978)....

It is not my purpose to appear to be a prophet of doom. This is the atmosphere in which we [in Senate and House staffs] have worked. These are the signs and signals that we see coming down the road. And we think that less than candor with you would be dishonesty on our part. But I don't really consider it to be that bleak a prospect, and I'll tell you why.

**THE INDIANS HAVE,** I think, really two things going for us, Number 1, whether or not the so-called Inertentia Congress on Equal Rights and Responsibilities—and I want to say that I'm always amused that those groups always play some high-sounding label on their opposition organizations—whether or not they want to accept it, there is a clear legal basis underlying federal-Indian relations.

And every time a state or local unit of government wants to unilaterally attack jurisdiction on natural resources of tribes, more often than not the courts uphold the Indians' legality. I think we have evidence of that in the Boldt, Oliphant and Bryant court decisions and a number of other cases. We've lost some, but maybe those were cases that never should have been tested.

**SECONDLY—**and this should be alluded to also—there is still a favorable climate, in other words, goodwill, in the Congress. But I think what this places on our shoulders, individually and collectively, is the responsibility of telling our story. We're going to have to choose our issues carefully. We're going to have to perhaps put a little extra emphasis into our legislative priorities, and I don't think we should be disappointed if it may take a couple of two-year Congresses to get some of this major legislation enacted. That's the history of moving complex and complicated legislation through the Congress.

## Objective analysis rather than anger

**THE 'INDIAN SPEAKS'** by the Confederated Salish & Kootenai Tribes (Char-Koosha News, Flathead Sub-Agency, Dixon, Mont. 1977, \$1.00

BY CAROL CRAIG

"Concerns seem to be to keep the Indian dependent on handouts, keep in the ghetto-like segregated, separated life of the reservation where the tendency is to stagnate."

**THAT'S ONLY THE BEGINNING** of a pamphlet put out in 1976 by the group Montanans Opposing Discrimination (MOD) in 1976, with credit for the "information" going to the Interstate Congress for Equal Rights and Responsibilities (ICERR).

That pamphlet, entitled "Are We Giving America Back to the Indians?", deals with a series of questions by an unidentified interrogator followed by statements written as though they were factual responses to the questions. The pamphlet appears systematically biased against Indians—whether intended or not.

**IN RESPONSE** to the pamphlet, its questions, answers and observations, "The Indian Speaks" is an educational pamphlet subsequently published by the Char-Koosha News, a widely respected Indian newspaper of Montana's Confederated Salish & Kootenai Tribes, to correct false impressions and erroneous information which the ICERR document creates.

Answers totalling 90 in "The Indian Speaks" go into detail with each and every question in the MOD-ICERR pamphlet. Most are "leading questions" which represent either thinly disguised or obvious efforts to manipulate the gullible reader into a position critical of Indian people and Indian rights.

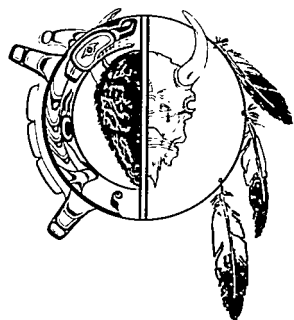
**IN ONE QUESTION** the MOD-ICERR pamphlet asks whether the tribal leaders represent the whole tribe. "The Indian Speaks" explains that there is variation in leadership which applies basically to leaders chosen to represent any group of people and pertains to leaders everywhere—including U.S. Presidents.

Every question answered is also a lengthy response explaining carefully the Indian way of life, respect the Native people have for the land, their people, their elderly they care for instead of sending to nursing homes, and other aspects of life Indians have lived for centuries and continue to live.

Other detailed explanations and answers deal with the 1974 Boldt fishing rights decision, hunting and fishing rights of the Indian people, tribal land status, and the now-notorious Billy Hignippan, a full-blood Blackfeet who lives in Glacier County, Mont. and who owns a ranch with between 2,000 and 3,000 head of cattle.

And the best response the book gives is this, beribboned: "The Indian Speaks" explains that there is variation in leadership which applies basically to leaders chosen to represent any group of people and pertains to leaders everywhere—including U.S. Presidents.

THE INDIAN SPEAKS



A RESPONSE TO THE M.O.D.A.C.E.R.R. "EDUCATIONAL PAMPHLET"

## BLACKFEET DISSIDENT:

'I think  
reservations  
should be  
terminated'

**BILLY BIGSPRING, a full-blood Blackfeet rancher in Glacier County in Montana, was interviewed by the Interstate Congress for Equal Rights and Responsibilities (ICER) last year, and two pages of that question-and-answer interview conclude the pamphlet "Are We Giving America Back to the Indians?" Other Indians are charging that he has disappointed himself from his tribe and has taken a terminationist posture on tribal assets and security. Bigspring's problems with his own council came when he wanted to sell his land, then to sub-divide those lands which lie near the sacred mountains and area of the Blackfeet Tribe. His is a totally individualist turn of thought.**

**INTERSTATE:** Mr. Bigspring, could you tell us something about your background and why you agreed to speak with us?

**BIGSPRING:** I suppose you wonder what I'm doing here, an Indian with Indian problems. I have a ranch in Glacier County and run between 2,000 and 3,000 head of cattle. I have never been on welfare or worked for the Bureau of Indian Affairs or the tribal council. I am not a Benedict Arnold or an Uncle Tom. What is good for me is good for my tribe.

**INTERSTATE:** We have been told that the tribal business council was trying to stop you from selling your land.

**BIGSPRING:** Yes.

**INTERSTATE:** Is it fee patent land?

**BIGSPRING:** Yes.

**INTERSTATE:** Have you had any trouble over water rights?

**BIGSPRING:** Yes. The tribe said they had the water rights. Without water your land is worth nothing. They could wipe me out in two weeks.

**INTERSTATE:** Do you have water rights to your land?

**BIGSPRING:** Yes. I have them on my leases, too, because I filed them.

**INTERSTATE:** Do you think the water belongs to the Blackfeet Reservation?

**BIGSPRING:** I think the water belongs to the land owner. If the individual land owner wants to sell his land, the water should go with the land. Otherwise, the land won't be worth very much. In fact, without the water rights, you couldn't give the land away.

**INTERSTATE:** If you feel you are a full citizen, how do you feel about recent bills introduced for the Indians?

**BIGSPRING:** They are no good. The Senators don't do any research. The reason some of these outrageous Indian bills get passed is because our Congressmen and Senators all have a Blue Collar feeling because the old word is out that we took the poor Indian's land away so we would owe him something. So some foolish bill comes along and they pass it. They don't do any research on it to see if it is good for both sides, and they don't have to live with it because they are back there and we are out here. Let's put it this way: They are not on the reservation.

**INTERSTATE:** How do you feel about the American Indian Movement (AIM) leaders who caused all the destruction at Wounded Knee?

**BIGSPRING:** They should have been jailed.

**INTERSTATE:** Since you are by birth a member of the tribe, are you subject to the tribal court?

**BIGSPRING:** Yes. I am also a taxpayer, so it works both ways.

**INTERSTATE:** What is your opinion of the tribal court system?

**BIGSPRING:** I don't think we should have them. We have a heck of a time living by the laws we have now, state and federal. Why should we have more?

**INTERSTATE:** Do you think you can get justice from the tribal court?

**BIGSPRING:** No. You have to be friends with the tribal leaders. If you are, you can get by well.

**INTERSTATE:** Do you think tribal affairs should be conducted only by Indians?

**BIGSPRING:** No. We are all in this together and should live under one set of laws. I think it is very important that the non-Indians who live on the reservation be involved in its decisions because whatever happens on the reservations can affect them.

**INTERSTATE:** What do you think about terminating the reservation status of Indians?

**BIGSPRING:** I think the reservations should be terminated. I'm for it 100 percent.

## When does an injustice become old enough to ignore?

ALBUQUERQUE, N.M.—A new 40-page softcover booklet covering the contents, rationale and reasonableness of contemporary American Indian concerns is being compiled by Phillip Samuel Deloria for the National Congress of American Indians (NCAI), and it will be published with illustrations in late summer for nationwide distribution.

"Basically," says Deloria, "it will be a non-technical booklet designed to describe to the average American reader what the whole discussion concerning Indians is about."

"The book will distinguish between so-called 'pull' arising from events in the past,

and what people can legitimately do today, particularly in the area of what Congressman Lloyd Meeds calls "state Indian claims." It will attempt to answer the question "When does an injustice become old enough to become okay to ignore?"

"Indians are not asking the public or the federal government for everything by winning every argument or upholding every claim. We are just seeking a fair chance to provide our side with the appropriate forum. But our new [backlash] opposition is changing the rules to prevent us even from 'getting our time at all.'"

Deloria says the book will be divided into three sections.

The first section will explore the areas of prime rights Indians are discussing, and their self-defined methods to assure protection of these rights of various sorts.

"The second section will discuss the 'reasonableness' of these rights, and current efforts by some groups to keep these claims away from the courts and denied by some of other opportunities to resolve the claims matter.

The last section, says Deloria, will explore the biblicoth that "Indians are America's nobility, a privileged class." He says this section will attempt to specify what the nature of the special status of Indians consists of—including full dimensions of so-

called privileges and liabilities.

Ordering procedures and costs of single and bulk copies can be obtained from the National Congress of American Indians, Suite 700, 1430 K St. NW, Washington, D.C. 20005. Interested persons may call NCAI at (202) 347-9520.

Text is authored by Deloria, a Standing Rock Sioux and director of the American Indian Law Center at the University of New Mexico. It will be illustrated by Charles E. Trimble, Ojibwa Sioux executive director of NCAI and a prize-winning artist.

## BIA's seven 'fact books' being drafted

PHOENIX, Ariz.—A series of seven special publications concerning select American Indian issues will be distributed nationally to tribes and media this September by the Bureau of Indian Affairs (BIA) Area Directors' Steering Committee on Federal-Indian Relations.

The publications were authorized last

Apr. 29 at the formation of the committee in Washington, D.C., an ad hoc policy group chaired by BIA Phoenix Area Director John Artchoker, Ogala-Winnebago.

Texts of the seven publications are being prepared by writers both inside and outside

of the federal government. Text coordinator of the series is John Sylvester, rights protection specialist for the Phoenix office.

Sylvester told the Yakima Nation Review the "fact books" will cover the seven topics of Indian water rights, government-to-government relations, Indian citizenship in tribe, state and nation, natural resources of tribe, tribal jurisdiction within exterior boundaries of reservations, Internal organization and responsibilities of the BIA, and land and other legal claims.

The "fact books" will be published at the Haskell Indian Junior College in Lawrence, Kan. in late summer and early fall.

Stimulus for the new series is the burgeoning national climate of "practical responsibility" underway against Indian interests. The BIA has a federal "trust responsibility" for the protection of Indian people, their rights and resource holdings.

Members of the Area Directors' Steering Committee are Chairman Artchoker of Phoenix; James Canan, Billings, Mont.; Vincent Little, Portland, Ore.; Ronald Esquivara, Albuquerque, N.M.; George Goodwin, Minneapolis, Minn.; and Harry Rainbolt, Eastern Tribes.

Each publication will be about 40 pages in length.

## Does America understand Indians?

BOOK TO APPEAR is a new 40-page booklet prepared by the National Congress of American Indians explaining the lower core of Indian commitments in the 1970s, the background of Indian claims and the procedures and steps Indians are utilizing today to achieve these aims. Are there both privileges and liabilities in this picture? How reasonable are these claims? For publishing and pricing information write or call NCAI.

SUITE 700, 1430 K ST. NW, WASHINGTON, DC 20005  
(202) 347-9520



## THE INDIAN SPEAKS

AN ANSWER TO THE GROUP  
MONTANANS ON DISCRIMINATION  
BY THE CONFEDERATED  
SALISH & KOOTENAI TRIBES



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CONCERNS OF THE 1970S

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Exhibit No. 7

Witnesses;

FRANCIS T. WOODCOCK, (REAL)

STATE OF WASHINGTON, COUNTY OF YAKIMA, SE:

I, C. H. HINMAN, a notary public, do hereby certify that on this 2nd day of January 1915, personally appeared before me Francis T. Woodcock a widow, to me known to be the individual described in, and who executed the within instrument and acknowledged that she signed and sealed the same as her freewill voluntary act and deed for the uses and purposes therein mentioned.



Given under my hand and official seal this second day of January A. D. 1915.

C. H. HINMAN, Notary Public  
in and for the State of Washington, re-  
siding at North Yakima, Wash.

Filed for record at request of Yakima Abstract & Title Co., Jan 27, 1930 at 11:06 A. M.

Recorded by L. B.

Ruth L. Hutchinsan, County Auditor

Compared by 27-2-15

Paul Briggs Deputy

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Fee No. 177269

PATENT

UNITED STATES OF AMERICA

TO

MARK WILSON

733121  
71243-17 I. O.  
3362

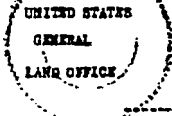
THE UNITED STATES OF AMERICA, TO ALL TO WHOM THESE PRESENTS SHALL COME; GREETING:

WHEREAS, An Order of the Secretary of the Interior has been deposited in the General Land Office, directing that a fee simple patent issue to the claimant Mark Wilson, an Indian of the Yakima Reservation, for the northwest quarter of the southeast quarter of section eleven in township twelve north of range eighteen east and the lots nine and ten of section seven in township twelve north of range nineteen east of the Willamette Meridian, Washington, containing seventy nine and eighty hundredths acres.

NOW KNOW YE, That the United States of America, in consideration of the premises, has given and granted and by these presents does give and grant unto the said claimant and to the heirs of the said claimant the land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature, thereto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; and there is reserved from the lands hereby granted, a right of way therein for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I Woodrow Wilson, President of the United States of America, have caused these letters to be made Patent and the seal of the General Land Office to be hereunto affixed. Given under my hand at the city of Washington, the second day of November in the year of our Lord one thousand nine hundred and seventeen and of the Independence of the United States the one hundred and forty second.

Recorded; Patent number 605984



By the President; Woodrow Wilson.

By H. P. LeRoy, Secretary

L. Q. C. Linnar, Recorder of the General Land Office.

Filed for record at request of Yakima Abstract & Title Co., Jan. 27, 1930 at 11:08 A. M.

Recorded by L. B.

Ruth L. Hutchinsan, County Auditor

Compared by 27-2-15

By Paul Briggs Deputy

WARRANTY DEED  
 MARY WILCOX, ET UX  
 TO  
 JOSEPH P. SCHREINER

The grantor, Mary Wilcox and Maud Wilcox, husband and wife, and who have been such husband and wife at and ever since acquiring title to the real estate hereinafter describe of Yakima, the County of Yakima, in the State of Washington, for and in consideration of the sum of Ten (\$10.00) Dollars, and other valuable considerations in hand paid, convey and warrant to Joseph P. Schreiner, whose wife is Louise Schreiner, the following described real estate, to-wit:

The Northwest Quarter of the Southeast Quarter of Section 11, Township 12 North, Range 18, E. W. M., together with the water, water rights, appurtenances and improvements thereunto belonging, consisting of U.S.I.S. water right, subject to maintenance charge thereunder due April, 1930, in the amount of \$50.00, and subject to Federal Land Bank mortgage dated August 16, 1922, recorded in Vol. 159 of Mortgages, page Auditor's Fee No. 280866, in the amount of \$3200.00, of which \$2000.00 remains yet to be paid, and which with said 1930 maintenance charges grantee assumes and agrees to pay as a part of the purchase price, and subject to an oil and gas lease in favor of Miocene Petroleum Co., a corporation, covering the above described real estate only.  
 Subject to reservations for ditches and rights of way in favor of the United States Government appearing in the Patent.  
 Situate in the County of Yakima, State of Washington.

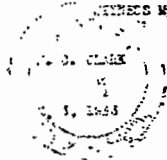
Dated at Yakima, Washington, this 8th day of April, A. D. 1930.

MARK WILCOX  
 MAUD WILCOX

STATE OF WASHINGTON, COUNTY OF YAKIMA ) SS.

BE IT REMEMBERED, That on this 8th day of April, A. D. 1930, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Mark Wilcox and Maud Wilcox, husband and wife, and who have been such husband and wife at and ever since acquiring title to the real estate herein described, to me personally known to be the identical individuals described in and who executed the within and foregoing instrument and who personally acknowledged to me that they signed the same as and for their own free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESSES My hand and notarial seal the day and year in this certificate first above written.



W. B. CLARK  
 Notary Public for Washington, residing at  
 Yakima, Wash.

Filed for record at the request of Joseph P. Schreiner, April 15, 1930, at 5:26 P. M.

Recorded by RC

Examined by WMB & RCH

FRED T. BRIGGS, COUNTY CLERK

By Marian M. Briggs Deputy



*Exhibit No. 8***LOWER ELWHA TRIBAL COUNCIL**

GERALD CHARLES, SR.  
*Chairman*

CHARLES SAMPSON, SR.  
*Vice-Chairman*

VERA J. CHARLES  
*Secretary-Treasurer*

105½ EAST FIRST STREET  
PORT ANGELES, WASH. 98362  
(206) 457-1188 or 457-1189

March 29, 1976

To the Honorable the Commissioners in and for Clallam County

A PROPOSAL FOR MUTUAL ASSISTANCE AND COOPERATION BETWEEN THE LOWER ELWHA TRIBAL COMMUNITY AND CLALLAM COUNTY

Please find attached a proposal for Tribe-County assistance and cooperation. We sincerely hope you will agree with us that both of our local governments will benefit substantially from a comprehensive network of commitments to the general well-being of this area and all of its residents, and that the time has come for abandonment of a single-minded reliance on a federal intermediary in our local affairs.

This proposal flows from our belief, which we anticipate you share, that the most efficient and satisfactory institutions of government arise out of negotiation, rather than rigid adherence to traditional or legalistic divisions of power. While retaining their independent sovereign character unimpaired, governments should be free to arrange sharing and exchanges of powers. Such arrangements



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should be limited only by the parties' constitutions or charters, and their right to revoke or reassume whatever they may delegate to one another.

This proposal is not a complete plan of action. It is intended merely to establish several general principles upon which specific negotiated arrangements may be based. We therefore pray the Commissioners to:

1. Endorse these principles on behalf of Clallam County;
2. Authorize and require appropriate employees or officers of the County to meet with the officers of the Lower Elwha Tribal Community for the purpose of drafting agreements and ordinances consistent with these principles, to the degree of specificity that may require to give them legal effect; and
3. Require the return of, and take official action on such agreements and ordinances within ninety days of this date.

Owing to the immediacy of this matter in particular, we also respectfully pray the Commissioners to:

4. Endorse the tribal consolidation area and flood control measures herein proposed by the Lower Elwha Tribal Community, and indicate support for federal financing of these projects on behalf of Clallam County.

How will the County benefit from Reservation development?

The Lower Elwha Reservation currently occupies an area of 372 acres at Angeles Point, within the exterior boundaries of Clallam County. Organized in 1968, several weeks after the amendment of Public Law 83-280 to require tribal consent to extensions of State jurisdiction, the Lower-Elwha Tribal Community is not, like other tribes in Washington, subject to limited State authority. Any extension of

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State powers to this Reservation, revocable or irrevocable, must by federal law be consented to by the tribe.

The economic condition of the Lower Elwha community is critical. With more than three hundred members, the tribe cannot offer stable employment or adequate housing. The entire Reservation is subject to frequent flooding, and has no development potential until flooding has been controlled. Tribal revenues barely meet administrative costs, and federal funding of essential services such as law enforcement and public health is discretionary and inconstant.

The impact of this situation on Clallam County is substantial. First, several County residents live or own property near the Reservation, and are therefore directly affected by the inadequacy of flood control, law enforcement, and public health and safety. Second, the City of Port Angeles, the county seat, is the principal retail and commercial center for the Reservation, and Reservation poverty means less consumer income for Port Angeles merchants. Third, federal law requires the States to contribute to federally-subsidized public assistance programs (such as AFDC) which support indigent tribal members. This State contribution derives of course from State and local taxes.

Economic improvement of the Reservation will therefore

- (a) increase the value of non-tribal lands near the Reservation;
- (b) place more disposable income in the hands of tribal members for use in the City of Port Angeles and elsewhere in Clallam County; and
- (c) reduce State and local fiscal responsibilities.

How will the County benefit from intergovernmental agreements?

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Because of the rather unique legal character of the Lower Elwha Tribal Community, neither the County nor the State have any control over Reservation activities, just as the members of the tribe, acting through their own government, have no control over the activities of the State and County. This results in two kinds of embarrassing, and costly problems:

- (a) environmental "spillover" and
- (b) jurisdictional (law enforcement) conflicts.

An example of environmental spillover is where the tribe develops a water supply system that affects the same aquifers the City and County hope to develop for future use. Or, where County zoning authorities grant a variance for an industrial operation that may affect water or air quality on the Reservation. The Reservation is too closely situated within the County (and on one of its major rivers) for environmental impact to be limited to one or the other in any case.

The tribe could appear as a private landowner in SEPA proceedings, and the County in NEPA hearings on tribal projects, but we believe that a much better system of coordination looking forward to the future, rather than limited to projects already initiated, is indicated. For this purpose we propose a joint planning council, with the purpose of serving as liason between tribal and County planning agencies. Although we do not feel the time is yet right for an agency with licensing or regulatory powers, we do recommend that the council be authorized by both governments to endorse one another's programs to State and national agencies, and to prepare joint statements, proposals, and appear jointly in hearings in matters of mutual interest and responsibility. We suggest that any project of one government that the council finds will not result in net loss to the other, be advanced by both. The council should meet on all projects involving water, transportation, communications,

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power, and zoning on and in the vicinity of the Reservation.

If consultation on environmentally-sensitive activities should fail, and one government proceeds, without joint endorsement, to develop a project harmful to the other, the council should have authority to assess the harm. We anticipate this process would prove preferable to adversary proceedings in a court of law.

Jurisdictional conflicts present a much more pressing and explosive problem demanding a much tougher solution. The County presently enjoys extensive cooperation with the law enforcement authorities of neighboring counties, just as Washington State enjoys the assistance of its neighboring States, and, via federal agencies, with the Canadian authorities. All of this proceeds from express written agreements, chiefly extradition treaties and reciprocity laws. It is a remarkable fact that the County and tribe have less of a duty to assist one another than either has to assist federal agents. Although we have been fortunate in the cooperativeness of the current Sheriff, neither tribe nor County have for the present any binding arrangement for cooperation.

The chief elements of interstate law enforcement cooperation, which we strongly urge on your consideration, are

- (a) reciprocal authorization of "hot pursuit" by officers;
- (b) "long-arm" agreements for extraterritorial services of process in sensitive civil areas such as child support and traditionally hard-to-prosecute areas such as traffic violations;
- (c) mutual extradition and/or service of extraterritorial warrants;
- (d) routine access to one another's correctional, rehabilitative and other law enforcement facilities; and

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(e) reciprocal enforcement and execution of the judgments of one another's civil courts.

None of these are now required of tribes by federal law, nor have the State or County committed themselves to such a policy for non-Public Law 83-280 tribes.

The Lower Elwha Tribal Community is also pursuing the possibility of an agreement with the State Department of Social and Health Services for points (b), (c) and (d), above, for the better integration of tribal and State social services programs.

Obviously, in a territory so small, the tribe suffers from severe limitations on its ability to execute its laws for the protection of its residents and neighbors. At the same time, the substantial flow of commerce between the tribe and cities and towns of the County results in a risk of non-enforcement of State and local laws against tribal members returning to the Reservation. This leads to considerable insecurity of property and investments affecting the citizens of both communities. County citizens avoid investments on the Reservation, interest rates for Indians increase, and the welfare burden grows heavier.

Mutual assistance and cooperation can therefore reduce some of the disputes, uncertainties, costs and delays in the current state of affairs. It can moreover serve to improve the overall quality of law enforcement, as well as other services, for both communities.

For example, tribal officers and social service personnel may be more effective in dealing with Indians for some purposes, than County personnel. On the other hand, the County has facilities and expertise not available to the tribe. The tribe would put its personnel at County disposal, in return for sharing of particular facilities and employees. This would

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- (a) improve the effectiveness of services for both communities, by increasing sensitivity; and
- (b) reduce the costs of duplicating facilities and personnel.

It would be appropriate to draw upon the Intergovernmental Personnel Act of 1970, governing federal-state sharing of resources, as a model for tribe-county sharing.

The tribe also has access to special funding sources, and power to subcontract with those funds. Among other things, Public Law 93-638 authorizes tribes to assume control of Bureau of Indian Affairs offices, retaining the federal budget for the office, but determining personnel and local program policies. A tribe might therefore contract out a Bureau social services office and recontract it to the County, thereby strengthening existing local programs and organizations.

Similarly, it is hoped that the County will cooperate with the tribe for a more equitable allocation of federal funds channelled through the County government but designated for Indians. This includes Johnson-O'Malley and Impact aid to public schools.

Why should the County support tribal land consolidation?

The tribe asks for immediate County endorsement and support of its efforts to consolidate a developable territory at Angeles Point and to control flooding there. This project will necessarily reduce the County property tax base. It will, however, more than adequately compensate for that loss by augmenting the business and industry of the County.

The tribal development plan, which is already partially funded by the United States,

Suggested form for County endorsement:

We, the Commissioners of Clallam County recognize and support the efforts of the Lower Elwha Tribal Community to consolidate a developable Reservation area and control flooding thereon. Having considered at the tribe's request, the impact of tribal consolidation and flood plain management within the limits proposed and agreed to by its officers, we have concluded that it will result in net benefit to this County.

We are moreover satisfied of the tribe's intention to cooperate fully with the County in environmental concerns, law enforcement, and human services as a part of its general development plan. We therefore urge the agencies and representatives of the State and the United States to endorse, promote, and expedite funding and approval for this tribe's consolidation and flood control programs.



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is a comprehensive approach to Reservation self-sufficiency. It seeks primarily to take advantage of the tribe's one renewable resource, the Elwha River salmon fishery, and to use it to capitalize small-scale cooperative agricultural development.

The tribe plans to begin with a fish-rearing facility on Angeles Point with a one to two million spry release capacity. This would augment the new State hatchery on Elwha River by as much as 30%. At full capacity the tribe will collect more than \$60,000 per annum net revenue by harvesting the escapement, to be applied to wages for tribal members in the fisheries enhancement program. The benefit to State fishermen is anticipated to be much greater, since the escapement fished by the tribe is not expected to exceed 1% of the releases. The remainder will be available for harvesting in the Strait and in the open ocean.

Moreover, the \$60,000 or more in wages thus generated will be spent primarily in Port Angeles. An important consideration here is that tribal housing and medicine are federally subsidized and there are no tribal taxes. Most wage income will therefore be disposable on food, clothing, and durable goods available from Port Angeles merchants.

Depending upon water quality and supply, and upon the possibility of developing specially-timed runs of salmon, wages payable by the tribal fishery could be vastly increased. Two to three times as many fish might be produced after capital expansions in the tribal facility, financed out of fishery revenues. Increases in escapement on the order of ten times are possible by timing. Timing may somewhat reduce the contribution of the tribal facility to the non-Indian harvest in the Strait, but since the tribe will be harvesting at lower cost (using fixed equipment)

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the total net income of the area fishery will increase, and the share of that income going to persons in Clallam County, for spending in Clallam County, will increase substantially.

Fishery enhancement is impossible, however, without flood control on Angeles Point. All possible development sites on the Reservation, indeed the entire Reservation, are subject to flooding to a degree completely inimical to fish-rearing operations.

It would be a relatively simple matter to control flooding by means of a short set-back levee. Funding of the construction itself will not pose any particular difficulties with federal assistance or the commitment of tribal credit. Unfortunately, the area that would have to be occupied by the levee is largely privately owned and part of the tax base of Clallam County. The tribe could simply purchase this property, which is entirely undeveloped, but it would lack jurisdiction or governmental authority on it. To enjoy the control and regulation of the property necessary for effective flood management, the tribe would have to include it in the Reservation. The principal effect of this on the County would be loss of tax revenue.

Such annexations are provided for by federal law (25 U.S.C. 465, 467). Under the circumstances the tribe could proceed without County authorization. However, we consider it consistent with a policy of cooperation, and conducive to future cooperation, to request County endorsement and support before seeking funding and specific authority from the United States.

We do believe it is in the County's interest to support this project. We estimate that the taxes on the affected property do not now exceed \$2500, whereas tribal

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acquisition of the property will ultimately bring at least \$60,000 of additional income into the County, as well as indirectly benefitting the County by augmenting the State's fish stocks and reducing the Reservation's demand for services.

Flood control will have further ramifications. Not only will it incidentally protect several developed privately-owned properties on Angeles Point, which will continue to be taxed by the County and at presumably higher assessments, but it will render most of the Reservation arable. Currently, only about 40 acres on Angeles Point are being used for agricultural purposes. After the tribe's flood control program, at least 800 acres will be safely developable for pasture or farmland.

As part of its general development program, the tribe therefore also proposes to acquire some, but not all of these newly drained lands for the establishment of agriculture. Over and above the 200 acres necessary for location and control of the levee, the tribe hopes to purchase and include within the Reservation at this time approximately 300 acres of this protected land. Once again, the trade-off of taxes and income are favorable for the County. Less than \$2500 in taxes would be involved, in return for establishing six to eight families in permanent agriculture.

Every effort would be taken to protect the rights of non-Indian landowners in the area. No land would be acquired except by purchase, and landowners will benefit from flood management if they do not sell.

At the same time, the tribe recognizes the County's interest in placing reasonable limits on tribal territorial growth. For that reason, the tribe is prepared to

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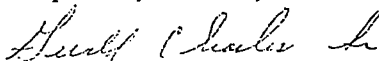
commit itself to a specified maximal consolidation area (this would be understood to apply only to lands acquired by the tribe and included in the reservation; the tribal constitution includes within the reservation only lands held by the tribe as a whole.) notwithstanding its power to extend itself further, if the County will endorse and support federal financing of consolidation within this area. This maximal area is approximately twice the size of the area now occupied by the tribe or proposed for acquisition in the immediate future. It therefore represents a limit to acquisitions not likely to be made for ten to twenty years or more.

For this maximal consolidation area, the tribe proposes the following:

That part of Sections 27, 34 and 35, Township 31 North, Range 7 West, W.M., and that part of Sections 2 and 3, Township 30 North, Range 7 West, W.M., lying between: on the north, the Strait of Juan de Fuca; on the east, the Elwha Road; on the south, the north line of the tract owned by the City of Port Angeles in Section 3 aforesaid, as extended due east and west to meet the other bounds of this description; and on the west by the bluffs forming the west bank of the Elwha River.

This area comprizes approximately two and one-half Sections, or about 1500 acres, and includes approximately 420 acres already made Reservation lands or previously purchased by the tribe. The potential tax loss to the County from such small acreage is slight, but the gains from tribal economic self-sufficiency within this territory, from fisheries and agriculture, would prove substantial.

Respectfully submitted,



GERALD CHARLES, SR., Chairman

# FERNDALE SCHOOL DISTRICT

Dr. Dennis L. Peterson  
Superintendent

James C. LaRose  
Business Manager

Dr. Janice B. Marchbanks  
Administrative Assistant

Post Office Box 698

Ferndale, Washington  
98248

(206) 384 - 3551

November 2, 1977

Office of General Counsel  
1121 Vermont Avenue N.W.  
Washington, D.C. 20425

Dear Sirs:

Pursuant to my telephone conversation of October 20, 1977 with Mr. Michael Walker, attorney for the Civil Rights Commission, the enclosed report is submitted for formal entry into the record of the hearing on Washington State Indians held October 19-20, 1977 in Room 514, at 915 Second Avenue, Seattle Washington. At the hearing held Wednesday, October 19, 1977,

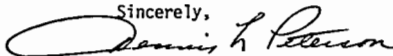
1. Individual persons and tribal officials from the Lummi area alleged that federal funds were not being administered by the Ferndale School District according to law and inferred that the District was not meeting the educational needs of Indian children.

2. Mr. Dan Raas, attorney for the Lummi Indian Tribe, entered into the record an exhibit concerning the Johnson O'Malley program contractual negotiations which have been underway between the Lummi Indian Tribe and Ferndale School District for a period of fifteen months and other materials related to Indian education.

3. Lummi Tribal officials and/or other Lummi Tribal members alleged that Ferndale teachers were prejudiced towards Lummi students; that some individual teacher had said that "Indians came from clamshells"; that teachers in the Ferndale School District were insensitive to Indians; and cited an example of a student being kicked by a teacher.

Since, as the representative of the Ferndale School District who testified at the October 19th hearing, I had little idea of the direction the hearing would take and was not specifically asked in advance to provide data of any kind, this report is being submitted for formal entry into the record of the hearing to provide information which could not be submitted at the actual hearing.

Sincerely,



Dennis L. Peterson  
Superintendent

ap

Enclosure

BOARD OF DIRECTORS

Carl Stock • Norm Robertson • Wayne Larson • Hugh Locker • Nelda Sigurdson

A SUMMARY OF INDIAN EDUCATION IN THE  
FERNDALE SCHOOL DISTRICT  
1966 - 1977

Submitted For Formal Entry Into The Record of The  
Hearing on Washington State Indians  
Held October 19-20, 1977

Prepared by the  
Office of the Superintendent  
Ferndale School District  
P.O. Box 698  
Ferndale, Washington 98248

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## CHAPTER I

## INTRODUCTION

Background -- National

Much has been written on the topic of Indian education from a national perspective. However, the August--September, 1976 American Education Journal article, "Indian Education: Where And Whither?" by William G. Demmert, Jr., first O.E. Deputy Commissioner of Indian Education and now Director of Indian Programs in the Bureau of Indian Affairs, succinctly describes the problem.

In his article, Dr. Demmert stated that in the late 1960's and early 1970's, important data was collected on educational achievement among Indians. Specifically, the data indicated that:

1. From grades 8 through 12, the dropout rate was estimated variously to be from 39 to 48 percent;
2. Indian students scored significantly lower than the average white pupil in measures of achievement at every grade;
3. The lag in achievement was greater at grade 12 than grade 1, indicating that the longer in school the further the lag;

4. Thirty-six percent of Indian parents had not continued their education beyond grade school and, as an expected consequence, parental participation in their children's educational process was minimal;
5. In forty percent of the cases surveyed, parents never bothered to consult teachers with respect to their youngster's academic progress, and nearly seventy percent of the parents had made no contact with teachers regarding their child's classroom behavior; and
6. Of the teachers working with Indian students, less than 0.1 percent are Indian.

He then described a few practices "that stand out as having a potentially solid impact on improving the academic achievement of Indian students while strengthening their identities as Indians (by Tribe) in a relatively short time. These included:

- i. Parent-based early childhood education for children under three years of age; and
2. Having members of an Indian community work with non-Indian teachers in the classroom as aides or trainees to assist children to be more open and not so intimidated.

Dr. Demmert indicated that Indian adult examples need to be present in the formal educational process if the first years of school are to be happy or acceptable ones for youngsters.

#### Background -- Ferndale

The problems which Dr. Demmert described on a national basis are similar problems to those in the Ferndale School District.

The needs assessment concerning Indian children which is in progress in the Ferndale School District indicates that:

1. Indian children score lower than non-Indian children on standardized tests;
2. There is greater absenteeism among Indian children than non-Indian children;
3. The dropout rate is higher for Indian children than non-Indian children;
4. Indian students receive proportionately more poor work slips at the high school level than non-Indian children.

Moreover, two unfortunate incidents occurred in the spring of 1976 which contributed to a release of tensions and frustrations by some Lummi relative to the education and general treatment they believed Lummi children were receiving in the District. The first incident concerned the Johnson O'Malley program; the second involved a middle school Indian student who was kicked by a certificated teacher during a disciplinary action.

#### Incident Related to Johnson O'Malley Program

During the 1975-76 academic year, the Public School Employees Union (which represents all aides, clerks, secretaries, and food service workers within the Ferndale School District) informed the District it was violating the negotiated contract between

the District and the Union. The specific portion of the agreement which the District allegedly was violating was the agency shop provision which stated:

All employees subject to this agreement who are not members of the Association on the effective date of this Agreement, and all employees subject to this Agreement who are hired at a time subsequent to the effective date of this Agreement, shall, as a condition of employment, become members in good standing of the Association within thirty (30) days of the effective date of this Agreement or within thirty (30) days of the hire date, whichever is applicable. Such employees shall then maintain membership in the Association in good standing during the period of this Agreement.

The Public School Employees' union representative gained a Washington State Attorney General's Opinion which stated conclusively that the Johnson O'Malley employees were, by definition, a part of the PSE Union and therefore must join the Union under the agency shop provision or be terminated from their employment with the District. One employee was subsequently terminated for refusal to join the Union.

As a result, the Johnson O'Malley Parent Advisory Committee protested to the Washington State Superintendent of Public Instruction's Office concerning the District's action. Further, the Committee passed a resolution to find a way to contract the program directly from the Bureau of Indian Affairs (BIA) and then sub-contract with the District rather than the Tribe and District continuing to jointly contract with the Washington State Superintendent of Public Instruction's Office. This resolution was passed in August, 1976 and negotiations between the Tribe and the District concerning the program have been ongoing since that time.

### Disciplinary Action

In the spring of 1976, a certificated teacher at a middle school kicked an Indian student. The "kicking incident" resulted in both disciplinary and legal action taken against the certificated teacher. The legal proceedings resulted in a two weeks loss in pay. Since this incident was dealt with predominantly in the legal arena, no detail will be given in this report.

### Identification of Problems and Solutions

As a result of the educational problems and specific incidents described above, the Ferndale School District's new administration sought to identify problem areas and their potential solutions. The District, beginning with the 1976-77 school year, developed a plan of action which included:

1. An assessment of the District's use of federal funds in general and use of federal funds specifically related to Indian education;
2. Working with the Lummi Indian Tribe to develop a Task Force to arrive at common goals for the District and the Tribe which would result in improved relations and a better education for all students through an assessment and improvement of curricular offerings within the Ferndale School District K-12; and
3. Negotiations with the Lummi Indian Tribe concerning the Johnson O'Malley program.

Though the District has developed and implemented a variety of programs, educational opportunities, and affirmative

action plans over the years in an attempt to address the special needs of Indian children, much remains to be done. However, the District is committed to improving educational opportunities for all students who attend its schools.

We believe that subsequent chapters and attachments demonstrate a commitment of the District to the education of Indian children and a desire to work with the Lummi Indian Tribe to improve the educational program for Lummis as well as all other children for whom it has a responsibility.

#### Overview of Remaining Chapters

Chapter 2 of this report includes an analysis of federal funds and selected programs/activities related to Indian education.

Chapter 3 provides information on the multi-ethnic curricular programs currently being offered within the Ferndale School District K-12.

Chapter 4 describes the Lummi Indian Tribe/Ferndale School District Task Force.

In Chapter 5, a brief review of the events surrounding the elimination of the Johnson O'Malley program from the Ferndale School District and reinstatement efforts is presented.

Chapter 6 concludes the report with a brief summary.

## CHAPTER II

FEDERAL FUNDS AND SELECTED PROGRAMS/ACTIVITIES  
RELATED TO INDIAN EDUCATION

The Ferndale School District has received money from several federal funding sources including monies for compensatory programs and monies in-lieu-of property tax. Some of the compensatory programs were specifically designed to meet the educational needs of Indian students, while others were designed to meet the needs of all students regardless of ethnic background. The in-lieu-of property tax monies were and are received to support the basic educational program for all students educated within the District including Indian students.

Included in Chapter 2 is an historical survey of selected instructional programs involving the Indian child; a summary of programs/activities related to Indian education; a resume' of current compensatory programs in the Ferndale School District; and information concerning in-lieu-of property tax money.



Historical Survey of Selected Instructional Programs  
Involving the Indian Child

Orientation to Primary Grades

Chapter I included a summary of Dr. Demmert's article in which he stated that there were a few practices that had a potential for solid impact on improving the academic achievement of Indian students while strengthening their identities as Indians in a relatively short time. One of these was early childhood education. The District has initiated four programs during the past decade to address the problem of early childhood education. These programs included:

1. In 1964, the District paid a Grade 1 teacher to work with prospective first graders at the Tribal complex for one week. The first graders were then transported to Mt. View School for a second week just prior to the opening of school. The purpose of this program was to decrease late enrollees and to minimize the cultural shock of school.

2. In 1965, the District applied for and was granted funds for a summer Head Start program. Simultaneously, funds were requested and granted to finish a partially completed building to house Head Start on the Lummi Reservation.

3. The District was granted funds for a year-round Head Start to begin in the fall of 1965. The purpose was to follow-up gains experienced in the 1964 two-week experience.

4. In the fall of 1966, a geographically located kindergarten was housed in the newly remodeled facilities along with the continuing Head Start program.

Johnson O'Malley Program

The Johnson O'Malley program evolved from a program which emphasized providing free lunches to Indian children to its 1975-76 status of providing services which included clothing purchases, school athletic insurance, high school shop expenses, school pictures, hiring counseling personnel, transportation, musical instrument purchase, high school annuals, and other similar expenses. The determination of program emphasis was made jointly by the Lummi Indian Education Parent Advisory Committee and the Ferndale School District.

Title IV-A

This program was developed jointly by the members of the Lummi Parent Advisory Committee and the Ferndale School District. The program objectives have more recently included:

1. To improve the academic achievement of all Indian students who are currently experiencing learning disabilities, especially that achievement directly related to language development;
2. To improve the Indian students' understanding of the importance of education in respect to his own academic and/or vocational ambitions;
3. To substantially reduce the rate of absenteeism currently prevalent among some Indian students;
4. To significantly reduce the present dropout rate among high school Indian students;

5. To improve communications between the school and the home through the use of trained Indian tutor/counselors who would act as liaison personnel;
6. To work cooperatively with the parents of Indian children presently enrolled in the Ferndale School District and the Lummi Education Center in an attempt to bring meaningful and fruitful solutions to the educational needs of the Indian community; and
7. To explore the feasibility of developing relevant curricula that shall specifically meet needs of Lummi people.

#### Urban, Rural, Racial Disadvantaged Program (URRD)

The objectives of the District's URRD program have been to help Indian dropout students and in-school elementary and secondary students to improve basic language, mathematics, and work study skills as well as to improve student attendance. These objectives were to be accomplished through:

1. An intensive reading program at the secondary level;
2. Language and math tutoring in the schools;
3. After-school tutoring on the reservation;
4. Daytime instruction at the Lummi Education Center for public school dropouts.

#### Follow Through

A Follow Through program was established in February of 1970. The program served all children targeted by economic guidelines set forth by the federal government, but first priority went to the Indian child with Head Start experience.

Follow Through initiated a photography class for Mt. View parents which met on the Reservation.

Title I

This program was developed jointly by the members of the Parent Advisory Committee and the Ferndale School District. The major objective of the program is to improve the reading skills of target students.

ESEA Title IV-B

The ESEA Title IV-B program has two major objectives. The first, to create an evaluation program related to specified learning objectives in reading, mathematics, and language arts. Second, to provide high interest, low reading level resource materials related to the history and culture of the Indian.

ESEA Title IV-C

The major objective for this program was to successfully adopt the reading and math components of "Project Catch-Up". The student achievement objectives are related to the improvement of reading skills and the improvement of mathematics skills.

Other Programs/Activities Related to Indian EducationNorthwest Regional Laboratory Program

In 1974, the Northwest Regional Laboratory representatives and the Ferndale School Board agreed to cooperate in the development of a reading series relevant to the Indian experience. With the support of the Tribal Council and the Ferndale School District's School Board, potential reading materials were developed and field tested within the Ferndale School District.

### Hiring of Indian Aides

Dr. Demmert's article stated that having members of an Indian community work with non-Indian teachers in the classroom as aides or trainees to assist children to be more open and not so intimidated has the potential for solid impact on improving the academic achievement of Indian students.

Prior to 1961, paraprofessionals were non-existent in the Ferndale School District. However, volunteers had long been utilized.

The first, full-time aide hired was a Lummi female who was employed in 1963 in a building which housed a high percentage of Indian children. The rationale was that her cultural background and knowledge could aid in communications between the home and school as well as assist Indian students to strengthen their identities as Indians.

With the advent of Head Start and Follow Through, residents of the reservation have had high priority for paraprofessional positions in those programs. Residents of the reservation have also had priority for positions in Johnson O'Malley, Indian Education Title IV, Part A, URRD, and general employment within the District.

As of the 1977-78 school year, 6.02 percent of the classified staff were of Native American origin.

### In-Service

The Tribe and Western Washington State College, with District cooperation, have conducted cultural seminars on the Reservation for the purpose of dialogue, information, and/or college credit. These seminars attracted participants from school districts throughout the county.

Teacher Orientation

Several times during the opening-of-the-year teacher orientation, representatives from the Lummi Community have made presentations. On occasion, this has been followed by a tour of the reservation and the aquaculture facilities. Again, the goal being to establish dialogue and understanding between two cultural groups.

Indian Supervisors/Administrators and Certificated Staff Members

As of the 1977-78 academic year, 6.25 percent of the supervisory/administrative personnel were of Native American origin.

Constant search for certificated Indian teachers has been a high priority with minimal success. Three, additional Native American certificated staff members were hired by the District, for a total of four, for the 1977-78 school year. As a result of this recent hiring, 2.17 percent of the certificated staff consists of persons with Native American origins.

Sports Banquets

Sports banquets have been held at the end of fall, winter, and spring seasons at the Lummi Neighborhood facility with all high school participants and their families as invited guests. These activities have been sponsored by the Lummi community individually or jointly sponsored by Lummi and non-Lummi parents.

Teacher Corps

The Teacher Corps program was a part of the District program for less than one year. The intent was to examine possible strategies more appropriate to the education of the disadvantaged,

especially the Indian child, in the Ferndale District. Public opposition caused this program to be concluded before the end of its first year of operation.

#### Catch-Up

From 1966 through 1971, the Ferndale School District provided some equipment, material, and facilities for a summer program held on the Western Washington State College campus for thirteen and fourteen year olds in a program called "Catch-Up". The program was financed primarily by the Rockefeller Foundation and involved participants, one-half of whom were Indian children, from Whatcom and Skagit counties.

#### Resume' of Current Compensatory Instructional Programs in The Ferndale School District

Figure 1 describes the six special programs currently operating in the Ferndale School District which involves Indian students. (See Page 15.)

The rules and regulations governing each of the compensatory programs have been implemented by the Ferndale School District. The District works closely with the Parent Advisory Committees for each program in the design, implementation, monitoring, and evaluation of each program. Most every compensatory program requires the consensus of the Parent Advisory Committee, the District, and either the federal or state government in order for a compensatory program to be approved in a district. All three parties are charged with the respons-

FIGURE 1

COMPENSATORY PROGRAMS IN THE FERNDALE SCHOOL DISTRICT  
1977-78

| PROGRAM  | FUNDING      | FUNCTIONS   | EMPHASIS   |
|--|--------------|---|------------|
| FOLLOW THROUGH                                     | \$ 69,259    | <ol style="list-style-type: none"> <li>1. Basic education skill development</li> <li>2. Emotional and social growth</li> <li>3. Health and Nutrition</li> <li>4. Parent participation</li> </ol>  | K-3        |
| ESEA TITLE I                                       | \$115,650    | Reading   | K-8        |
| TITLE IV-A<br>(Indian Education Act)               | \$ 55,256.25 | <ol style="list-style-type: none"> <li>1. Provide Programmed Tutorial Reading (PTR)</li> <li>2. Provide in-school tutoring in basic skill areas with emphasis on Language and Math</li> <li>3. Improve performance in Civics</li> </ol> | Elementary |
| ESEA Title IV-B                                    | \$ 9,845     | <ol style="list-style-type: none"> <li>1. Assessment and Evaluation</li> <li>2. Provide library resource materials pertinent to Indian culture</li> </ol>   | K-12       |
| ESEA Title IV-C                                    | \$ 12,000    | Reading and Mathematics   | 1-5        |
| URBAN, RURAL,<br>RACIAL<br>DISADVANTAGED<br>(URRD) | \$ 70,000    | <ol style="list-style-type: none"> <li>1. Provide in-school tutoring in all subject areas</li> <li>2. Provide Reading and Language Arts instruction</li> <li>3. Alternative school</li> </ol>   | Secondary  |

ibility of administering programs according to the law. To our knowledge, all three parties have been in compliance with the laws for all compensatory programs.



In-Lieu-Of Property Tax Money

Another major source of federal monies comes to the Ferndale School District via PL-874, in-lieu-of property taxes. These monies are co-mingled in the general fund with other sources of revenue to support the basic education program operated by the District.

In the assurances section for PL-874 money, the applicant assures the Commissioner of Education that:

Policies and procedures have been set forth and implemented to insure that parents of Indian children claimed for Indian lands under Section 3 have been consulted and involved in the planning, development, and operating a program and projects assisted under this application for such children. (Attach a brief statement describing such policies and procedures.)

The Ferndale School District's statement of assurances which was submitted to the federal government in the fall of 1976 stated:

Parents of Indian children have been consulted and involved in the planning, development, and operation of our educational program. This occurs at the building level in the form of Parent Advisory Committees, at the District level in numerous Parent Advisory Committees for Indian education programs, and as a result of the Ferndale School District/Lummi Tribe Steering Committee which recently established goals and procedures to improve the education for both Indian and White students.

During the 1976-77 academic year, the Ferndale School District made significant advances in involving Indian parents in the development of the educational program. The Ferndale School District/Lummi Indian Tribe Steering Committee and Task Force jointly agreed to a set of five goals to improve the relations between the Tribe and the District and the educational program for Lummi children. Additionally, the District and Tribe

agreed to a large number of potential objectives for implementing these goals. The Ferndale School District/Lummi Tribe Steering Committee and Task Force are described in detail in Chapter IV.

The second assurance requirement from the federal government for PL-874 monies states that:

Policies and procedures have been set forth and implemented to adequately disseminate program plans and evaluations to the parents of Indian children claimed for Indian lands under Section 3 and to the public and that such parents have had an opportunity to present their views with respect to the application. (Attach a brief statement describing such policies and procedures.)

The Ferndale School District's statement of assurances related to the above was:

The Lummi Indian Education Committee is given, by the Tribal Council, the responsibility to make recommendations for program development and evaluation to the School District. Dissemination of program occurs through local newspapers, district newsletters, and a Lummi Indian education newspaper.

More recently refined, this statement should include that the Lummi representatives to the Ferndale School District/Lummi Tribe Steering Committee and Task Force have been given, by the Tribal Council, the responsibility to make recommendations for joint goals between the District and the Tribe, objectives for implementing the goals, and the charge of disseminating this information to the Tribal Council, the Indian Education Committee, and the Lummi parents. As per the assurance statement and the ongoing Task Force relationship between the District and the Tribe, the District is and has been in compliance with the rules and regulations governing PL-874 monies.

In summary, the District works closely with the Parent Advisory Committees of its compensatory programs in order to provide the best educational opportunities available for all children eligible for those compensatory programs. Additionally, the District and the Lummi Indian Tribe have developed mechanisms wherein the two groups may communicate with one another to develop and improve the educational opportunities for Lummi children within the Ferndale School District.

## CHAPTER III

MULTI-ETHNIC CURRICULAR PROGRAMS CURRENTLY BEING OFFERED  
WITHIN THE FERNDALE SCHOOL DISTRICT K-12

Multi-ethnic and multi-cultural topics, activities, and materials are incorporated into and throughout the curriculum kindergarten through grade 12 within the Ferndale School District. While these programs/experiences may not be offered every year and/or in every building, they do represent common practice in the Ferndale School District's curriculum.

KINDERGARTENReading

Teachers read stories to the children about minority people.

Language Arts

1. Film strips and tapes on Lummi legends presented.
2. Isadore Tom, Lummi elder, tells Indian stories to children.
3. A language experience approach is used. The dictation of stories using the language of each child naturally includes home and cultural language.
4. Brainstorming activities allow for each child to have responses fitted to his/her experiences and/or background.

Social Studies

1. Thanksgiving-- Knowledge and kindness shown by the Indians towards Pilgrims discussed.
2. Stommish royalty visit classrooms.
3. Clothing of royalty discussed.

## 4. Experience Day

- A. Joe Washington (Lummi) came in traditional dress and sand and danced.
- B. Reservation police with car and boat visited the school.

Music

1. Indian dancers from Lummi perform.
2. Records of local songs and stick games used.

Art

1. Sand painting
2. Bead sewing
3. Weaving

Math/Science

1. Unit on the beach is of high interest to children.
2. Lummi Aquaculture program visited.
3. Field trip to Point Francis to explore the beach.

FIRST GRADEReading

1. Multi-ethnic edition of Scott-Foresman basal reader used.
2. Multi-ethnic edition of Allyn & Bacon supplemental reader used.
3. Ginn 360 and Holt, Rinehart and Winston reading series have stories and illustrations depicting minority groups.
4. Northwest Regional Laboratory books on Indian culture used.
5. Scholastic books, Gerrard books, and new MacMillan reading program each have multi-ethnic materials.
6. D.C. Heath Co. materials are multi-ethnic.
7. Books from the Department of Research and Publications, Indy School District #22 Shysioch, NM (Navajo) used.

Language Arts

1. Haibu-Poetry (Asian)
2. What is Rain? (Indian poem told by hand movements)
3. Milton Bradley study prints.

Music

1. Rhythm Today--Silver Burdett
2. Lummi Stick Chant
3. Dance A Folk Song -- By Ann and Paul Barland
4. Indian Circle Dance
5. Mexican Hat Dance
6. Hula
7. Exploring Music -- Holt, Rinehart & Winston
8. "Songs and Stories of the North American Indian" by Grosset & Dunlap.
9. "Out of the Earth I Sing" -- Grosset & Dunlap.
10. New Life Indian dancers from Lummi Reservation.
11. Use Crow and Blackfeet dance records.
12. Chants from Bill Martin's sound books.

Art

1. Sand painting -- Indian
2. Indian headband and necklaces (macaroni necklaces)
3. Totem poles.
4. Senufo mud painting -- Black culture.
5. Oragami (paper folding -- Asian)
6. Pinatas-- Mexican
7. Weaving
8. Color by number Indian prints

Math/Science

1. Graphing -- differences and similarities
2. Money -- wampum (Indian) and pesos (Mexican)
3. Microscopic studies of skin, blood, hair, etc.
4. Measurement -- food preparation of
  - A. Indian fry bread
  - B. Cornpones -- Black culture
  - C. Torritos, enchiladas, tacos -- Mexican culture
  - D. Japanese Rice -- Asian
5. Counting and writing from 1 to 10 in Japanese when studying Japanese culture.

Social Studies

1. Study of Japan, Hawaii, and Germany on alternating years. During this time native food is prepared, students learn dances and read related literature. Songs and art related to social studies unit included.
2. Sharing of different family customs during holidays.

Field Trips

1. Lummi Aquaculture pond
2. Jung's Japanese food supply store -- Bellingham
3. Lummi Reservation Stommish -- canoe races
4. Portage Island -- seashore study on the Lummi Reservation
5. Joe Washington's dancers
6. Isadore Tom -- storyteller

SECOND GRADEReading

1. All reading books used in grade two are geared to multi-ethnic backgrounds.
2. Supplemental texts contain literature that is multi-cultural and ethnic (Ginn, Holt, Open Court, Houghton-Mifflin). Other reading books including Scott Foresman Magic Circle Books, Trade Books, Bill Martin's Sound Books, and MacMillan reading program are multi-ethnic and multi-cultural.
3. Multi-ethnic and multi-cultural resource material are available in the library and resource portions of the classroom.
4. Contemporary books read aloud to classes including books on early Indian life compared to today.

Language Arts

1. Pioneer unit -- many Indian ways discussed as to "old and new" living.
2. Christmas prints of various customs around the world.

Music

1. Silver Burdett music books for singing.
2. Many Indian songs, rhythms, and records.

Art

1. Beadlooms
2. Weaving on looms -- as done by both Indian and Whites long ago.
3. Authentic Indian artifacts displayed periodically.
4. Mural in main hall at Mt. View School on Indian culture developed and created.

Math/Science

1. Health and nutrition prints with various racial models.
2. Indian cooking unit.

Social Studies

1. Text covers Hawaii, Nigeria, Mexico, Japan, and Norway. Units in these areas include geography, language, literature, films, family life, music, art, cooking, and creative writing.
2. Field trips to local museums.

THIRD GRADEReading

1. Northwest Regional Laboratory Indian curriculum materials utilized.
2. Nearly all reading series and many trade books allow for ethnic discussions. Reading series include Scott Foresman, Ginn 360, and Holt.
3. Library books depicting peoples of different cultures utilized.
4. Culture studies done weekly with a different culture every week. Activities include music, art, cooking, simple languages, geography, and discussion of customs. Visitors are included and class members bring things to share about the cultures.
5. Resource people-- Henry Realbird -- Crow Indian



Language Arts

1. Northwest Regional Lab Indian culture and legend materials.
2. Themes include:
  - A. Me
  - B. Christmas Around the World
  - C. History of Ferndale and Whatcom County including Lummi Indians and other American Indians
3. Field Trips
  - A. Whatcom County Museum
  - B. Pioneer Park
  - C. Hovander Park
4. Resource People
  - A. Rosemary Placid with Lummi Indian material
  - B. Isadore Tom (local Indian culture)
5. Study of Northwest Indian Legends
6. Films and filmstrips depict Northwest Indian legends.
7. Parents used to tell folktales

Social Studies

1. Study of European explorers and how the Indians helped them.
2. Indian parents are used for demonstrations on food and customs.
3. Unit on Northwest Indians
4. Introduction to cultures of Sweden, Israel, and South America
5. Field Trips
  - A. Whatcom County Museum
  - B. Fort Langley, B.C.
  - C. Lummi Aquaculture
  - D. Vancouver Aquarium
  - E. Centennial Museum to visit Northwest Indian display
6. Parents are used to demonstrate foods, etcetera

Music

1. Songs from other lands and in different languages
2. Musical games from various cultures
3. Customs, music and rhythms of the Indian people in conjunction with social studies unit
4. Resource people
  - A. Students with songs and dances of various cultures
  - B. Lummi Indian dancers
  - C. Galen Biery

Art

1. Indian coil method used for clay bowls and masks
2. Mrs. Cagey demonstrates beadwork with students
3. God's eye weaving unit from Mexico
4. Adapting Indian cultural artifacts into decorations and games
5. Totems
6. Kachina dolls
7. Children's illustrated stories
8. Bolero--Mexican game
9. Local Indian design (made wall murals using local design for killer whale)
10. Masks, basketry, weaving and pottery of various Indian cultures.

Math/Science

1. Sea life scene with discussion of industry from the sea including the Lummi Aquaculture

FOURTH GRADEReading

1. Multi-ethnic textbooks--Sounds of Mystery
2. Island of the Blue Dolphin is read to the class and art projects are developed from it.
3. Ginn 360 reading books have multi-ethnic stories

Language Arts

1. Folk tales in Indian legends are read and discussed.
2. Pictorial writing
3. Japanese culture with class play on slavery

Social Studies

1. Emphasis on cultural anthropology with the study of other countries including: New Zealand, Australia, Africa, desert peoples, Polynesian, etc.
2. Multi-ethnic textbooks--Regions Around the World
3. Discussion on equality; freedom with responsibility
4. Resource people:
  - A. Isadore Tom-- Lummi Tribal elder
  - B. Pen pals with Eskimo children
5. Comparison of cultures and how they effect our lives

Art

1. Integrated with social studies in which other countries are studied and art forms are developed from the study of those countries.
2. Baskets, totem poles, and masks are made
3. Indigo cloth project
4. Study artists of minority background

Music

1. Introduce cultures and customs of other countries through rhythm and music

Physical Education

1. Pininkling from the Philipines
2. Bone game
3. Indian circle dance
4. Folk dances from European countries including Spain, Germany, and Israel

FIFTH GRADEReading

1. Minority groups are represented in the reading books. Also the trade books in the classrooms include books about Indians and Black America.
2. SRA kit contains minority and ethnic entries.
3. Stories of Argentina, Brazil, England, Africa, and China showing cultural differences.
4. The Helen Keller story discusses difficulties of living with a handicap.
5. The Ginn 360 series have several Indian stories including "Wildbird", "Anansi's Fishing Expedition"
6. Several teachers read Island of the Blue Dolphin

Language Arts

1. Much is done in folk tale and legends from various cultures such as European, Indian and African.
2. A study of how some American dialects came to be.
3. Field trip to the Indian Art Exhibit at Whatcom County Museum. Students analyze what they have seen by writing and drawing about it.

Social Studies

1. Unit on Native Americans, Native Alaskans, and European Immigrants and their contributions to America.
2. Most fifth grade teachers discuss the fact that the Indians were the first Americans.
3. The relations of the Indians and colonists are discussed as part of the history of America.
4. Isadore Tom has talked to various classes throughout the District.
5. Native Alaskan persons have spoken.

Music

1. Both Negro spirituals and Indian songs were sung.
2. How American music came about
3. African rhythm and movement

Art

1. Classes make God's eyes
2. Paint pictures like the one seen in Anansi
3. Students make Indian masks

SIXTH GRADEReading/Language Arts

1. Indian books (i.e., Black Elk Speaks, Light in Forest, Touch the Earth, Isle of Blue Dolphins, Julie of the Wolves)
2. Indian Culture series
3. Indian art and famous Indian artists
4. Resource people
5. Our Indian and non-Indian certificated teachers discuss our country and respect and love for it, as well as Indian legends, history, culture (modern and past).
6. Field trips
7. Indian films
8. Indian photographs of Lummi
9. Bibliographies and famous books on Indians, Indian Chiefs and men.
10. Special projects (reading about and visiting):
  - A. Lummi fishing
  - B. Aquaculture report
  - C. Lummi law and order
  - D. Drug abuse
  - E. Lummi Shaker Church
  - F. Pow-Wows
  - G. Longhouse
  - H. Indian Council
  - I. Museums (Bellingham)
11. Read books on famous Indian arts and artists
12. Comparative mythology - discuss how we are more similar than different than other races.
13. Reading and discussing Indian stories, such as Black Elk Speaks.
14. Reading and giving Indian plays
15. Isadore Tom, Lummi elder, comes several times each year to give talks and slide presentations on Lummi culture.
16. Library:
  - A. Subscribe to a magazine called Weeish Tree especially for Indian students
  - B. Library collection consists of approximately 260 books specifically on Indian heritage and culture.
  - C. Good collection of pamphlets on Indians and a separate file on Lummis

Social Studies

1. Study Spanish explorers, study natives (Indian) of Central and South America, study African slaves in the Americas, study Eskimo culture and customs.

SEVENTH GRADELanguage Arts/Social Studies

1. Read various stories found in the Holt, Rinehart & Winston program and discuss-- example: Atv, the Storyteller.

2. Course content covers the civilizations of the Eastern hemisphere-

## A. Major tenets:

## 1. Primitive man

- a. Study of Bushman tribe of South Africa
- b. Two films: Primitive Man in Our World (New Guinea)  
Blue Men of Morocco (North Africa)

## 2. Ancient Civilizations

- a. Sumerian tribes of Mesopotamia
- b. Greeks - students are introduced to mythology

## 3. Far Eastern Civilizations

- a. Chinese - discussion of history and language, introduction to music and discussion of customs, especially home life.
- b. Japan - same as above
- c. India - same as above; discussion of caste system.

- B. Discussion takes place which involves an investigation as to why cultural changes are slow to occur and also why it is difficult, in some cases, to understand the customs of others.

3. Post each week at least one article concerning some American Indian information.
4. Short stories from the anthologies - example: Two Were Alone.
5. Etymology of words - tracing our words back to their origin.
6. Mr. Isadore Tom comes and talks about stone age people and cultures.
7. Poetry - about American Indians

Art

1. Beginning basketry, Indian seed-beads weaving
2. Persons from the Lummi Tribe share their crafts, legends, etc. with us.

EIGHTH GRADELanguage Arts/Social Studies

1. Settlement Unit - the role of the Indian, including the Aztec and Incas
2. Colonization Unit - the give and take of both the Indian people and the settlers.
3. Government booklets - includes special projects on the Lummi Council and enterprises.
4. Moving West - a close look at the Nez Perce, including the movie "I Will Fight No More Forever".
5. Books, posters, filmstrips, films, slides and speakers. Books and posters obtained from any source available including the Ferndale District curriculum library. Slides taken of Isadore Tom's presentations and later given to him to use. Films and filmstrips ordered from a state catalog of Indian materials available. Speakers included Mr. Isadore Tom, a JO'M cultural aide in the Ferndale School District, who regularly spoke to 8th grade classes about history, customs, Lummi government, great chiefs, etc. He also arranged programs of Lummi music and dance.

Other speakers included Mr. Larry Kinley from the Lummi Tribe to speak on the 1855 treaty, Mr. Larry George to speak about the Indian in American history and to show filmstrips about Indian legends, and Mr. Morrie Alexander to demonstrate Lummi carving and art.

6. Language Arts projects involve 8th grade students writing about what Mr. Tom had spoken. He also tape recorded some legends and these were written down by some Lummi students as individual language arts projects.
7. Field trips to Whatcom Museum and the Vancouver Centennial Museum were also part of the Indian curriculum. Mr. Tom accompanied the 8th graders to Vancouver to speak about the Indian artifacts.
8. Approximately 15 students (Lummi) were taken to Ozette, Washington to the Makah dig in the summer of 1971. This five-day outing was co-sponsored by Ferndale School District and the Teacher Corps.
9. Students share their costumes, customs with the class.
10. The Indian's role as non-aggressive in early colonization.
11. Negroes in American History - slavery, civil rights, American Indians - westward movement are all covered in the text.
12. The following books are used during the year: The Good Earth, Yes I Can, My Lord, What a Morning, The Night They Burned the Mountains, Black Like Me, etc.

Music

1. Music classes often have material that relates to the Indian culture. Songs in music lab are the most frequent examples, however.
2. Band class has music that is of the Indian culture.

Special Education

1. Have several reading groups now reading in the Dan Frontier series and much of our discussion of the material read centers around the early pioneers and their relationships with the Indians whom they met during the period of westward expansion.
2. Field trip to Smoke House - annual ceremony of Lummi Tribe. Talked about what took place, why, when, effects.
3. Bone game - why, how.
4. Frequently talk about Indian culture and history.

Home Arts

1. Cook some native American foods - Navajo fry bread and Navajo tacos.
2. Plan to have some Indian parents come and demonstrate cooking.



GRADES 9-12Foreign Language

1. The foreign language classes have long incorporated different cultures into class activities and learning materials:
  - A. A foreign language camp involving both German and French students was designed by the foreign language teachers and held last spring (1977).
  - B. Field trips to Vancouver, British Columbia and other cities for tours of foreign shops and foreign restaurants are planned regularly for foreign language students.
  - C. Students spend time in various homes where only German is spoken; they also come in contact with native Germans.
  - D. German newsreels are used once a month in the German classes as well as films from the German Consulate.
  - E. Over the last few years, Ferndale High School has been involved in two-way exchange programs with two countries: Germany and Japan.
  - F. The French teacher is sponsoring a European trip this coming summer (1978) for all students, not just language students.

Language Arts

1. The language arts department of Ferndale High School has tried to meet the cultural differences of its students:
  - A. The department designed two courses, Indian Literature I and II, to present literature by and about Native Americans.
  - B. The school publications have run stories featuring Indian students and the Lummi culture. The newspaper also did a rather extensive series on prejudice at Ferndale High School, its causes and possible solutions.
  - C. Reading selections are often chosen to call attention to prejudice and to encourage discussion of the problems it causes, its roots, and solutions.
  - D. The material used in American Humanities in discussing the development of the West is presented from the point of view sympathetic to that of the Native American.
  - E. Teachers do not use attendance as a criteria for grading.
  - F. The proposed Art History class covers many historical eras and cultures of the Americas, and includes a special unit on Native American art.

Music

1. The study of music is a multi-cultural activity. Most western music has roots in the European past in that our scale and key systems were developed in Europe during the 16th and 17th centuries. In addition, we teach elements of jazz which while thought of as an American music has its roots in the Black folk music of Africa. Also, ethnic styles such as the spiritual are used in the vocal classes.
2. The JO'M program has provided instruments for Indian students so that they may participate in guitar classes, band and orchestra.

Science

1. Classes in Environmental Education are offered to Lummi students through the Science Department and in conjunction with the URRD program at Ferndale High School. One class has been taught during the school day and one section is offered immediately after the regular school day. The latter course enables Lummi students to acquire additional credits needed (when deficient) for graduation with their class.

Social Studies

The following courses cover multi-ethnic, multi-cultural, minorities topics:

1. U.S. History I: This course includes a study of the impact and problems of immigration and the adjustment of many cultures adjusting to life in the U.S. This course also includes the study of the migration west of Americans and the impact of the Indian and problems related to settlement.
2. U.S. History II: A study of Indian history in the United States 1492-1977, to include the culture, religion, history, geography, and life of the American Indian and his impact on American history.
3. Eastern Europe and the USSR: A study of the geography and history of the people living in Eastern Europe and Russia to include the culture, religion, customs and the changes in that part of the world during the past 1000 years.
4. The Middle East: A study of the geography and history of the people living in the Middle East to include the culture, religion, customs and the changing society in that area the past several hundred years.
5. The Far East: A study of the geography and history of the people living in the Far East, to include the culture, religion, customs, and progress of the people living in that area.
6. Latin America: A study of the geography and history of the people living in Latin America, to include the culture, religion, customs, and the changing society in Latin America 1500-1977.

7. Psychology of Prejudice: Why do people of one race or one culture readily get into conflict or misunderstanding with members of other races or cultures? The one-trimester course attempts to answer some of the following questions about race prejudice and prejudice in general. Is it normal to feel or experience prejudice toward someone else? When and why do people pick on others? How do people "protect" themselves from prejudice? Are people really equal? What is integration and segregation all about? Discussion of case studies will be used to attempt answers.
8. Sociology-Anthropology: What makes a society healthy? Answers to that question evolve in part by contrasting American culture with other cultures; the other cultures include a variety of pre-industrial types. Various social institutions in both the pre-industrial and industrial cultures are examined. A variety of criteria are used in making a useful examination. The criteria range from productivity, direction, alienation and so on. The course employs books, films, and guest lecturers in examining other cultures.

#### Extracurricular Activities

1. Minorities are included in all aspects of these activities.
2. For example, this year in football the league's leading rusher is one of our Lummi Indian students. We have quite a few minority students on the football teams at all levels in the school.
3. Traditionally, we have had many minority students on our cross country team including the district champion a few years ago.
4. There is an Indian Culture Club, the Chusquin Club. It is open to all students. It has sponsored all school Indian culture assemblies and all school dances.
5. We have had minority ASB officers and cheerleaders regularly the past few years.

## CHAPTER IV

LUMMI INDIAN TRIBE/FERNDALE SCHOOL DISTRICT  
TASK FORCE

Significant attempts have recently been made by the Ferndale School District and the Lummi Indian Tribe to enhance the relationship between these two entities and to improve the educational opportunities of Indian children within the District.

Lummi Indian Tribe - Ferndale School District Goals

In December, 1976, the Ferndale School District Board of Directors and the Lummi Indian Tribal Business Council each adopted the following goals for improving the education for Lummi children within the Ferndale District. The goals were jointly developed by a Task Force consisting of both Lummi and District appointees and were:

1. To develop and implement in-service training programs for teachers and administrators in the area of Indian education.

2. The Ferndale School District will continue to implement an approved Affirmative Action Program.
3. To develop and implement programs designed to enhance the communication and improve community relations between the District and the Tribe.
4. Curricula and resource materials in the area of Indian education will be developed/selected and implemented in the K-12 program.
5. The Lummi Indian Tribe - Ferndale School District Task Force will meet by June, 1977 to evaluate progress made on goals 1 through 4.

The Lummi Indian Tribe and Ferndale School District both agreed to pursue the Task Force recommendations which were developed to implement goals 1 through 4 and agreed that to attempt to immediately implement all the Task Force recommendations would be an insurmountable task. Therefore, the Task Force was directed to select and pursue the development and implementation of recommendations selected by the Task Force.

The entire Lummi Indian Tribe - Ferndale School District goals document with the Task Force recommendations of objectives for implementing the goals is included in Appendix A.

January, 1977 Task Force Report

After the Ferndale School District Board of Directors and Lummi Indian Tribal Council formally adopted the joint goals and jointly directed the Task Force to implement those goals, the Task Force met on two separate occasions in January, 1977 to select objectives to be developed and implemented.

The Task Force recommendations to the Ferndale School District included that the District address itself to the following:

1. A full needs assessment of Indian students within the District;
2. The District request that the Tribe appoint an Affirmative Action representative to the District's Affirmative Action Committee;
3. The District recruit potential Indian employees;
4. The District request that the Lummi Indian Tribe appoint a representative to the Superintendent's Task Force which was reviewing and developing disciplinary procedures within the District;
5. The District establish a committee to assess the Ferndale School District reading program and specifically the reading needs of Lummi children.

The Ferndale School District is currently completing the needs assessment within the District. The District did request

that the Lummi Tribe appoint an Affirmative Action representative to the District Affirmative Action Committee. The District recruited potential Indian employees and as a result hired three certificated, Indian teachers who are currently employed by the District. The District requested the Tribe appoint a representative to the Discipline Committee and this person served with the Committee until the task was completed. Finally, the reading needs assessment of Lummi children is being conducted along with the general assessment of needs.

The Task Force recommended that the Lummi Indian Tribe address itself to the following:

1. The Tribe assist the Ferndale School District in the needs assessment; particularly in the areas of surveying parents and in assessing cultural factors;
2. That the Affirmative Action representative be responsible for reporting progress to the Tribe;
3. That the Tribe establish an educational program to assist those Lummis who are seeking employment;
4. That the Lummi Indian Tribe appoint a representative to the Ferndale School District Board of Education whose task it would be to attend all board meetings and report back to the Lummi Tribe.
5. That the Lummi Indian Tribe request that the District appoint a representative to the Lummi Indian Education Committee. This representative's task would be to attend all Lummi Indian Education Committee meetings and report back to the District.

To our knowledge, the Lummi Indian Tribe has addressed itself to Items 1 and 2 above. However, the District has no information concerning Items 3 through 5, a representative has not attended a school board meeting since January, 1977, and the Tribe has not requested that the District appoint a representative to the Lummi Education Committee.

A complete copy of the January Task Force Report is included in Appendix B.

#### Change In Tribal Government

During the early part of 1977, the Lummi Indian Tribe had an election of their Tribal Council and as a result changed Tribal Chairman and government. The person who had served as the Tribal Indian Education Director was fired. There was confusion among the Task Force members as to the status of the Task Force as the result of the change in government. Consequently, in April, 1977, the Task Force decided to write to Mr. Sam Cagey, new Lummi Indian Tribal Chairman, to ascertain the status of the Task Force so far as the Lummi Indian Business Council was concerned. As of October, 1977, no answer has been received from that letter.

A copy of the letter to Mr. Cagey from the joint Task Force is included in Appendix C.

#### Summary of Steering Committee and Task Force Meetings

Starting with September 8, 1976 through and including October 4, 1977, a series of meetings was held by both the Steering Committee and Task Force of the Tribe and District.



A total of fifteen formal meetings were scheduled during this thirteen-month period. Eleven of the scheduled meetings actually were held and ranged in meeting time from two to six hours. One meeting was cancelled by the Lummi Tribal representatives. The Lummi representatives to the Task Force failed to attend three mutually agreed upon, scheduled meetings.

As an example, the three Ferndale School District representatives to the Task Force were in attendance at the meeting scheduled for April 28, 1977. However, no Lummi representatives came to the meeting nor did any call to cancel. The District members waited for approximately forty-five minutes and then disbursed. The April meeting was the time when the Task Force should have begun evaluating the progress made during the 1976-77 academic year and setting future direction for 1977-78. These tasks were not begun because the Lummi representatives failed to attend the scheduled meeting.

A complete summary of the Steering Committee and Task Force meetings between the Ferndale School District and the Lummi Indian Tribe is included in Appendix D.

In September, 1977, the Tribal Indian Education Director, who was fired early in 1977, was rehired as the Lummi Education Director. Representatives of the Lummi Indian Tribe and Ferndale School District met on October 4, 1977 to re-establish the Task Force and to continue implementation of the goals and objectives. Appendix E contains a letter from the School District summarizing that meeting and giving the

names of the District Task Force representatives. As of October 21, 1977, the District had not received the names of the Lummi representatives. Therefore, the Task Force has not yet resumed its operation.

## CHAPTER V

## JOHNSON O'MALLEY PROGRAM

Prior to the 1976-77 academic year, the Ferndale School District had been the signatory for the Johnson O'Malley program. The District and the Tribe had jointly developed the goals and objectives for the program, the budget, and program evaluation. Both the Tribe and the District had signed the application form which the District then sent to the Washington State Department of Public Instruction for approval.

From the 1976-77 academic year to the present, the Ferndale School District has not been the signatory for the Johnson O'Malley program. During this time, the District has requested that the Lummi Tribe join with the District for a joint program as had been operated prior to the 1976-77 academic year. However, the Johnson O'Malley Parent Committee refused to join with the District in the program.

This chapter offers a brief review of the events surrounding the elimination of the Johnson O'Malley program and reinstatement efforts from the 1975-76 academic year to the present.

Agency Shop

During the 1975-76 academic year, Dr. James Norris, former superintendent, worked with the Johnson O'Malley employees and the Union concerning the Johnson O'Malley employees and the Title IV-A employees joining the Union under the agency shop provision. According to Dr. Jan Marchbanks, School District Director of Federal and Special Projects, Mr. Emmett Oliver, who is the Indian Program Director at the Superintendent of Public Instruction's Office, told the Johnson O'Malley employees that they did not have to join the Union. Mr. Ben Blackwell, the Public School Employees representative, gained a State Attorney General's Opinion which stated conclusively that the Johnson O'Malley employees must join under the agency shop provision or be terminated.

This information was given to the Johnson O'Malley employees, to the Chairperson of the Johnson O'Malley Parent Advisory Committee, and to the Title IV-A employees. The Title IV-A employees joined the Union but one Johnson O'Malley employee refused to join. While the Chairperson of the Parent Advisory Committee for the Johnson O'Malley Committee had the information, for whatever reasons, she did not call a Parent Advisory Committee meeting. In any case, Ms. Doralee Sanchez was terminated from her employment with the Ferndale School District for refusal to join the Union under the agency shop provision. With this action, the Parent Advisory Committee then protested to Mr. Emmett Oliver.

Alleged Breach of Johnson O'Malley Federal Guidelines

Mr. Emmett Oliver then informed the Tribe and the Ferndale School District that the District had breached its contract and

was therefore in violation of the BIA rules and regulations. It was his contention that because the School District had broken the guidelines, he was going to withhold the final Johnson O'Malley payment from the State which was in the amount of \$6,600. Further, it was Mr. Oliver's contention that the State could not enter into a direct Johnson O'Malley contract with the District because the District had allegedly breached the BIA guidelines.

The School District requested that Mr. Emmett Oliver receive an opinion from the BIA as to whether the School District had actually violated the rules and regulations of Johnson O'Malley or not. Mr. Oliver did make that request and then indicated to Dr. Jan Marchbanks, Director of Federal and Special Projects, at a later time that the BIA had not made a decision.

During a conversation with Director of Equal Educational Opportunities Warren Burton and Assistant Attorney General Robert E. "Skip" Patterson, Mr. Patterson informed both Mr. Burton and Dr. Marchbanks that the BIA had rendered the opinion that the District had not violated the rules and regulations of the Johnson O'Malley program. The money was thus released to the District.

1976-77 Meetings Between Lummi Indian Tribe And  
Ferndale School District Re: Johnson O'Malley

During the 1976-77 school year, numerous meetings were held with Tribal representatives and the District concerning the Johnson O'Malley program in an attempt to resolve the contractual

agreement between the District and the Tribe on the operation of the program. The dispute between the District and the Tribe was related to which party would be the signatory for the program; the amount of input that each party would have concerning the development, implementation, budget, and evaluation of the program; and who would be responsible for the hiring, evaluation, and dismissal of personnel employed by the program.

The position of the Johnson O'Malley Parent Advisory Committee was that it wanted to be the signatory for the program; it wanted control of the development, implementation, and evaluation of the program; it wanted control of the budget; and it wanted control of the hiring, placement, evaluation, and firing of personnel employed under the program. Further, without giving the District any input into the development of the program or the hiring of personnel other than "consultation", the Johnson O'Malley Parent Advisory Committee wanted to operate the program within the public schools.

The position of the School District has been that personnel who work within the public schools will be School District employees and subject to all the rules and regulations of the District. Further, the District wanted to be involved with the Parent Advisory Committee in the development and implementation of the program just as the Parent Advisory Committee had been involved in that capacity with the District when the District was the signatory for the program. Washington State statutes give authority over curriculum, personnel, and budget to the school district board of directors. Appendix G contains a copy of statutory provisions applicable to all school districts within

Washington State. While these statutes delineate the board's responsibility in the area of curriculum, personnel, and budget, the District desires to continue the cooperative development of programs to meet the needs of students.

Several outside parties were brought in by both sides in an attempt to assist in the resolution of this problem:

1. Emmett Oliver, Indian Program Director, Superintendent of Public Instruction's Office;
2. Mr. Warren Burton, Superintendent of Public Instruction's Office;
3. Representatives of the BIA from both the Everett and Portland offices;
4. Dr. Frank Brouillet, Superintendent of Public Instruction;
5. Dr. Jack Frisk, Deputy Superintendent of Public Instruction;
6. Mr. Robert E. "Skip" Patterson, Assistant Attorney General;
7. Mr. Julian Pinkham, Chairman of the Big Twelve;
8. Mr. Sam Cagey, Tribal Chairman, Lummi Indian Business Council; and
9. Mr. Bob Hughes, Community Relations Service, Department of Justice.

Each of the efforts to resolve the issue by bringing in a third party was unsuccessful.

The Lummi Indian Tribe submitted a rough draft of a proposed Agreement, an unofficial draft of a proposed Agreement, and an official draft of an Agreement for negotiation between September and November, 1976.

After thorough discussion between November, 1976 and May, 1977, the Lummi Tribal Chairman, Mr. Sam Cagey, requested that the District draft a proposed contract and submit it to the Tribe for their reaction. The District submitted its proposed contract in June, 1977. As of October 21, 1977, the Tribe had not responded to that contract.

#### The Issue of Money

Johnson O'Malley funding can come either directly to a Tribe or to the state for distribution to the school districts. When the money goes directly from the BIA to a Tribe, the Tribe receives "X" number of dollars for each eligible Indian child.

When the money goes directly to the state, the state has an equalization formula which it uses for distributing the money. The BIA gives "X" number of dollars for every Indian child in the state. However, the state puts that money into an equalization formula and distributes the money so as to equalize the amount of money going to both large and small school districts so that all can operate a program for their children. This equalization formula was approved by the Big Twelve which is an advisory group to Dr. Frank Brouillet, Superintendent of Public Instruction composed of the representatives of Indian Tribes around the state.



The Lummi Tribe, then, can receive more money by contracting directly with the BIA.

During the 1976-77 school year, if the District and Tribe had contracted with the state, the Johnson O'Malley program would have received approximately \$32,000. According to Mr. Bill Riefenberry, BIA representative from the Everett office, the Tribe was able to get \$66,975 for their Johnson O'Malley program plus an additional \$1,013 for indirect costs for a total of \$67,988 to operate their program during the 1976-77 year.

#### Summary of Johnson O'Malley/Ferndale School District Discussions

Representatives of the Ferndale School District began discussions over the district alleged violation of Johnson O'Malley in August, 1976. These discussions have continued through and including October, 1977. Many meetings have been held, contracts proposed, third parties brought in, and correspondence sent in an attempt to resolve the dispute over Johnson O'Malley and to negotiate an agreement between the District and the Tribe. A thorough, succinct summary of the discussions and correspondence between the District and the Tribe with supporting attachments is included in Appendix F. A review of Appendix F will document the time and effort expended by both parties to reach agreement in the Johnson O'Malley dispute.

## CHAPTER VI

## SUMMARY

While the Ferndale School District acknowledges that much remains to be done in multi-ethnic education, particularly with regards to Indian culture and programs designed to meet the needs of Indian children, we believe the foregoing information shows that much has been accomplished. The District continues to seek ways to better communicate with and involve the Lummi community in the education of their children and to insure equality of educational opportunity insofar as that is possible. Low socio-economic factors and cultural ethnocentrism must be considered as among the underlying factors which will continue to pose problems. However, the District recognizes its obligation to meet the needs of all students and will continue to strive to do so.

The rest of this exhibit is on file at the  
U.S. Commission on Civil Rights.

*Exhibit No. 10*

THE LOCAL PUBLIC WORKS CAPITAL

DEVELOPMENT AND INVESTMENT

ACT OF 1976

A

REPORT

TO

THE

MAYOR OF BELLINGHAM

AND

THE WHATCOM COUNTY BOARD OF COMMISSIONERS

PREPARED BY

ELLEN NELSON, WHATCOM COUNTY GRANTS COORDINATOR

AND

STEVEN PRICE, CITY OF BELLINGHAM GRANT MANAGEMENT OFFICE

## FORWARD

This report was presented by the Mayor of Bellingham, Washington and the Board of County Commissioners of Whatcom County, Washington, at a joint news conference on Wednesday, January 19, 1977. Sections of this report are the texts of verbal statements made by the Mayor and Commissioners at that news conference.

The majority of this report deals with what happened in Washington State. The discussion of the Act and guidelines, however, apply to the nation as a whole.

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STATEMENT TO THE PRESS

On December 23rd of last year, the Federal Economic Development Administration allocated over \$40 million to various communities in Washington State. These funds were distributed to local governments under the Local Public Works Capital Development and Investment Act of 1976 for the purpose of public works job-producing projects.

Having followed the program closely from it's inception, we were both shocked and dismayed to see where these monies were being allocated and to see projects of generally poor caliber being funded. It is our understanding that the Congress of the United States passed this act to help alleviate the tremendous unemployment problem within the nation's building trades. The majority of projects funded within this state contribute very little to reducing unemployment generally and provide absolutely no benefits whatever to the vast number of unemployed construction workers in Washington.

Our initial reaction to the EDA allocation plan was to investigate the possibility of obtaining an injunction in federal court to prevent projects in Washington from being funded, pending a complete explanation on the part of EDA. We assigned staff full time, in addition to exploring grounds for an injunction, to uncover the process by which EDA selected projects.

We took these steps for two basic reasons: first to

expose to the citizens of Washington State and the nation as a whole, the internal mechanism of a federal "fiasco" and the tremendous waste of their tax dollars; and secondly, to point out to the citizens of this state the reasons why far superior projects such as ours were not funded.

In the major area of program development, we find that the act itself has several major flaws that prevent it from effectively dealing with the unemployment problem. EDA regulations for the program do nothing to clarify or redefine these flaws but in fact magnify them,

The next area is that of program implementation.

Communications between EDA and potential applicants became totally broken down, leaving too many communities on their own to formulate their applications. Also, program regulations were revised on almost a daily basis, thus changing the rules of the game while play was in progress.

Information on the internal decisions by EDA on project selection are very difficult to obtain. Although we cannot identify any laws being broken, we have been able to document EDA's violation of the intent of the act and subsequent guidelines. They are in fact guilty of creating a federal "boondoggle" at the expense of local governments and perpetuating distrust and cynicism in the public toward the federal bureaucracy.

The last area dealt with is that of project selection.



EDA led applicants to believe that applications had to be technically correct and complete in order to be acceptable, when in fact the majority of the applications to receive funding were neither technically correct nor complete. Also, EDA administratively changed some of the program regulations after applications were received. Third, Indian tribes were given undue advantages because they could generate their own unemployment and per capita income data, whereas other local governments had to rely on information generated at the state level. Next, applicants were given too much freedom to define their project labor areas. And finally, without the needed but mysteriously unavailable information concerning discussions at the Regional Director level, it is impossible to determine what "political" influences were involved during the final days before projects were approved..

Based on the above conclusions, we will be taking the following courses of action.

1. Due to the lack of specific information on internal EDA decisions affecting project selection and the great amount of time required to get that information, our plans for legal action are postponed for the present time.
2. We will demand that EDA drop from funding consideration the following projects: Issaquah, the Lummi Tribe,

Edmonds School District and the excessive equipment expenditure of the Auburn project. We will further demand that all other projects be reviewed in light of their ability to produce employment at a reasonable cost. In addition, we will demand that our project be reconsidered under the original appropriation.

3. We will do everything in our power to ensure that new EDA regional staff appointed by President-Elect Carter is more responsive to local needs.
  
4. Our report will be sent to Congress and every effort will be made on our part to ensure that the appropriate changes are made in the act during forthcoming Congressional hearings on this program.

THE PUBLIC WORKS PROGRAM

The Local Public Works Capital Development and Investment Act of 1976, PL 94-369, was passed by Congress on July 22, 1976.

HOW CONGRESS WROTE IT

The legislative history of this act and the act itself clearly indicates to the most casual reader the intent of Congress. Congress recognized that nationwide one of the hardest hit groups in terms of unemployment are the building trades. The "Public Works Act" was designed specifically to put building and construction workers back to work. In order to facilitate this process, the act provided for "grants to any state or local government for construction, renovation, repair or other improvement of local public works projects."

In awarding grants, the act directed the Secretary of Commerce to consider the following criteria:

- \* "the severity and duration of unemployment in proposed project areas".

Congress clearly intended for areas with "chronic" unemployment to receive the most benefit.

- \* "income levels and extent of underemployment in proposed project area".

It appears to us that Congress was attempting to place projects in areas where, because of low per capita income and underemployment, public works projects could not be publicly financed because of low tax related revenues.

- \* "extent to which proposed projects will contribute to the reduction of unemployment".

It is quite clear that Congress intended those projects which employed the greatest number of unemployed workers would receive the greatest consideration for funding. It is also clear from the projects that were funded in this state that EDA played down the importance of this criteria.

- \* "the Secretary shall give priority and preference to public works projects of local governments".

It should be clear from this phrase that Congress intended local governments to have priority under this program. The act defines local governments as "any city, county, town, parish or other political subdivision of a state, and any Indian tribe." There is no mention of special purpose units of governments.

- \* Applicants should "relate their specific requests to existing, approved plans and programs of a local community

development nature, so as to avoid harmful or costly inconsistencies", and "where feasible, make requests which, although capable of early initiation, will promote or advance longer range plans and programs".

We see this section as merely being a SOP to those who advocate advanced planning for capital development projects. It is clear that Congress did not intend any project to be held up because it did not relate to long range plans.

In addition to the above mentioned criteria, the act makes it very clear that only those projects which can begin construction within 90 days after project approval are acceptable.

#### HOW EDA RESPONDED

The act gave the Secretary of Commerce 30 days in which to develop the rules, regulations and procedures to implement this program. Due to delays caused by a Presidential veto and override, the 30 day period was stretched closer to 90 days.

In addition to the delays caused in passing the authorization bill, there were further delays while Congress attempted to pass the needed appropriation bill. During this period, EDA published regulations for review in the Federal Register. The regulations went through three modifications before the final rules were

published in early September. Our discussion here will be limited to those final rules.

When any bill is passed by Congress that requires administrative implementation, the Secretary of the implementing agency is given a certain amount of discretion in formulating the rules and regulations for that program. Departmental staff research testimony in the committee hearings, floor discussions in Congress and the language of the act itself to try to determine exactly what the intent of Congress was when the bill was passed.

In the case of the Public Works Act, EDA established funding guidelines based on the following criteria:

- \* "The number of unemployed workers in the project area averaged over the three most recent months for which data is available." (30 points)

This criteria appears to be an attempt on the part of EDA to identify those areas where the impact from unemployment is greatest. We felt from the beginning that total numbers of unemployed did not reflect the true impact of unemployment in any given locale. As an example - the 11.4% unemployment rate in Bellingham has a greater adverse impact on us than does the 8.8% unemployment rate in

Seattle on that community, even though the relative numbers of unemployed workers of the latter are far greater.

We tried and were successful in getting the significance of total numbers reduced in the final EDA criteria. EDA adopted a logarithmic scale for grading and assigning scores in this area. Therefore, as an example, in the final evaluation, 10,000 unemployed persons ended up being only twice as bad as 100 unemployed persons, instead of 100 times as bad. While this change was to our benefit, applicants from the Snohomish-King County area scored higher in this category than we did.

- \* "Severity and duration of unemployment as measured by the unemployment rate prevailing in the project area averaged over the last three months for which data is available."  
(25 points)

It appears to us that this category is one of the few in the entire program that even comes close to measuring true need for a project. Although our project area has a high unemployment rate, we did not score high in this category because of the manner by which EDA assigned points and because we had the distinct disadvantage of competing with Indian tribes.

Indian tribes represented a factor which totally distorted

the intent of the entire program not only in Washington State, but in most Western States as well. Indian tribes are allowed by the Bureau of Indian Affairs to compute their own unemployment rates and per capita income figures in a manner quite different from other general purpose governments. This is not to imply that tribes manipulated the figures which they supplied to BIA, but is merely to point out the fact that BIA is much more "liberal" than the state in compiling unemployment data. This has resulted in most tribes in Washington State and elsewhere in presenting unemployment figures that are much higher than other areas in the state (e.g. Nooksack Tribe 66% and Lummi Tribe 44%).

EDA awarded the full 25 points to the highest unemployment rate (i.e. Nooksack) in the state and then gave every other applicant in the state points based on their percentage of that highest rate. Using that formula, the Nooksacks were awarded the full 25 points while our application only received 14.7 points.

- \* "The relationship of labor cost to total project cost defined as the ratio of total wages to total project cost". (30 points)

It appears to us that this figure combined with person



months of employment offers the best method of effectively measuring the merit of a project in meeting the program goals. Unfortunately, EDA totally misused this measurement tool.

Projects that had a labor intensity ratio of at least 35% and no more than 80% were given the full 30 points. Therefore, using EDA logic, a community that had a project that spent 60% of its project cost for labor had no advantage over a community that spent 35% on labor. This you must recall is a program designed to employ people but apparently EDA felt labor costs did not reflect that factor.

"The level of income prevailing in the project area".  
(30 points)

EDA took this category directly from the act, word for word, therefore we cannot fault EDA for the inclusion of this category. Congress clearly intended this category to be used as a measure of an area's financial need for a project.

We feel that per capita income is a poor measure of project need. While per capita income may reflect an area's lack of wealth and to some extent underemployment, it generally has no correlation with unemployment.

Additional categories that EDA utilized were also taken straight from the act. These included: 5 points for being a local government (almost every applicant qualified as a local government except the state and port districts): 10 points for being related to existing, approved plans; and 5 points for having the potential for long term benefits. These extra considerations amounted to 20 points and they were given outright to almost every applicant, thus limiting their impact in project scoring.

As a result of our staff investigation, we have come to the following conclusions:

CONCLUSIONS

1. The act itself has several major flaws that prevent it from dealing effectively with the unemployment problem.
2. EDA regulations for this program do nothing to clarify or redefine these flaws but in fact magnify them.
3. School districts should not have been allowed to compete equally with general purpose local governments.
4. EDA led applicants to believe that applications had to be technically correct and complete in order to be

acceptable when in fact the majority of the applications to receive funding were neither technically correct or complete.

5. EDA administratively changed some of the program regulations after applications were received.
6. Indian tribes were given undue advantage because they could generate their own unemployment and per capita income data.
7. Applicants were given too much freedom to define their project labor areas.
8. It is impossible to determine what political influences were involved during the final days before projects were approved.

#### RECOMMENDATIONS

Recommendations for changes within this program must be addressed at three levels: changes in the act, changes in the guidelines and changes in EDA's administration of the program.

1. Changes in the act.
  - A. The 70/30 split between areas of high and low unemployment should be eliminated.

- B. Per capita income as a rating factor should be eliminated.
- C. Indian tribes should be allocated a separate fund at the national level to eliminate competition with local governments.
- D. Labor market definitions should be consistent throughout the state and should as much as possible reflect the applicant's jurisdiction.
- E. Projects should reflect a real, documented need in the community.

2. Changes in the Guidelines

- A. School districts must be eliminated from the definition of local government.
- B. Increase the points given to the unemployment rate factor to 30 and reduce the points given to total unemployed workers to 25.
- C. Increase the points awarded to local general purpose units of governments.
- D. Allow for only the acceptance of complete and technically correct applications.

E. A method should be developed that would measure the "quality" of a project, thus ensuring that only those projects meeting the intent of Congress are funded.

F. Labor intensity should be viewed as a percentage of labor costs of total project costs. The resulting percentage figure should be rated against other projects and scored accordingly, rather than all scores from 35% to 80% receiving the same score.

3. Changes in EDA Administration

A. EDA should make every effort in the future to inform applicants of guideline changes.

B. EDA should not change program guidelines once applications are being accepted.

C. The method by which EDA will score and evaluate applications should be known in advance.

Based on the above conclusions, we will be taking the following courses of action.

1. Due to the lack of specific information on internal EDA decisions affecting project selection and the great amount of time required to get that information, our plans for legal action are postponed for the present time.

2. We will demand that EDA drop from funding consideration

the following projects; Issaquah, the Lummi Tribe, Edmonds School District and the excessive equipment expenditure of the Auburn project. We will further demand that all other projects be reviewed in light of their ability to produce employment at a reasonable cost. In addition we will demand that our project be reconsidered under the original appropriation.

3. We will do everything in our power to ensure that new EDA regional staff appointed by President-Elect Carter is more responsive to local needs.

4. Our report will be sent to Congress and every effort will be made on our part to ensure that the appropriate changes are made in the act during forthcoming Congressional hearings on this program.

SUMMARY OF STAFF INVESTIGATION

The Local Public Works Capital Development and Investment Act of 1976 prescribed the following criteria for selecting projects.

1. Severity and duration of unemployment
2. Income levels
3. Extent of underemployment
4. Extent to which project will contribute to the reduction of unemployment
5. Preference to local government
6. Must relate to existing approved plans
7. Must promote longer range plans

Criteria adopted by regulations by the Economic Development Administration:

1. Number of unemployed
2. Unemployment rate
3. Income levels
4. Labor intensity
5. Preference to local government, including school districts
6. Relates to existing plans
7. Has potential for long term benefits

The criteria developed by EDA, with the exception of the inclusion of school districts, seems to follow the intent of

the act. The major problem is with how EDA scored applications based on the above criteria.

WHAT PROJECTS WERE FUNDED

The following summary includes those projects in both a 70% and 30% category while the accompanying tables reflect only those projects in the 70% category. The 30% category represents 30% of the 40 million allocated to areas in the State of Washington that have unemployment levels below the national average of 7.8%. The 70% category represents the allocation for areas with unemployment above the national average.

1. Cities and Towns

21 projects approved. The largest city to receive assistance ranks 17th in the state in population (22,300 persons in 1975). The next largest city to receive a grant ranks 33rd. The smallest town to receive a grant ranks 225th out of the 265 cities and towns in the state.

2. Counties

Two projects approved. The two counties rank 5th and 39th in state in population. There are 39 counties in the state (only one in the 70% pot).

3. School Districts

Nine projects approved.

4. Port Districts

One project approved in the 30% allocation. No major district received assistance. This is an inland port on the Idaho border.



5. Library Districts

One project approved.

6. Indian Tribes

Six projects approved.

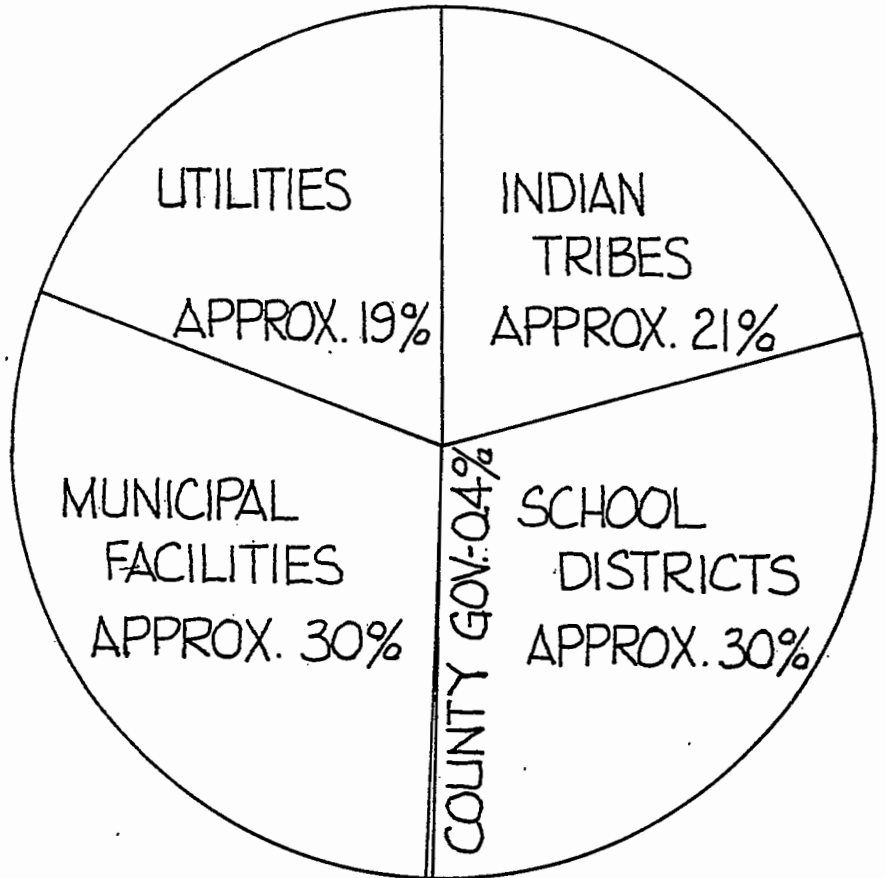
From this listing it is obvious that:

1. Central cities and other relatively populous cities;
2. County governments; and
3. Port Districts

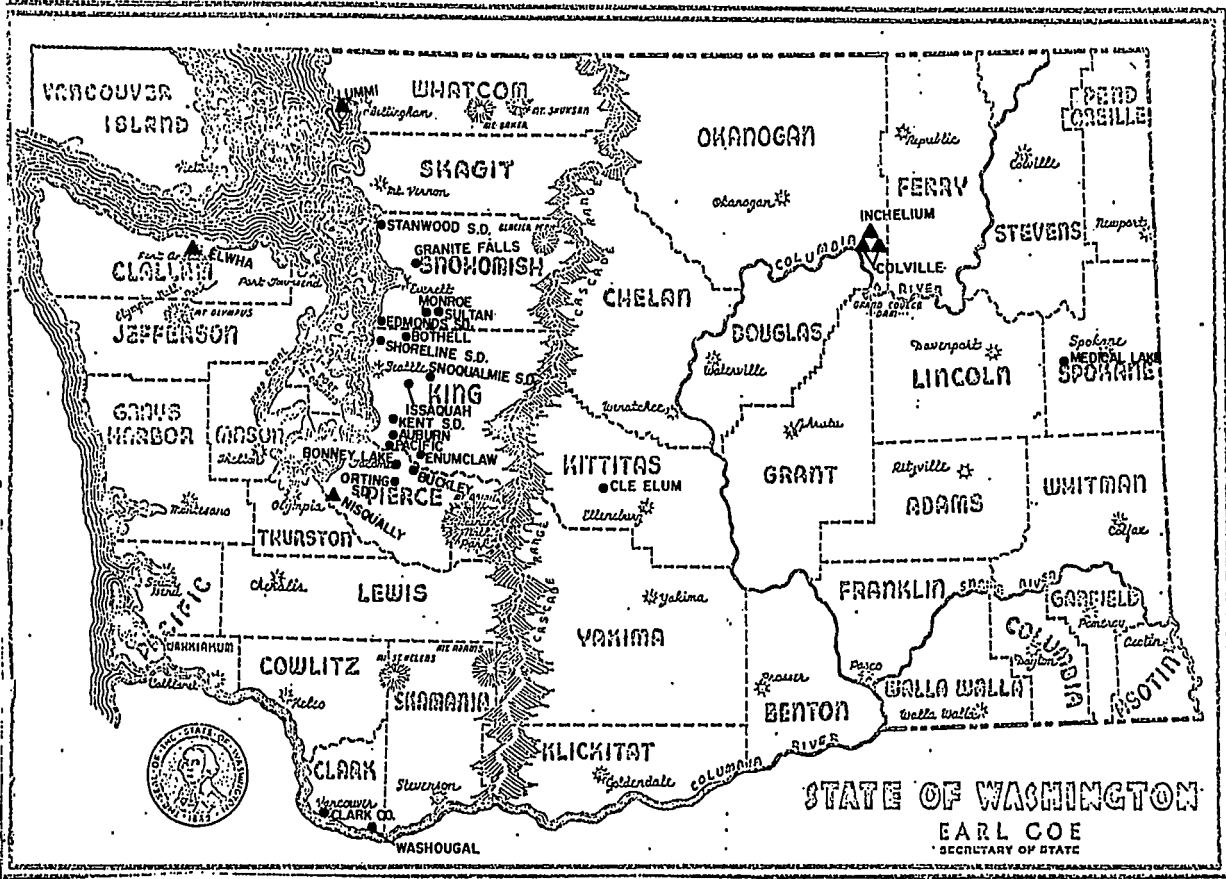
received little or no assistance from the LPW Act.

While some projects funded in this state were well thought-out and do meet the intent of the act, the majority of the projects can only be classified as "boondoggles". The remainder of this presentation will deal only with the 70% allocation because that is the money allocated to the areas with the highest unemployment and because that is the money Whatcom County competed for.

# WHERE THE MONEY WENT IN THE STATE 70% ALLOCATION



4/11/11



Program  
Report Narrative - 70% Allocation

While we review the Washington State allocation, remember the hallmark of this program was jobs. Further, keep in mind that President Ford's veto of this legislation was based on his concern that the jobs would be created at an inflated cost. His estimate was that each job would cost \$25,000. Congress justified their override of the veto because of the urgency of the growing numbers of unemployed and because it was their intent that the jobs would be created for not more than \$15,000 each.

The results in the State of Washington show twelve projects out of twenty-seven in the seventy percent pot exceeding \$25,000 with the median cost per job \$22,501. This figure could, in fact, be low due to the disproportionate numbers of jobs claimed by some projects as compared to the project type and projected man months.

Thirteen funded projects claimed the Snohomish-King County labor area while not one project went to Seattle or Everett where the largest unemployed population resides.

The reason for denial for most projects was categorically due to what EDA called, "a concentration of projects in an area". If this was the initial reasoning, the resulting project allocation turned that philosophy into a sham. The attached map illustrates my point. The Northwest counties: Skagit, San Juan, Island and Whatcom did not receive one project, where relative unemployment has been the worst in the state.

Skagit and Whatcom Counties have had the highest unemployment rates in the state for the past two years.

The unofficial use of the "Bench Mark System" by EDA further exaggerated the disparate allocation of funds. The Bench Mark System was a sub-state allocation plan used by EDA unknown to the applicants. This system established a quota method by which counties were allocated an amount of money based on their percentage of the state's unemployed workers. Projects were selected in a county until that county's allocation was spent. King and Snohomish Counties because they contain most of the state's unemployed workers received most of the money while the entire state allocation was utilized before projects in some counties could be considered.

As a capital investment program, the original legislation gave priority funding to general purpose governments. A heavy lobbying effort in behalf of the school districts was successful in getting equal status with general purpose governments for the purpose of this act. This turned out to be very gratifying for them. School districts ended up with 30 percent of the state<sup>l</sup> allocation. Municipal projects for small towns fared well with 30 percent of the money. But county governments fared worse -- only one county project was funded from the 70 percent pot, or .4%.

The school district projects read like a wish list and do not provide funding to the urgent needs of communities suffering from high unemployment and deficient governmental

facilities. Two examples of this flagrant expenditure of funds are the Stanwood School District Recreational Complex for \$1,815,900 which includes a 440 yard eight-lane track, covered grandstand, six tennis courts, handball courts and horseshoe pits. Another is the Edmonds School District Locational Horticultural Center. This project can be reviewed on page 25 in chart form.

It appears that funded projects were those that best manipulated the unemployment figures. This is best demonstrated by the charts on pages 24 - 31.

The quality of the projects and their preparation were meaningless. There was indeed a discriminatory application of the rules for project acceptance. The regulations published by EDA included precise instructions on exhibits and information to be provided by an application. Yet, to this day, EDA is still gathering information to complete funded applications.

For instance, all applications were to have fully executed architectural agreements. All architectural final specs and drawings were preferenced, as well as full and documented environmental clearance and administrative procedures were to be complete, presumably so that only projects that were prepared to commence construction in ninety days could be funded. Applicants, therefore, were led to believe that those who were ready and who had documentation that could stand the test of scrutiny by EDA's staff would be funded. Clearly this was not the case.

At least five of the applications had no architectural

information or drawings prepared. The Orting School District even managed to get by with an "Agreement to Agree" with an architect. Where this may not seem important on the surface, one must keep in mind that to meet all of the EDA regulations as they were laid down meant an investment of time and money by the applicant. Considering that there were grant requests that totaled \$600 million dollars in the State of Washington, there can be no justification for EDA "waffeling" on their own guidelines.

It appears that no final review for accuracy on economic impact was given to projects prior to grant awards. Did anyone ask Issaquah if six jobs was the best they could do for \$193,000? Or the Town of Monroe if 203 people could build a new public service administration building in 104 person. months? Did anyone ask if it is reasonable to have Auburn build a Taj Mahal at the whopping cost of \$64,166 per job? Did EDA question the expenditure of Washington's allocation partly to benefit Oregon? Whereas unemployment is of national significance, it seems absurd to concentrate 2.2 million dollars to Clark County projects which claims Multnomah County, Oregon as part of its labor area.

A major concern we have with the Public Works Program is the amount of money allocated to Indian tribes. Indeed, unemployment is a chronic problem on reservations, but the exception made to the rules as well as the intent of the act by EDA are not acceptable. If EDA intended to provide special

provisions for tribal applications, it should have established this at the start.

The Colville Indians received \$2,776,092 in grant awards (one was submitted in the name of the Inchillium School District) despite the fact that there are only 557 unemployed. The Colville Indians claimed a labor area for one project that included Okanogan, Stevens and Ferry Counties. This brought their unemployment level to 11.9 percent, or 2,830 unemployed for the purpose of the application. They then claimed the percapita income of the Colville Reservation at \$2,700. This is an illustration of figure juggling excepted by EDA.

The Lummi Indian Tribe is a classic example of unnecessary exception to the rules. The Lummis claim that they need no environmental clearance to build a modular float system in Lummi Bay, when in fact they must comply with HEPA. They claim a long range economic impact will be derived by the project when they have concurrently stated that they plan to store the floats over an extended period of time. They don't own the land they plan to build this facility on when clear title and ownership of the land was clearly a prerequisite to funding, according to EDA regulations.

Whatcom County was not funded because of a so-called concentration of dollars in the area due to the Lummi grant award. A close look at the facts makes that reasoning seem ludicrous. The tribe plans to use force account procedures to employ only tribal members in the project. Clearly, this concentrates money



on the Lummi Reservation, not the rest of Whatcom County, nor does it alleviate unemployment in the construction trades in Whatcom County. In fact, it is safe to say that for the purpose of this grant, the Lummi Tribe is in Whatcom County by a geographical coincidence.

The following are charts that disclose the economic impact of each project funded in the 70% allocation. The first six are done graphically as examples of some of the most dubious projects funded through the LPW Act.

Whatcom County's denied project is included for comparative purposes.

AUBURN - Grant Award - 3,850,000

Project: City Hall & Police Station

SELECTED CRITERIA

|                              |        |
|------------------------------|--------|
| 30% unemployed workers       | 47,850 |
| 25% unemployment rate        | 8.53%  |
| 30% labor intensity          | 43%    |
| 15% per capital income       | 3,801  |
| 10% long term benefits       | X      |
| 5% relate to community plans | X      |

RESULTS

|                             |           |
|-----------------------------|-----------|
| Jobs created                | 60        |
| Lab or costs per job        | 27,654    |
| Total cost per job          | 64,166 *  |
| Duration of project         | 12 months |
| Project area claimed        | Sno-King  |
| Dollars per area unemployed | 80.45     |

Highest cost per job in the Washington allocation -  
5 times the amount intended by Congress!

CLE ELUM - Grant Award - 334,368

Project: Library

SELECTED CRITERIA

|                              |        |
|------------------------------|--------|
| 30% unemployed workers       | 59,290 |
| 25% unemployment rate        | 8.8%   |
| 30% labor intensity          | 37.8%  |
| 15% per capita income        | 2,878  |
| 10% long term benefitis      | X      |
| 5% relate to community plans | X      |

RESULTS

|                             |                                 |
|-----------------------------|---------------------------------|
| Jobs created                | 100                             |
| Labor costs per job         | 1,264 *                         |
| Total cost per job          | 4,243 *                         |
| Duration of project         | ?                               |
| Project area claimed        | Kititas, King<br>Chelan, Yakima |
| Dollars per area unemployed | 5.62                            |

Further the King County Labor Market was claimed by  
this eastern county with no justification.

\* The accuracy of these figures is highly  
improbable but were none the less accepted by  
E.D.A.

EDMONDS S.D. - Grant Award - 373,438

Project: Locational Horticultural Center

SELECTED CRITERION

|                              |        |
|------------------------------|--------|
| 30% unemployed workers       | 58,490 |
| 25% unemployment rate        | 8.6%   |
| 30% labor intensity          | 36%    |
| 15% per capita income        | 4,539  |
| 10% long term benefits       | ?      |
| 5% relate to community plans | ?      |

RESULTS

|                             |          |
|-----------------------------|----------|
| Jobs created                | 11.7     |
| Labor cost per job          | 11,757   |
| Total cost per job          | 31,917   |
| Duration of project         | 6 months |
| Project area claimed        | Sno-King |
| Dollars per area unemployed | 6.38     |

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LOWER ELWHA TRIBE - Grant Award - 1,377,845

Project: Community Center

SELECTED CRITERION

|                              |       |
|------------------------------|-------|
| 30% unemployed workers       | 103   |
| 25% unemployment rate        | 54%   |
| 30% labor intensity          | 33.8% |
| 15% per capital income       | 1,570 |
| 10% long term benefits       | X     |
| 5% relate to community plans | X     |

RESULTS

|                             |                   |
|-----------------------------|-------------------|
| Jobs created                | 30                |
| Labor cost per job          | 15,559.26         |
| Total cost per job          | 45,928            |
| Duration of project         | 14 months         |
| Project area claimed        | Elwha reservation |
| Dollars per area unemployed | 13,377.13*        |

\* Highest concentration of E.D.A. dollars in state allocation

25.

LUMMI INDIAN TRIBE - Grant Award - 835,000      Project: Modular Float System

SELECTED CRITERIA

|                              |       |
|------------------------------|-------|
| 30% unemployed workers       | 573   |
| 25% unemployment rate        | 44%   |
| 30% labor intensity          | 38.9% |
| 15% per capita income        | 1,065 |
| 10% long term benefits       | ?     |
| 5% relate to community plans | ?     |

RESULTS

|                             |                        |
|-----------------------------|------------------------|
| Jobs created                | 17                     |
| Labor cost per job          | 19,118                 |
| Total cost per job          | 49,118                 |
| Duration of project         | 12 months              |
| Project area claimed        | Lummi Reservation      |
| Dollars per acre unemployed | 1,457 reservation only |

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ISSAQUAH - Grant Award - 193,918

Project: Water Reservation

SELECTED CRITERIA

|                               |        |
|-------------------------------|--------|
| 30% unemployed                | 59,423 |
| 25% unemployment rate         | 8.8%   |
| 30% labor intensity           | 43%    |
| 15% per capita income         | 3,853  |
| 10% long term benefits        | X      |
| 5% relates to community plans | X      |

RESULTS

|                             |           |
|-----------------------------|-----------|
| Jobs created                | 6         |
| Labor costs per job         | 14,067    |
| Total cost per job          | 32,319    |
| Duration of project         | 12 months |
| Project area claimed        | King      |
| Dollars per area unemployed | 3.26      |

26.

NOT FUNDED

WHATCOM COUNTY - Grant Request - \$1,946,206 Project: Bellingahm - Whatcom County

Civic Center

SELECTION CRITERIA

|                               |         |
|-------------------------------|---------|
| 30% unemployed workers        | 7,428   |
| 25% unemployment rate         | 11.4%   |
| 30% labor intensity           | 40%     |
| 15% per capita income         | \$3,816 |
| 10% long term benefits        | X       |
| 5% relates to community plans | X       |

RESULTS

|                             |                   |
|-----------------------------|-------------------|
| jobs created                | 164               |
| labor cost per job          | \$5,271           |
| total cost per job          | \$11,867          |
| duration of project         | 12 mon            |
| project area claimed        | Whatcom<br>Skagit |
| dollars per area unemployed | \$262             |

| SELECTION CRITERIA           | WHATCOM            | LUMMI                  | AUBURN                | COLVILLE                  | COLVILLE      | (COLVILLE School District)<br>INCHELIUM | CLE ELUM                    | ISSAQUAH          |
|------------------------------|--------------------|------------------------|-----------------------|---------------------------|---------------|---|-----------------------------|-------------------|
|                              | 1,946,206<br>7,428 | 835,000<br>573         | 3,850,000<br>47,850   | 141,298                   | 256,949       | 2,768,618<br>2,830                      | 334,368<br>59,290           | 193,918<br>59,423 |
| 30% Unemployed Workers       |                    |                        |                       |                           |               |   |                             |                   |
| 25% Unemployment Rate        | 11.4%              | 4%                     | 8.53%                 | 31%                       | 31%           | 11.9%                                   | 8.8%                        | 8.88%             |
| Person Months                | 948                | 204                    | 690                   | 156                       | 192           | 451                                     |                             | 84                |
| 30% Labor Intensity          | 40%                | 38.9%                  | 43%                   | 30.9%                     | 30%           | 40.6%                                   | 37.8%                       | 43*               |
| 15% Per Capital Income       | 3,816              | 1,065                  | 3,801                 | 2,700                     | 2,500         | 2,700                                   | 2,878                       | 3,853             |
| 10% Long Term Benefits       | X                  | X                      |                       |                           |               | X                                       |                             |                   |
| 5% Relate to Community Plans | X                  | X                      |                       |                           |               | X                                       |                             |                   |
| Cost Per Job Created         | 11,867             | 49,118                 | 64,166                | 5,887                     | 10,706        | 41,948                                  | 4,243                       | 32,319            |
| People Per Project           | 164                | 17                     | 60                    | 24                        | 24            | 66                                      | 100                         | 6                 |
| Unemployed Dollar Per Person | 262                | Reservation Only 1,457 | 80.45                 |                           |               | 9.78                                    | 7.15                        | 3.26              |
| Project                      | Civic Center       | Modular System         | City Hall Police Sta. | Malott Comm. Center       | Tribal Center | Elementary & Sec. Schools               | Library                     | Water Resv.       |
| Project Area                 | Whatcom-Skagit     | Lummi Tribe            | Sno-King              |                           |               | Okanagan Stevens, Ferry                 | Kititas King, Chelan Yakima | King              |
| Incomplete A/E Information   |                    |                        |                       | Incomplete A/E No Drawing |               |   |                             |                   |
| Labor Equipment              | 864,518<br>26,530  |                        | 1,659,283<br>414,911  | 43,667                    |               | 1,124,369                               | 126,480<br>80.00            | 84,405            |

| <u>SELECTION CRITERIA</u>           | (School District)<br><u>EDMONDS</u> | (School District)<br><u>STANWOOD</u> | (School District)<br><u>ORTING</u> | <u>ROTHIEL</u>    | <u>BOHNEY LAKE</u>  | <u>MONROE</u>          | <u>CLARK COUNTY</u>       | <u>WASHINGTON</u>         |
|-------------------------------------|-------------------------------------|--------------------------------------|------------------------------------|-------------------|---------------------|------------------------|---------------------------|---------------------------|
| <u>30% Unemployed Workers</u>       | 373,438<br>58,490                   | 1,815,900<br>58,490                  | 1,153,000<br>16,044                | 450,025<br>59,423 | 3,828,364<br>16,044 | 884,361<br>59,423      | 1,898,118<br>32,642       | 247,275<br>33,302         |
| <u>25% Unemployment Rate</u>        | 8.6%                                | 8.64%                                | 10.3%                              | 8.8%              | 10.43%              | 8.88%                  | 9.24%                     | 9.5%                      |
| <u>Person Months</u>                | 70.5%                               | 270                                  | 289                                | 96                | 2,376               | 104                    | 65                        | 40                        |
| <u>30% Labor Intensity</u>          | 4,539                               | 38%                                  | 37.5%                              | 40.6%             | 63%                 | 36%                    | 39.7%                     | 50%                       |
| <u>15% Per Capital Income</u>       |                                     | 3,077                                | 3,023                              | 3,854             | 3,356               | 3,645                  |                           | 3,739                     |
| <u>10% Long Term Benefits</u>       |                                     | X                                    | X                                  |                   |                     |                        |                           | X                         |
| <u>5% Relate to Community Plans</u> |                                     | X                                    | X                                  |                   |                     |                        |                           | X                         |
| <u>Cost Per Job Created</u>         | 31,917                              | 33,627                               | 5,912                              | 22,501            | 29,002              | 4,356                  | 43,139                    | 5,495                     |
| <u>People Per Project</u>           | 11.7                                | 54                                   | 195                                | 20                | 132                 | 203                    | 44                        | 45                        |
| <u>Unemployed Dollar Per Person</u> | 6.38                                | 31.00                                | 71.86                              | 7.57              | 238                 | 14.88                  | 58.14                     | 7.43                      |
| <u>Project</u>                      | Locational Horticultural Center     | Recreational Complex                 | Elementary School Addition         | City Hall Ren.    | Sewage System       | Public Services Admin. | Juvenile Hall Cons/Recon. | New City Hall             |
| <u>Project Area</u>                 | Sno-King                            | Sno-King                             | Pierce                             | Sno-King          | Pierce County       | Sno-King               | Clark, Portland Multnomah | Clark, Portland Multnomah |
| <u>Incomplete A/E Information</u>   |                                     |                                      | No A/E Agreement                   |                   |                     |                        |                           |                           |
| <u>Labor Equipment</u>              | 137,568<br>15,643                   |                                      | 433,500<br>50,000                  | 182,740           |                     | 318,670                | 753,934                   | 124,500                   |



| <u>SELECTION CRITERIA</u>               | <u>NISQUALLY<br/>INDIAN TRIBE</u>     | (School<br>District)<br><u>KENT</u>  | (School<br>District)<br><u>SNOQUALIMIE</u> | <u>LOWER<br/>ELWHA TRIBAL</u> | <u>SULTAN</u>                 | <u>PACIFIC</u>                  | (School<br>District)<br><u>SHORELINE</u> | <u>BUCKLEY</u>     |
|---|---------------------------------------|--------------------------------------|--|-------------------------------|-------------------------------|---------------------------------|--|--------------------|
| <u>30% Unemployed Workers</u>           | 712,145<br>153                        | 947,409<br>59,423                    | 2,741,000<br>58,490                        | 1,377,845<br>103              | 603,000<br>59,423             | 565,810<br>59,423               | 266,702<br>59,427                        | 308,620<br>16,044  |
| <u>25% Unemployment Rate</u>            | 69%                                   | 8.8%                                 | 8.6%                                       | 54%                           | 88.8%                         | 8.88%                           | 8.9%                                     | 10.8%              |
| <u>Person Months</u>                    | 157                                   | 221                                  | 575  | 420                           | 108                           | 132                             | 83.8                                     | 131                |
| <u>30% labor Intensity</u>              | 45%                                   | 40%                                  | 34%  | 33.8%                         | 31%                           | 32%                             | 40%                                      | 33.6%              |
| <u>15% Per Capital Income</u>           |                                       |                                      |  |                               | 2,933                         | 2,914                           | 4,539                                    | 1,979              |
| <u>10% Long Term Benefits</u>           |                                       |                                      |  |                               | X                             | X                               | X  |                    |
| <u>5% Relate to Community<br/>Plans</u> |                                       |                                      |  |                               | X                             | X                               | X  |                    |
| <u>Cost Per Job Created</u>             | 14,533                                | 38,513                               | 9,354                                      | 45,928                        | 37,687                        | 22,632                          | 10,257                                   | 11,022             |
| <u>People Per Project</u>               | 49                                    | 24.6                                 | 293  | 30                            | 16                            | 25                              | 26                                       | 28                 |
| <u>Dollar Per Person<br/>Unemployed</u> | 4,654                                 | 15.94                                | 46.86                                      |                               | 10.00                         | 9.52                            | 4.48                                     |                    |
| <u>Project</u>                          | Admin. and net<br>Hanging<br>Facility | School P.E.<br>Facility<br>Expansion | High School<br>Alteration                  | Community<br>Center           | Water<br>Treatment<br>Storage | Fire &<br>Police<br>Hall        | Voc-Tech<br>School Imp.                  | City Hall<br>Reno. |
| <u>Project Area</u>                     | Nisqually<br>Indian Res.              | King                                 | Sno-King                                   | Elwha<br>Reservation          | Sno-King                      | Sno-King                        | Sno-King                                 | Tacoma,<br>Piorce  |
| <u>Incomplete<br/>A/E Information</u>   |                                       |                                      | No A/E<br>Agreement                        |                               |                               | No Draw-<br>No A/E<br>Agreement |  |                    |
| <u>Labor<br/>Equipment</u>              | 323,657                               | 381,393                              |  | 466,778                       |                               |                                 |  | 103,990            |

| <u>SELECTION CRITERIA</u>           | <u>ENUNCLAW</u>    | <u>GRANITE FALLS</u> | <u>MEDICAL LAKE</u>                  |
|-------------------------------------|--------------------|----------------------|--------------------------------------|
|                                     | 592,920            | 268,097              | 366,751                              |
| <u>30% Unemployed Workers</u>       | 59,423             | 10,642               | 9,944                                |
| <u>25% Unemployment Rate</u>        | 8.8%               | 9.16%                | 7.8%                                 |
| <u>Person Months</u>                | 90                 | 72                   | 145.5                                |
| <u>30% Labor Intensity</u>          | 34%                | 44%                  | 46%                                  |
| <u>15% Per Capital Income</u>       | 3,940              | 2,729                | Including<br>1,832 Inmates           |
| <u>10% Long Term Benefits</u>       |                    |                      |                                      |
| <u>5% Relate to Community Plans</u> |                    |                      |                                      |
| <u>Cost Per Job Created</u>         | 32,940             | 15,770               | 5,239                                |
| <u>People Per Project</u>           | 18                 | 17                   | 70                                   |
| <u>Unemployed Dollar Per Person</u> | 9.97               | 25.00                | 36.88                                |
| <u>Project</u>                      | Rural Water Supply | Water System         | Municipal Town Hall                  |
| <u>Project Area</u>                 | Sno - King         | Snohomish            | Spokane County                       |
| <u>Incomplete A/E Information</u>   |                    |                      | A/E Incomplete<br>Drawing Incomplete |
| <u>Labor Equipment</u>              | 202,410            |                      | 170,000                              |

*Exhibit No. 11*LUMMI INDIAN TRIBE - FERNDALE SCHOOL DISTRICT  
GOALS  
December 7, 1976

The Lummi Indian Tribe and the Ferndale School District have jointly developed the following goals and agree that the implementation of these goals would enhance the education of children within the District and enhance the working relationship between the District and the Tribe.

## GOAL I:

To develop and implement inservice training programs for teachers and administrators in the area of Indian education.

## GOAL II:

The Ferndale School District will continue to implement an approved Affirmative Action Program.

## GOAL III:

To develop and implement programs designed to enhance the communication and improve community relations between the District and the Tribe.

## GOAL IV:

Curricula and resource materials in the area of Indian education will be developed/selected and implemented in the K-12 program.

## GOAL V:

The Lummi Indian Tribe - Ferndale School District Task Force will meet by June, 1977 to evaluate progress made on Goals I through IV.

The Lummi Indian Tribe and Ferndale School District further agree to pursue the task force recommendations which delineate means to implement Goals I through IV (see Attachment A). To attempt to implement all the task force recommendations immediately would be prohibitive. Therefore, the task force is directed to select and pursue the development and implementation of particular recommendations from Attachment A.

LUMMI INDIAN TRIBE - FERNDALE SCHOOL DISTRICT  
OBJECTIVES DEVELOPMENT TASK FORCE RECOMMENDATIONS

GOAL I:

To develop and implement inservice training programs for teachers and administrators in the area of Indian education.

- I-A. New teacher orientation to the Lummi community to be conducted annually. During the workshop days prior to the opening of school, new certificated employees to the Ferndale School District could be introduced to the Lummi Community in a brief, one-day workshop.

Included in this orientation could be a luncheon at the reservation, visitations to the aquaculture school, the Lummi business area, the Lummi Education Center, the Council chambers, and other organizations and/or facilities on the Lummi reservation. Additionally, this could include an introduction to the various Federal programs that are operating within the Ferndale School District and the goals and objectives of these programs. Finally, it is our hope that parents would be involved with the new teachers in this orientation program so that new teachers would have an opportunity to become acquainted with Lummi parents, the Lummi community, and needs of Lummi children.

- I-B. Faculty orientation to the Lummi community. Possibly departments within each building could be involved in an orientation session to the Lummi community. The activities could be very similar to the activities for new teachers. However, this could be done throughout the school year rather than prior to school. Again, it would be crucial that Lummi parents as well as Ferndale teachers be involved in this program. Examples: Second grade teachers may need information on the Lummi community when doing a unit on communities. Math departments may find a visit to the Aquaculture school beneficial to use for background to develop math problems.

- I-C. Develop inservice seminars for Ferndale School District employees and Lummi parents. The seminars would be developed in such a way that teachers could get district inservice credit applicable to the salary schedule for participating in the inservice seminars.

These seminars could include the following: History of the Northwest Indians, Culture of the Northwest Indians, sessions on prejudice and cultural differences, facts of Federal laws and policy, development and selection of materials that would enhance the education of Lummi children, parent expectation of school program, and teacher expectation of students.

- I-D. Workshops in Northwest Indians for college credit through Western Washington State College. Again, it would be crucial that Ferndale School District teachers, white parents, and Lummi parents be involved.

NOTE: With C and D above, the Task Force people indicated that there are resources available. These resources include Susan Mancuso who works at both Whatcom Community College and Western Washington State College, Jeff Wilner, who works at Western Washington State College, and Sarah Burgess of Western Washington State College.

- I-E. Inservice training for administrators, particularly in the area of hiring and ways to interview prospective employees to ascertain whether they are sensitive to the minority cultures.
- I-F. Sensitivity of students to students. In the area of curriculum, it was determined that it was important that students improve their attitude toward themselves, others, and property. Two suggestions to improve school climate between students follow.
1. Programs, methods, and activities designed to enhance the self-concept, self-esteem, and pride of students for themselves will be developed.
  2. A series of planned units on prejudice in grades 6-9. Each grade level would be done in a different manner, but some basic concepts would be taught. For example: School counselors handle 6th grade unit, Group from OIC (Opportunities Industrialization Center) handle 7th grade unit, representatives from Marine Corps at 8th grade, and Psychology of Prejudice teacher at 9th grade.
- I-G. Faculty meetings as informational sessions on Federal programs. The faculty session informational programs could include general information on URRD, Title IV-A, Title I, Johnson-O'Malley, Title IV-B, Follow Through and all other Federal programs. The purpose would be to make faculty members aware of the Federal programs which are operating in the Ferndale School District and the objectives they are trying to accomplish. Explanation of impact and PL 93-638 money as well as tax assessments against Indians should be included.
- I-H. Assessment of needs. It is suggested that a needs assessment be conducted. The assessment would include:
1. Early dropout rate--we discussed the fact that many Lummi children are adults at age 11 and are out working on full-time jobs and the difficulty of being an adult, a full-time employee, and going to school. We need to assess the causes of our dropout rate.
  2. Management systems--how to deal with discipline and Lummi children.
  3. Physical size--the small stature of the Lummi children was posed as a problem with athletics especially in the secondary school area.
  4. High rate of absences was recognized as a major problem. We discussed three areas which we would like to bring to the attention of the Steering Committee.
    - a. Numerous absences will continue to be a problem for some students. Can alternatives to present systems be found to help teachers help these students keep up? Two possibilities explored included taping of lectures and more efficient use of tutors.

- b. The pressing need for attendance counselors who are Indian and therefore can deal more effectively with parents and students.
  - c. Council and parent responsibility. LIBC should consider ways to inform tribal members of the law and order code regulations dealing with contributing to the delinquency of minors in educational matters. They should also consider appointing a tribal truant officer.
5. A longitudinal study on Head Start students vs. non-Head Start students could be conducted.
  6. Establish clear standards in basic education to be met by each student at each grade level. If students are not achieving these standards, the parents should be notified and cooperative measures should be taken to remedy the deficiency. Indian parents should not discover when their child is in 9th grade that he reads at 3rd grade level.

The Task Force concluded that a joint assessment of the problems of Lummi children was necessary.

GOAL II:

The Ferndale School District will continue to implement an approved Affirmative Action Program.

- II-A. The Ferndale School District will develop an Affirmative Action Advisory Committee which will include a representative from the Lummi Indian Community to be selected by the Lummi Tribal Council. The purpose of the Affirmative Action Advisory Committee will be to review the Ferndale School District Affirmative Action Program on a regular basis.
- II-B. It is recommended that the Lummi representative to the Affirmative Action Advisory Committee be responsible for reporting Affirmative Action information to the Tribal Council.
- II-C. The Lummi Tribe will establish an educational program designed to assist adults who are seeking employment. This program would include helping applicants fill out applications, helping applicants gather letters of recommendation, and assisting applicants in developing resumes of their experience and qualifications.
- II-D. The Lummi Indian Tribe will assist the Ferndale School District in the search and recruitment of potential Indian employees. Possibly the Tribe would delegate this task to someone in the personnel office of LITE or the Tribal personnel office.

GOAL III:

To develop and implement programs designed to enhance the communication and improve community relations between the District and the Tribe.

- III-A. Lummi representative to the Ferndale School District Board of Education: The Tribe will appoint one member of the Tribe to attend all regularly

scheduled and special meetings of the Ferndale School District Board of Directors. It will be the responsibility of this person to report information concerning the Board meetings to the Tribal Council. As a patron of the Ferndale School District, this person has the right to be heard by the Board of Directors in open Board meetings. As with any other patron, this person shall not participate nor be present in any discussions of the Board which are held in Executive Session unless expressly requested by the Board to attend; nor shall this person have a vote in any matter coming before the Board.

III-B. Grievance Procedure--A grievance procedure that will allow for Indian Community input will be established.

1. A formal grievance procedure should be developed and the Lummi Indian community should be informed of this grievance procedure. The consensus of opinion from the Lummi Task Force was that parents were not aware of the channels that they should follow for grievances.
2. The tribe will appoint a person to serve as a liaison for the Lummi people to hear and assist Lummi parents in processing grievances. Notice of the name of the person will be distributed by the Lummi Tribe to Lummi parents and students.
3. Suggested that a "round table" forum be developed where representatives from Ferndale School District go to the Lummi Tribal Center possibly once a month for a 2-hour session where parents and Lummi Community members can drop in to submit their problems and their ideas. It was further suggested that the liaison person appointed by the Tribe should also attend these round table sessions.

III-C. Lummi representative on the Levy Committee--It was recommended that the Ferndale School District request that the Lummi Indian Tribe select a representative to the District's annual levy committee.

III-D. Dual community activities--It was suggested that the Ferndale School District and Lummi Indian Tribe continue to seek opportunities for dual community activities. Examples of types of activities include:

1. Seasonal sports participation between Lummi teams and white teams in exhibition games. For example: basketball jamboree with teams from grade school through high school, men faculty against Indian fishermen, and an adult women's team. White involvement in some canoeing exercises or training.
2. Joint dinners such as the Title IV-A banquet held for the Ferndale School District staff and the fall sports banquet.
3. Occasional school assemblies such as the one held on Treaty Day during the 1974-75 academic year.
4. It was suggested by the task force that employees under Title IV-A and Johnson-O'Malley should continue to seek potential dual community activities programs.

- III-E. Affirmative Action representative--A representative from the Lummi Indian Tribe should be selected by the Lummi Tribal Council to serve on the Ferndale School District Affirmative Action Advisory Committee as described in Goal II above.
- III-F. Discipline Committee representative--The Ferndale School District will develop a task force to review the rules and regulations and student disciplinary code of the Ferndale School District. A representative from the Lummi Indian Community should be selected to serve on that task force.
- III-G. District representative to Lummi Education Committee--It was suggested that the Ferndale School District designate a District representative to attend the meetings of the Lummi Education Committee.

GOAL IV:

Curricula and resource materials in the area of Indian education will be developed/selected and implemented in the K-12 program.

- IV-A. Curricula in the area of Indian education will be developed for the K-12 program.

1. The Ferndale School District will develop an instructional materials committee which will include Lummi representatives. It will be the task of the instructional materials committee to formulate guidelines that will govern the selection of materials to be used in the Ferndale School District. These guidelines will be sensitive to Lummi Indian cultural concerns.
  - a. The second stage of the process would require inservice training for teachers to teach them how to use the guidelines and sensitize them to the subtleties of the problems of discrimination in materials.
  - b. The instructional materials committee will develop a system whereby teachers could evaluate existing materials using the accepted guidelines. This would include a procedure for alerting the instructional materials committee as to materials which are inappropriate and should be removed or which are especially appropriate and should be disseminated for use.
  - c. It was suggested that the instructional materials committee review the Dan Frontier series for suitability under the newly formulated guidelines.
2. The Ferndale School District will develop a curriculum committee which will include representatives of the Lummi Tribe to assess the curricular needs in the area of Indian education, develop programs to be implemented, and develop time lines for implementing programs. These would be programs for all children in all schools, not just Indian children in some schools. Example:-
  - a. Indian history could be taught along with U.S. History in grades 5, 8, and 10.
  - b. The reservation as a community could be taught at grade 2.



- c. Lummi careers could be included in diversified occupations and other career education units and/or programs.
  - d. Mathematics problems could include examples related to Indian culture.
  - e. The criterion referenced tests and other evaluation items which will be designed for the goal-based curriculum evaluation program could include problems related to Indian culture.
3. The Ferndale School District will develop a committee specifically designed to assess the reading program and reading needs of the Lummi children. It was the feeling of the task group that the middle school and high school need more supplemental reading programs than are presently in existence. Additionally, there is a need for high interest materials related to Indian culture as well as general teenage culture.
- IV-B. The Lummi Indian Tribe will develop an Indian Cultural Resource Library and Speakers Bureau. The Ferndale School District will increase the Indian cultural resource materials within their library collections.
- 1. Indian Cultural Resource Library:
    - a. To allow access to documents, archives, art work, etc. by Ferndale School District staff and students and Lummi parents.
    - b. Speakers Bureau to bring Lummi culture--both past and present--and resource materials to the schools. It was suggested that the Lummi Tribe delegate some person, group, or agency to be responsible for this.
    - c. Videotapes of cultural dances, etc. could be gathered for use in classrooms.
  - 2. The Ferndale School District librarians will develop and implement a program where input from the Lummi Tribe will be encouraged to aid the librarians in the selection and evaluation of materials pertaining to Indian culture.
    - a. The task groups will also actively seek potential supplemental funding sources to enable additional purchases of material.
    - b. The librarians will develop a means of disseminating materials to staff members.

GOAL V:

The Lummi Indian Tribe-Ferndale School District Task Force will meet by June, 1977 to evaluate progress made on Goals I Through IV.

The purpose of the task force meeting will be to evaluate progress made on the objectives and to modify the objectives where necessary. Additionally, the task force would receive a report on each program which was selected for implementation.

A report of this evaluation will be disseminated to the Lummi Tribal Council and the Ferndale School District Board of Education.

## STUDENT ENROLLMENT IN THE FERDALE SCHOOL DISTRICT

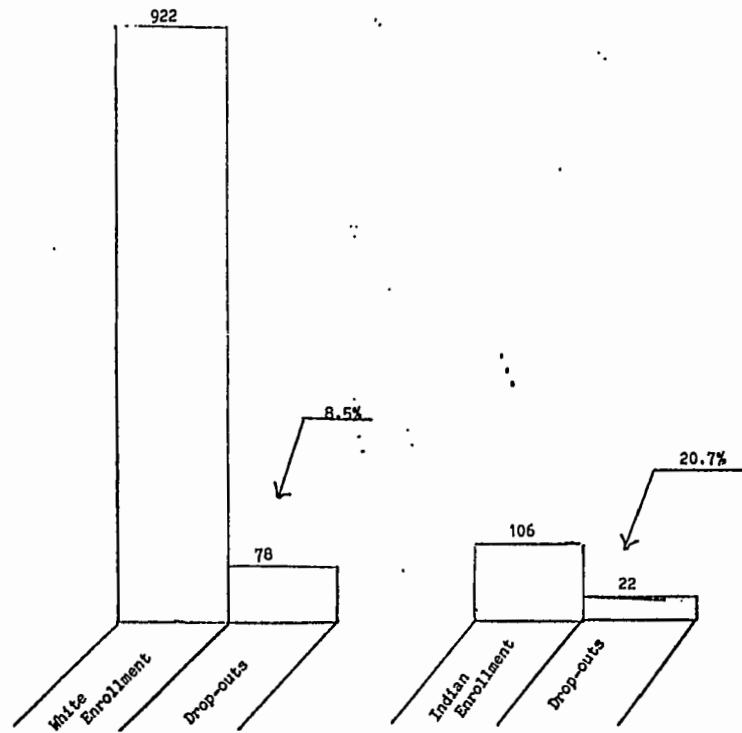
November, 1976

|                             | Total<br>Students | Indians | Percentage of<br>Indians to<br>total enrollment |
|-----------------------------|-------------------|---------|---|
| Ferndale High School        | 1028              | 106     | 10.3 %  |
| Vista Middle School         | 697               | 103     | 15.2 %  |
| Custer Elementary           | 533               | 18      | 3.3 %   |
| Central Elementary          | 380               | 76      | 20 %  |
| North Bellingham Elementary | 370               | 2       | .54 %   |
| Mountain View Elementary    | 650               | 160     | 24.6 %  |
| Beach Elementary            | 26                | 0       | 0 %   |
| Total                       | 3684              | 465     | 12.6 %  |

APPENDIX A-4

Comparison of Indian/white drop-out figures at Ferndale High School for 75/76.

APPENDIX A-5



## APPENDIX A-7

A B S E N T E E   R E C O R D S

Indian Students compared to Non-Indian Students

| <u>Enrollment as of October 1</u> |    | 1975-76 School year   |                   |
|-----------------------------------|----|-----------------------|-------------------|
| Indian Students                   |    | <u>Percent Absent</u> |                   |
|                                   |    | <u>Indian</u>         | <u>Non-Indian</u> |
| K                                 | 41 | 17.9                  | 8.5               |
| 1st                               | 52 | 15.3                  | 5.9               |
| 2nd                               | 36 | 11.8                  | 6.6               |
| 3rd                               | 36 | 11.5                  | 6.5               |
| 4th                               | 32 | 11.3                  | 5.2               |
| 5th                               | 37 | 14.0                  | 5.7               |
| 6th                               | 35 | 17.5                  | 7.7               |
| 7th                               | 32 | 20.2                  | 2.2               |
| 8th                               | 49 | 18.9                  | 7.0               |
| 9th                               | 29 | 12.1                  | 5.7               |
| 10th                              | 23 | 15.4                  | 5.4               |
| 11th                              | 14 | 13.4                  | 5.7               |
| 12th                              | 14 | 12.8                  | 5.9               |

## APPENDIX A-8

Nelson Reading Test, September, 1976

Indian 9<sup>th</sup> Graders

Number of Students Tested: 46

Percent of  
Indian Students  
100%

90

80

70

60

50

40

30

20

10

0

At grade level or above

Less than 1 year below grade level

1 to 1.9 years below grade level

2 to 2.9 years below grade level

3 or more years below grade level

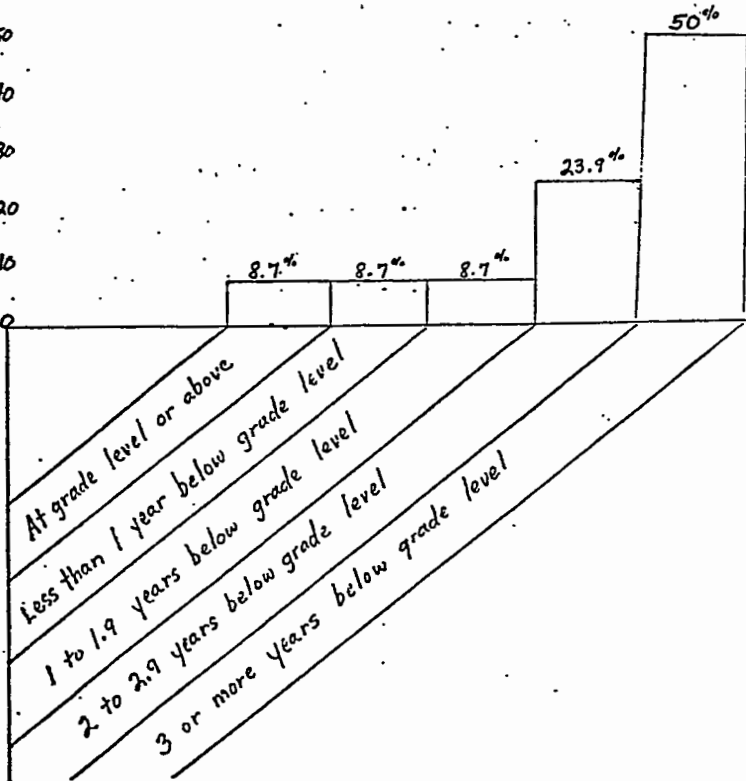
8.7%

8.7%

8.7%

23.9%

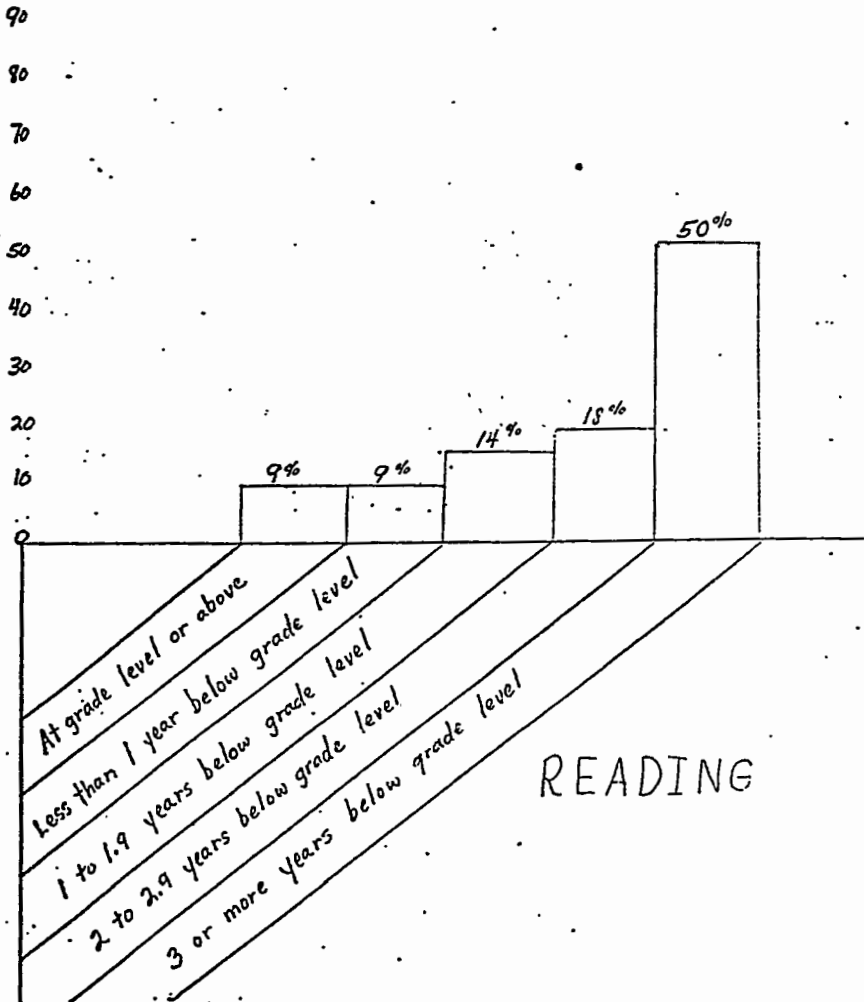
50%



## APPENDIX A-9

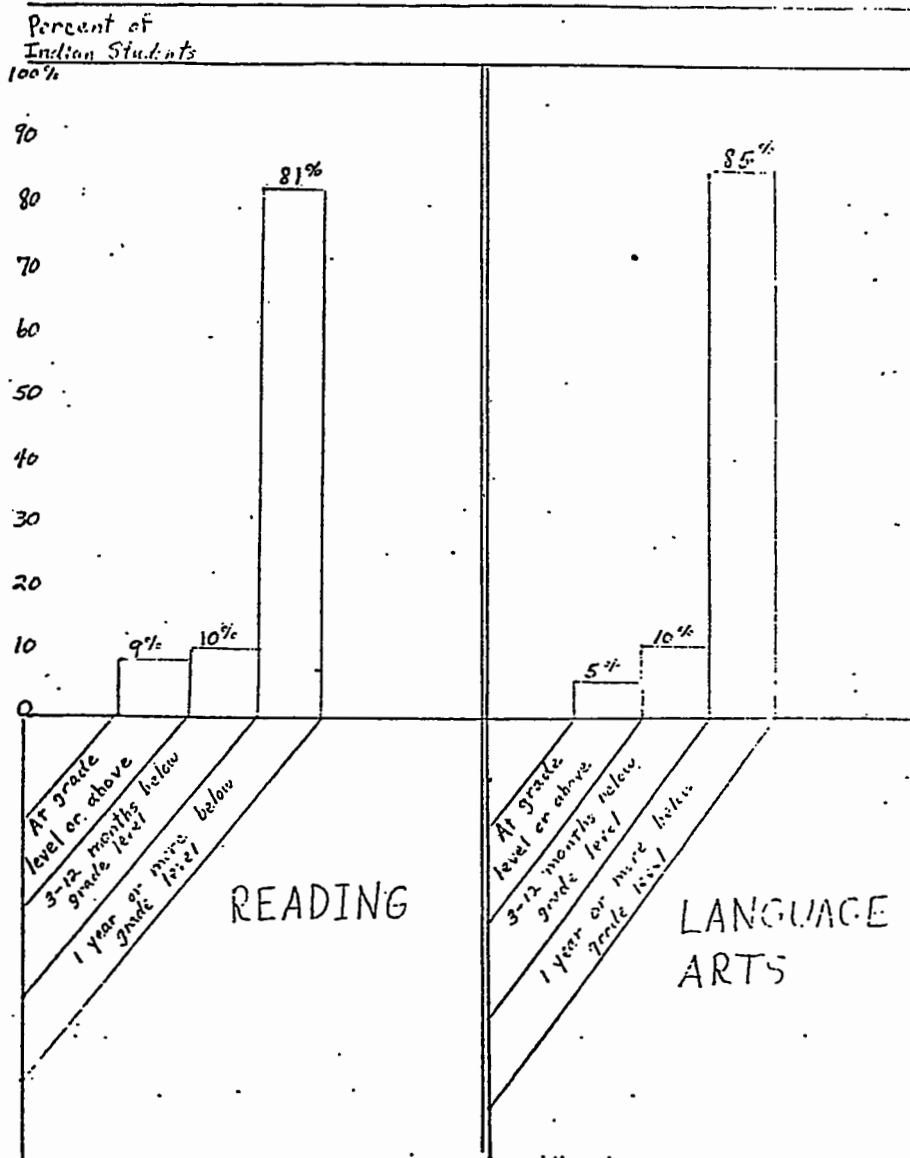
Comprehensive Test of Basic Skills, November, 1976  
 Indian 10<sup>th</sup> Graders                      Number of Students Tested: 22

Percent of  
 Indian Students  
 100%



## APPENDIX A-10

Comprehensive Test of Basic Skills, April, 1976  
 Indian Students Presently Enrolled in Grades 6, 7, and 8  
 Number of Students Tested: 77

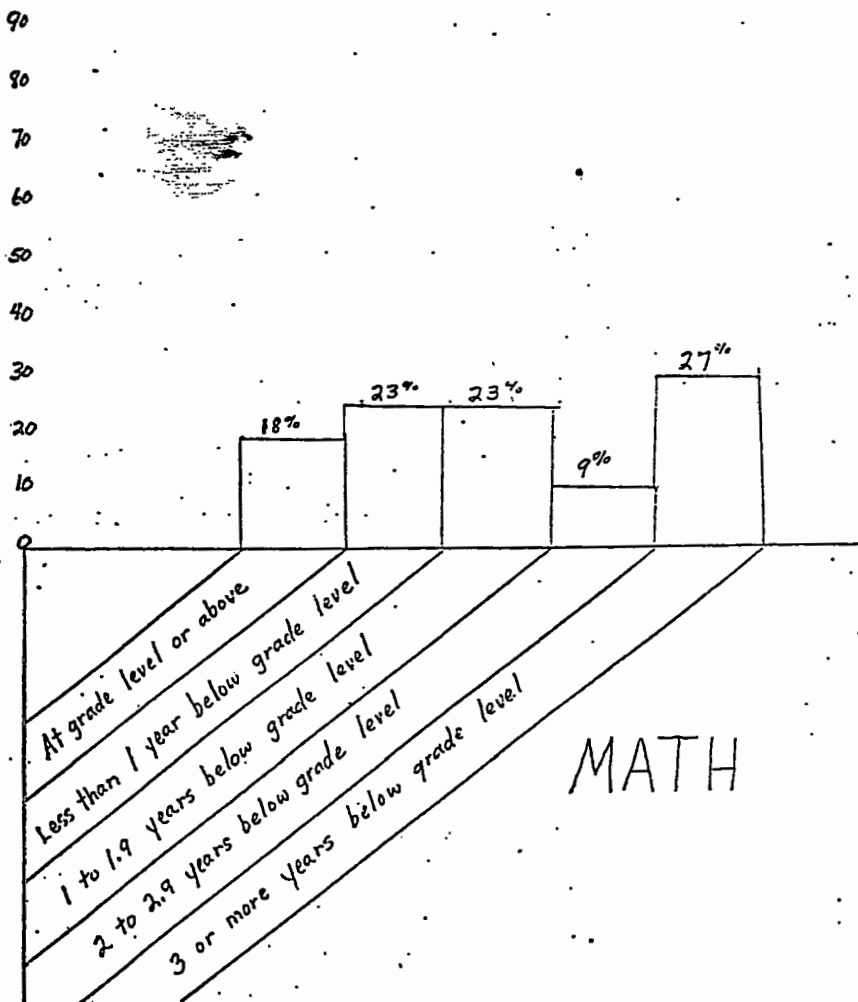


## APPENDIX A-11

Comprehensive Test of Basic Skills, November, 1976

Indian 10<sup>th</sup> Graders

Number of Students Tested: 22

Percent of  
Indian Students  
100%



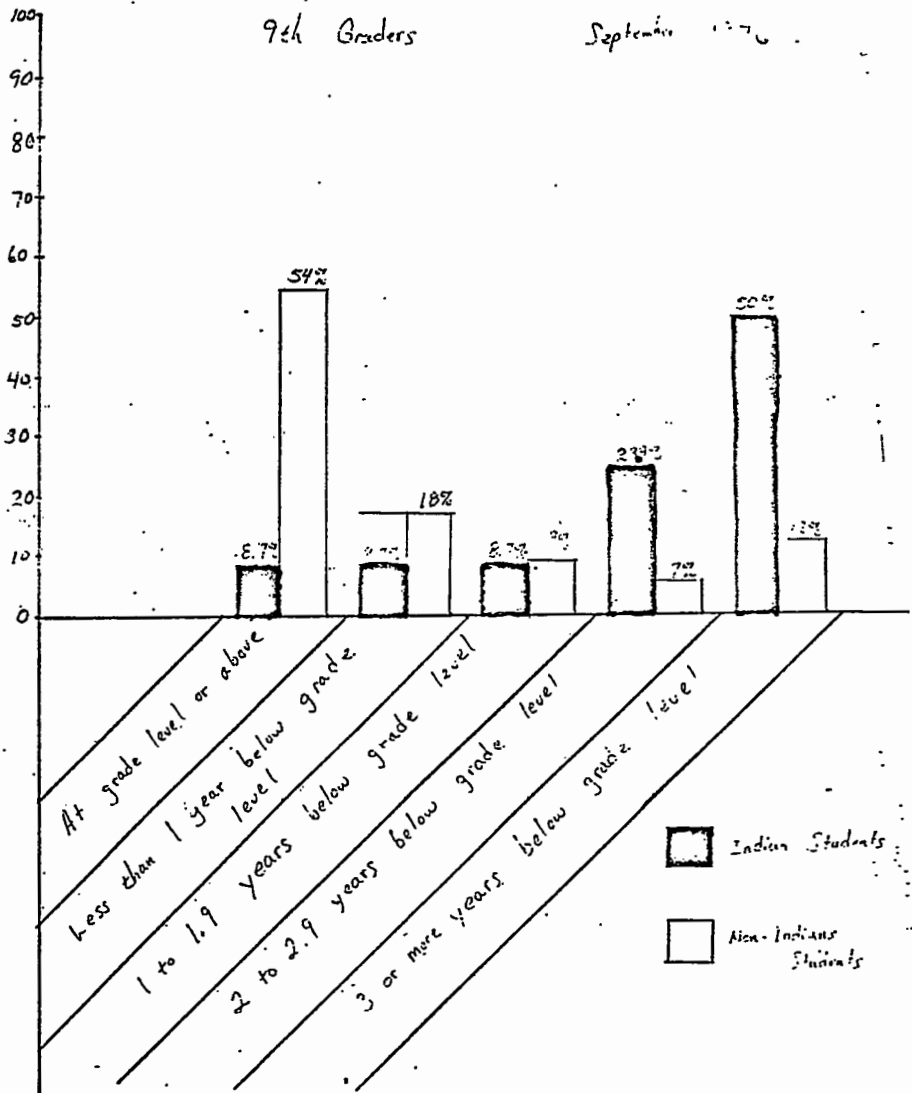
APPENDIX A-12

Nelson Reading Test

9th Graders

September 1976

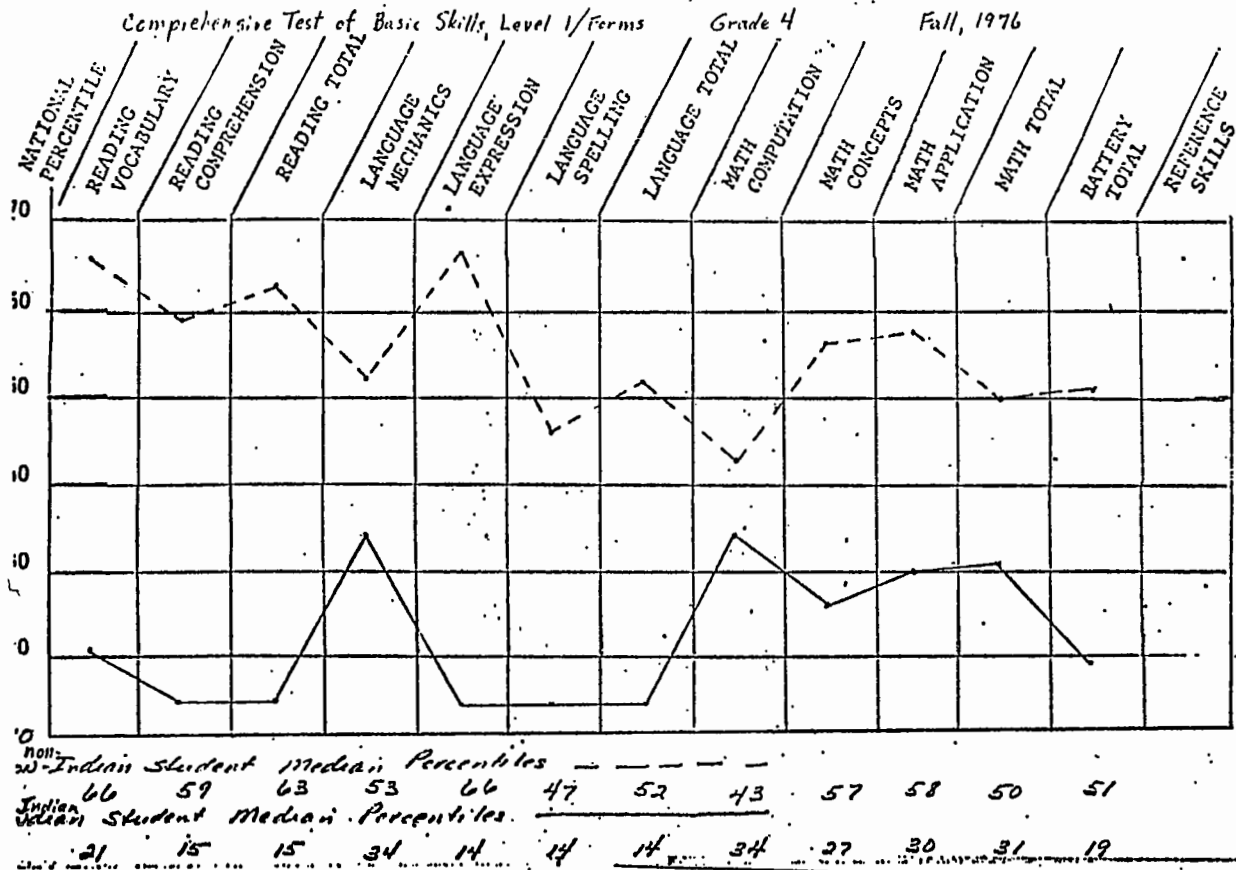
Percent of Students



Indian Students

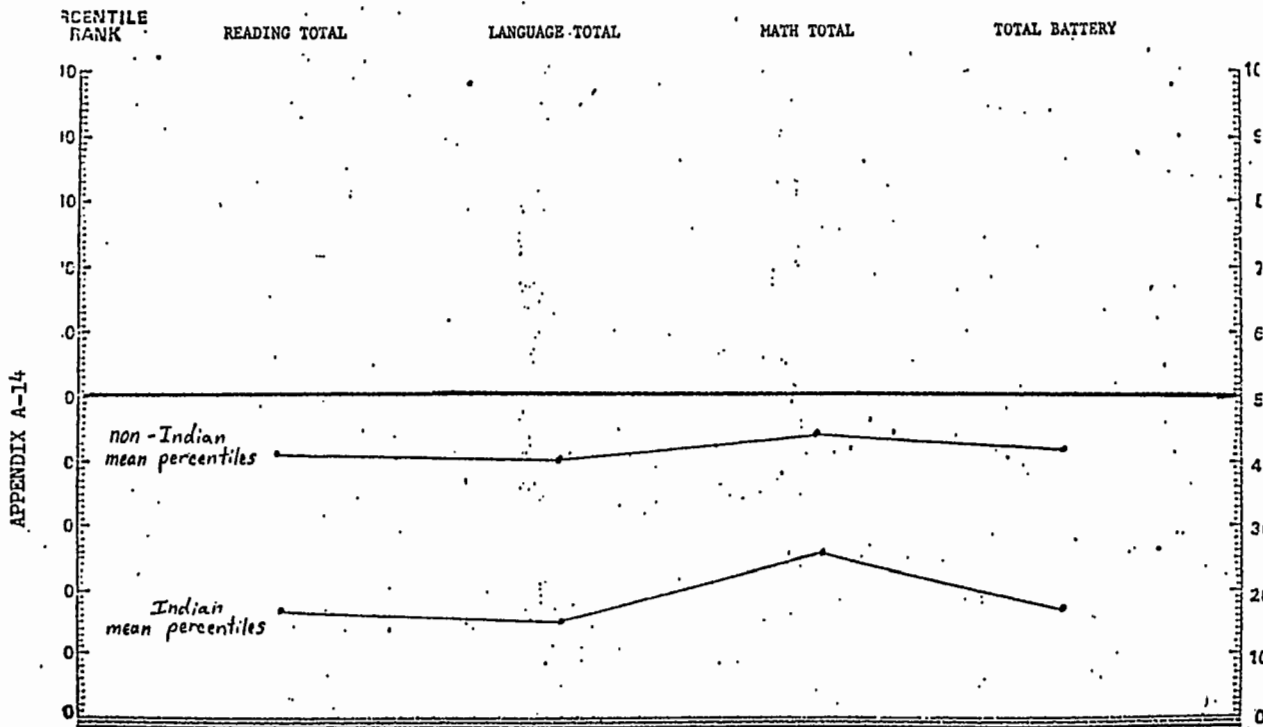
Non-Indian Students

APPENDIX A-13



FERNDALE SCHOOL DISTRICT #507  
 COMPREHENSIVE TEST OF BASIC SKILLS, NOVEMBER, 1976  
 10th GRADE  
 COMPARISON OF INDIAN AND NON-INDIAN PERCENTILE RANKS

150



NUMBER AND PERCENTAGE OF BOOKS ABOUT INDIANS  
IN NEARBY SCHOOL AND COUNTY LIBRARIES

| Library                            | Total Number of Books in Library | Total Number of Books about Indians | Percentage of Indian Books to Total | Total Number of Magazines and Newspapers | Total Magazines and Newspapers about Indians | Percentage of Indian magazines and newspapers to total | Percentage of Lummi Indian enrollment or population |
|------------------------------------|----------------------------------|-------------------------------------|-------------------------------------|--|--|--|---|
| Ferndale High School               | 7500                             | 90                                  | 1 %                                 | 87                                       | 0  | 0 %  | 10.3 %  |
| Central Elementary<br>(grades 3-5) | 7000                             | 150                                 | 2 %                                 | 22                                       | 1  | 4.5 %  | 20 %  |
| Vista Middle School                | 8400                             | 205                                 | 2.4 %                               | 30                                       | 0  | 0 %  | 15.2 %  |
| Whatcom County<br>Public Library   | 125,000                          | 300                                 | 4 %                                 | 275                                      | 3  | 1 %  | 4.5 % *   |

\* There are 1800 Lummis in a county population of 40,000 (excluding the city of Bellingham). This percentage does not include the Nooksack Indians who also reside in the county.

The rest of this exhibit is on file at the U.S. C  
Commission on Civil Rights.

LUMMI INDIAN TRIBAL ENTERPRISES UPDATE 1976



Indian  
Self-Determination  
in Progress



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## INTRODUCTION

The Lummi Tribe is located in the northwest corner of the State of Washington. With a population of approximately 2,000 and a land ownership of 15,000 acres, the Lummi have recently celebrated the 7th year in their economic development project.

Being traditional fishermen for thousands of years, the Lummi Tribe expanded the concept of harvesting seafood to actual growing of the products from birth to harvest to market. Thus, Aquaculture and the Seafood Company started.

With the large amount of construction work to be done in the Aquaculture Project, a new venture was added, the Lummi Construction Company. Now the Construction Company successfully bids on various contracts constructing roads, housing, large buildings, and sewer and pipe lines.

With the further development of Lummi Indian Tribal Enterprises' three ventures, the Lummi Tribe can look forward to self-determination and financial independence for all operations of the tribe itself.

Lummi Indian Tribal Enterprises proudly submits an updated report of the three ventures for review.

The Editor



Lummi Indian Tribal Enterprises, Board of Directors, left to right. Verne Johnson, Henry Hillaire, Chairman, Robert Wallin, Jim McKay. Not shown - LaVerne Lane, John Critchlow.

### MESSAGE FROM THE CHAIRMAN OF THE BOARD

The Lummi Indian Tribal Enterprises (LITE) Board, composed of seven Lummi tribal members and two local businessmen, is responsible for the overall direction and control of three business ventures located in the special impact area served by the LITE CDC — namely the Lummi Indian Reservation.

The three LITE business ventures are: Lummi Indian Construction Company (LICO); Lummi Indian Seafood Company (LISCO); and the internationally known Lummi Aquaculture Project.

The initial thrust of such ventures, starting in 1969, was aimed at creating needed jobs and developing trained Lummi technicians, production workers, supervisors, and project managers. This has been largely accomplished over the past six years as evidenced by the present full time work force of 150 trained and motivated employees with an annual payroll in excess of 1 million dollars.

As Chairman of LITE Board, I would like to report that the last year has evidenced a strong start on a new change in direction of the LITE business ventures. We have redirected our basic objectives towards greater emphasis on the creation of profits which are vital for the continued existence of our economic ventures and to the support of the Lummi Indian Tribal Government. Our Construction Company is now in the black and we have cut deficits in our other ventures. At the same time, we are continuing our heavy emphasis on the development of Lummi business managers.

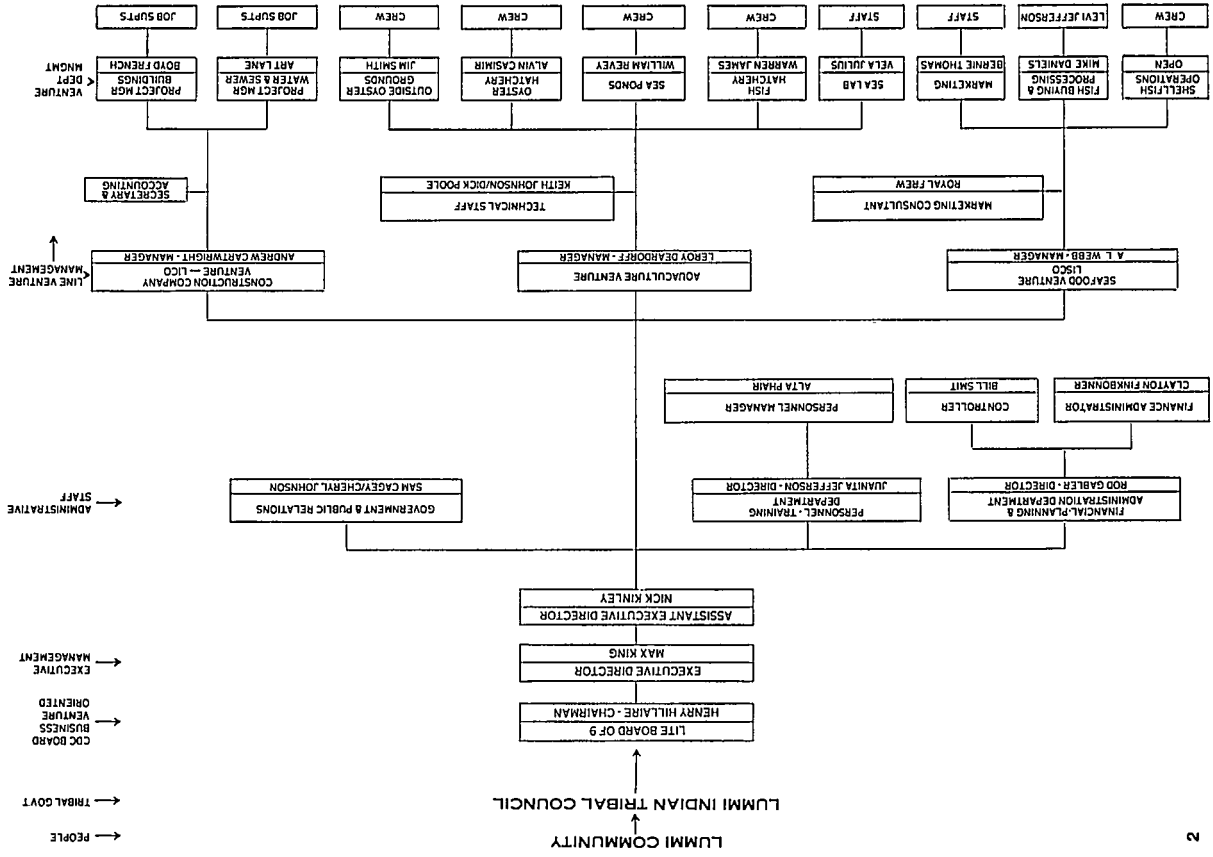
Perhaps one of the most outstanding contributions to the Lummi community, local Whatcom County area, and the State of Washington, in general, is the LITE Fish Hatchery planting and sea ranching program which has resulted in the release in the Nooksack River and local Puget Sound waters of over 11 million Coho, Chinook, and Chum Salmon, and Steelhead Trout in the past five years of operation. These releases have benefited not only the local Lummi fishermen and economy but have improved dramatically fishing conditions for sportsmen, gillnetters, and purse seiners in the entire Puget Sound area who all get a first opportunity of catching such fish before they return to their spawning and release areas of the Lummi Reservation.

Respectfully submitted,

Henry Hillaire, Chairman  
Lummi Indian Tribal Enterprises







### EXECUTIVE DIRECTOR'S MESSAGE

As Executive Director of Lummi Indian Tribal Enterprises, I am hired by the LITE Board of Directors with the primary responsibilities to run the various enterprises on a profitable basis; to train Lummi managers, supervisors and employees; and to properly account for and communicate to the Board and Tribal Government the status of the business ventures.

Assisting me is a centralized administration staff which services three LITE business ventures in the areas of Accounting, Budgeting, Personnel Administration, centralized Purchasing, Public Relations, and General Administration. In addition, the centralized staff is responsible for creating and implementing training programs at all levels for Board, staff, and ventures; and for the functions of funding, and short and long range planning.

The most significant accomplishment over the past year has been the continued development of five Lummi Executive Managers and a host of middle-managers in the supervisory and foreman areas. This Lummi management team is now carrying the majority of the management and supervisory load and is doing an outstanding job. This development was recently highlighted by the naming of Aquaculture Venture Manager, Lloyd Kinley, to be the future successor to my job as Executive Director.

Another important accomplishment has been the

advance of the Lummi Oyster Growing Operations. This operation, which is a part of the Aquaculture Venture, includes the spawning, growing, harvesting, processing, and marketing functions and is now to the point in the four year production cycle where significant cash flow will be generated this next year from that portion of the oyster crop first planted and now in the growing and inventory development stage on the Reservation tidal flats.

In conclusion, the Enterprises would like to acknowledge and thank several federal agencies, particularly the Office of OED of Community Services Administration and the Economic Development Agency (E.D.A.) for their financial and technical help in advancing the Lummi Indian business enterprise to the present point of near economic selfsufficiency.



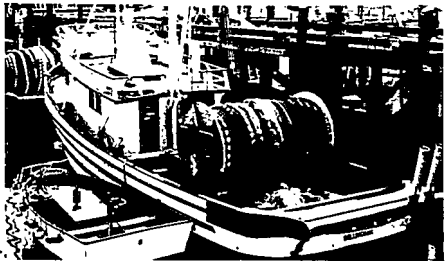
Respectfully submitted,  
*Maxwell C. King*  
Maxwell C. King  
Executive Director  
Lummi Indian Tribal Enterprises

### LUMMI INDIAN SEAFOODS COMPANY

Philosophy of the Lummi Indian Seafoods Company (LISCO) management team is dedicated to maximizing company growth in numbers of qualified fishermen, sound economics, and good reputation.

In order to achieve these major goals, concentrated efforts have been and are aimed at the well-being and growing strength of the fishermen who comprise Lummi's fishing fleet.

Every effort is being directed to have LISCO personnel work directly with fishermen and LITE's finance group to engineer worthy fishermen into sensible boat and gear loans within the local banking community. The loans are obtained to update, repair and maintain existing equipment, for the purchase of new boats, nets, motors, and other gear which allows Lummi fishermen to become as competitive and productive as other Puget Sound fishermen.



- 1. LISCO fish tender "Nushagak"
- 2. A part of LISCO's fishing fleet moored between seasons.

2.

## LISCO's additional services to fishermen include:

1. Constant and nearby tender service with the Company's 70 foot MV Nushagak. In addition to functioning as a buying station, the Nushagak provides a stop-over service for food, hot coffee, beverages, boat fuel, emergency service in the event of breakdowns, and relief in foul weather.
2. A floating buying station is moored in Bellingham near popular fishing grounds. Often referred to as the "White House", the facility services the Bellingham Bay area with all services provided by the Nushagak plus a convenient stop-over area between drifts.
3. A third buying station is located at the fishing village on the Nooksack River. In addition to facilities comparable to other Lummi buying stations, a boat ramp and yard-service area are welcome pluses. This unit serves the river and portions of the Bellingham Bay.



4. The 50-foot Stee-Wah-Tan is a multi-purpose unit used to transport fish from the White House and other areas. Acting as a stand-by or emergency tender, the crew has aided fishermen in distress on numerous occasions.
5. A vital link in the LISCO production chain is located in the heart of Bellingham's Squalicum Harbor Marina, where all Lummi products are processed for sale at the Lummi Seafoods Center. With shellfish on the way, Lummi's diverse and growing line-up of the products include Pacific Ocean Salmon, Lummi Indian Yearling Coho Salmon and herring roe, all of which stop here to be dressed for markets in every land. The center's location is so close to all production areas, that all Lummi products can be harvested, processed, and delivered to the freezer or sold fresh all in the same day.

This "day fish" concept has helped provide many advantages in marketing over those fisheries which must delay, often for several days, due to the remoteness of the fishery from processing and cold storage facilities. Lummis deliver fresh fish to the center's deep-water unloading station, allowing ready access for the larger fishing vessels the Lummis are acquiring. To support this, the center has all the necessary equipment and personnel to handle Lummi products efficiently, and the Lummis take pride in this.

Typically, the year begins with an early run of King Salmon, while preparations are made for the annual harvest of herring during spring.

Around the end of March, Japanese technicians assist the Lummis in processing herring roe, which naturally is prepared for sale in Japan. The finished product is Japanese-style caviar called "Kazunoko"

Here again, Lummi can establish a high price for this product because of the freshness, wholly important in quality.

At the close of the herring fishery, sometime in June, plant operations, like the fishermen, gear-up for the beginning of salmon season, which will last through the end of the year, when the cycle begins again. While the work is seasonal, an average of 15 Lummis and sometimes as high as 40 Lummis are employed that otherwise might not have been only two years ago.

This Lummi Seafoods Center and Processing Plant, thanks to the Lummis who work here, really does much more and will do more in the future to help Lummi marketing bring more and higher quality products to markets throughout the world.

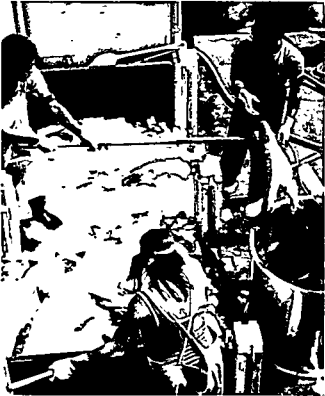
1. LISCO's herring roe processing.

2. The end product bound for Japan.

## LISCO MARKET CENTER

In Lummi, marketing is that dramatic link between the consumer and the delicate products the Lummis produce and will use as an economic stepping stone to independence.

The mammoth Lummi Aquaculture Project was little known four years ago. Thanks to extensive press coverage, and advertising directed at food distribution networks, Lummi-caught Pacific Ocean-run Salmon, Lummi Indian Yearling Coho Salmon, and Oysters have found their way from the sea to the consumer's plate. Located in Seattle, Washington, nerve center of the Pacific Northwest Seafood World, the Lummi Marketing Team consisting of Mr. Bernie Thomas and Russ Wilson, has found after four years of selling Lummi and Lummi-related products to be a sheer delight and a deep challenge. Bernie Thomas, a Lummi and only Native American Marketing Director of Seafoods in the United States, explains his unique situation, "The Lummis are a fiercely proud people, many of whom have taken an active part in producing products from the sea, and carrying the pride and care into the market place makes our team effort work. The result is people, quite literally throughout the world, are excited about us and our products"



1.



Lummi Marketing Director Bernie Thomas (left) and Associate Russ Wilson (right) in the Seattle Lummi Market Center.



Conveyor system helps these Lummis process salmon for domestic sale.

Many thanks and warm feelings are due Mr. Royal Frew for developing, directing and successfully training Bernie Thomas to operate a totally integrated, efficient marketing operation.

With Royal's job accomplished, the Market Center is slated to be moved to Lummi, where Thomas and Wilson will play an even larger role in maintaining and monitoring quality control.

1. Unloading Lummi fish caught in Puget Sound to be processed.

## THE LUMMI AQUACULTURE VENTURE

### SKOOKUM CREEK FISH HATCHERY

Skookum Creek Fish Hatchery is located on the South Fork of the Nooksack River. The Nooksack River enters Bellingham Bay on the Lummi Indian Reservation. The hatchery is owned and operated by the Lummi Tribe to fulfill several objectives:

- A. To supply fish for the pan-sized and sea-ranching positions of LITE's Aquaculture Venture.
- B. To provide fish for release into the Nooksack River in order to supplement salmon runs, provide brood stock, and to contribute to commercial fisheries.
- C. To provide rewarding and meaningful employment for tribal members.

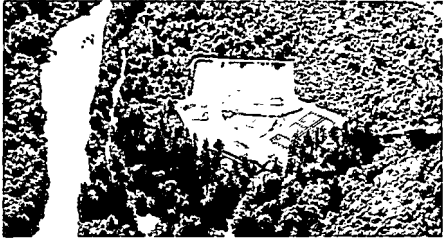
During the operations of 1976, the hatchery production included:

|           |                     |
|-----------|---------------------|
| 1,850,000 | Coho Salmon         |
| 400,000   | Fall Chinook Salmon |
| 800,000   | Chum Salmon         |
| 30,000    | Steelhead Trout     |

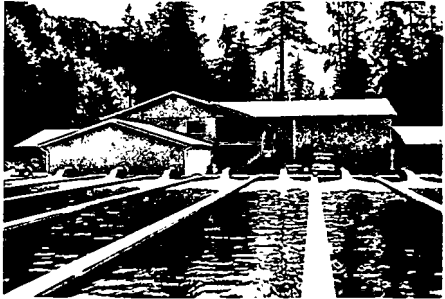
Of the total production, about a fourth of the coho and chum, and nearly all the chinook and steelhead, were released into the Nooksack River. These fish are reared from eggs at the hatchery to salmon size with the costs born by LITE. Several continuing

research programs are being conducted involving the use of coded wire tags to evaluate the impact that these releases have on commercial and sport fisheries. The first major return of adult coho salmon occurred in the fall of 1975 and approximately 4,750,000 eggs were obtained from their spawning. These returned stocks form the future brood stocks for release programs.

During the winter months, coho salmon, destined for transport to the salt water rearing areas, are accurately inventoried and vaccinated against diseases they will encounter during salt water residence. Transport of fish to salt water occurs during the spring.



*An aerial view of our prestigious Skookum Creek Salmon Hatchery.*



*Raceways hold stock for 6 months.*



*Juvenile salmon are graded for size, growth and inventory.*

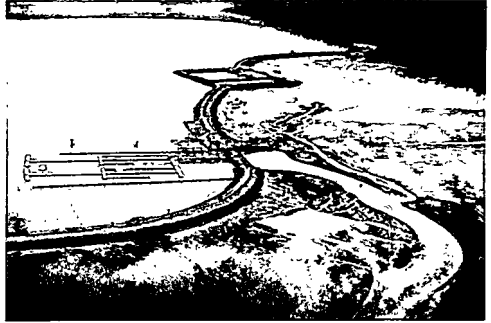


*Artificial spawning as practiced here by Lummi technician, Evelyn Jefferson.*

Projections for 1977 sea ranching, which include a portion of all salmon species reared at the hatchery, will approximately be:

- 1,400,000 Coho
- 300,000 Chinook
- 1,750,000 Chum Salmon
- 60,000 Steelhead

These fish will be available for commercial exploitation before returning to the traps located on Lummi Bay and contributing revenue to the Lummi Tribe.



*Aerial of the existing Aquaculture "Sea Pens" where fish are held to be released.*

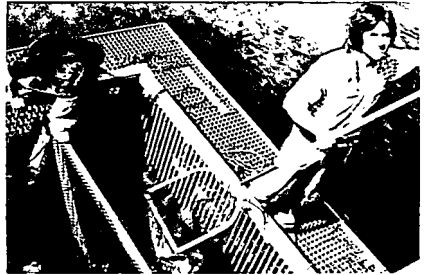
## SEA RANCHING

During the spring months, coho, chinook, chum, and steelhead trout salmon are transferred from Skookum Creek Fish Hatchery to the Sea Pond.

These fish are held in pens for two to three weeks after which they are released to migrate to the "pastures" of the sea. They will remain at sea for 18 to 40 months, after which they return to the Aquaculture Sea Pond where they are captured in a trap set just inside the inlet gates.

A projected return of 1.5% was met and surpassed with the close of the 1976 coho salmon run. The total number of coho returned was approximately 6,200 which was about 1.6% return. The project realized a total of approximately 22,000 pounds of coho salmon.

These fish returning are prime quality ocean run fish that are sold on the open market through the LISCO Marketing Office.



*Salmon released, return to the above trap, are harvested, processed and sold in world markets.*

## PAN-SIZE RESEARCH PROJECT

At the same time the fish are transferred for the Sea Ranching Operation, a small percentage of coho salmon are kept at the Sea Pond for a grow-out season. The fish are reared in nets that form an enormous bag hung from a walk-way system.

These selected coho salmon are cared for by the Sea

Pond crew during their grow-out season. They are closely monitored to watch for disease, growth rates and meat coloration by the Sea Lab crew who will be working on various methods to combat vibriosis, a salt water disease which attacks salmon, better growth rates through balanced nutrition diets and meat coloration through chemicals and natural foods.

## LUMMI OYSTER GROWERS

Since the oyster project began in 1969, it has evolved from a pilot project to a full blown commercial business. The integrated operation includes an oyster hatchery to provide seed oysters on a sustained basis, a grow-out phase, which utilizes the pond, adjacent tidal flats and other areas on the Reservation, and processing and marketing both on the retail and wholesale levels. Vertical integration of the components promises to provide the project maximum return and sustained jobs.

Commercial operations really began in 1973 after almost four years of research, development, construction and training. The Oyster Hatchery began producing seed in quantity for planting in 1974 when 4,500 cases were produced or roughly 45 million seed oysters. In 1976, 10,000 cases or roughly 100,000,000 seed oysters were produced, which consisted primarily of Giant Pacific Oysters. Other species spawned successfully in the hatchery include: American oyster, European oyster, the native or Olympia oyster, and the Manila clam. Excess seed from the hatchery is sold to other oyster growers.

The hatchery was conceived to produce seed regardless of weather and natural conditions. Seed produced naturally is not dependable and as a result oyster production fluctuates considerably reflecting the natural set. We have been able to stabilize seed production and insure a seed supply for the grow-out operations.

Production of this magnitude has been possible through the efforts of personnel trained by the training programs and dedication to the job. At the Oyster Hatchery, the job turn-over rate has been extremely low and indicates job satisfaction and good working conditions.

Seed from the hatchery is planted on the tidal flats outside the dike, at Portage Bay, Blaine, and inside the pond. To date, more than 22,500 cases of oyster seed have been planted or roughly 200,000,000 seed oysters. The harvest of these oysters will start in 1977 and peak in 1980 when close to 100,000 gallons of oyster meat will become available for market.



*Oyster hatchery can produce 100 million oyster seed per year.*



*Oysters spawning as they do for 9 months out of each year.*

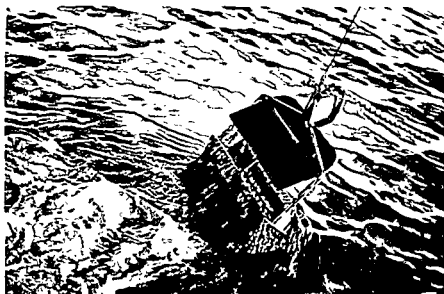


*Outside oyster crew preparing to plant a part of this enormous benefactor, Lummi oysters.*



We have suffered several set backs in seed survival because of unexpected heavy storms, however, survival still exceeds the Washington State expected average survival of 10 percent. We are working on increased survival methods by providing protection for our growing grounds.

Growth of the oysters has been good and a fine tasting oyster is produced on the relatively open area, which provides excellent circulation. Oyster reputations are built on areas which produce good tasting oysters and ours compare with any oyster bed in the state. Clean water and no pollution are primary factors in good oyster production and we are constantly monitoring the water conditions to insure a consistent supply of top quality oysters.



Oyster harvester in action, will ultimately play a big role in helping produce millions of oysters annually.

1.



1.



Oyster Operations Advisor, Dick Poole, left, along with Outside Oyster Manager, Jim Smith constantly check oyster quality and flavor. Ahah! That's where all those oysters went!

## LUMMI INDIAN CONSTRUCTION COMPANY

Lummi Indian Construction Company (LICO) is the third division of Lummi Indian Tribal Enterprises.

LICO has been in business for six years and is specializing in building construction and water and sewer installation.

During these years of operation, LICO has completed construction of sixty-five homes, four commercial buildings and many thousands of feet of water lines and sewer lines of all sizes. At the present time LICO is finishing up thirty-five Housing and Urban Development homes that are from two to six bedrooms. Future plans call for constructing a water line, a complete sewer system, and four commercial buildings.

1976 marked the third straight year that LICO has earned net profits. In addition to operating a successful profit making company, LICO has concentrated on employing and training Lummi people and at present is developing them in all areas of

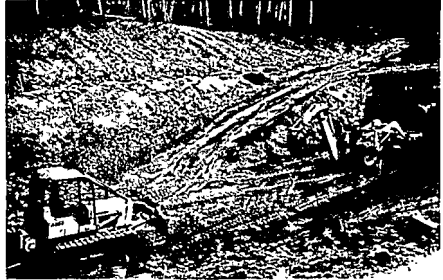
construction management and supervision as well as in the crafts. This is accomplished by both direct employment and sub-contracting in order to help Lummis set up and operate their own business.

In areas of this work where we do not have the skills or expertise within our own operation, we have Joint Ventured or subcontracted with other companies, some of which were Indian owned.

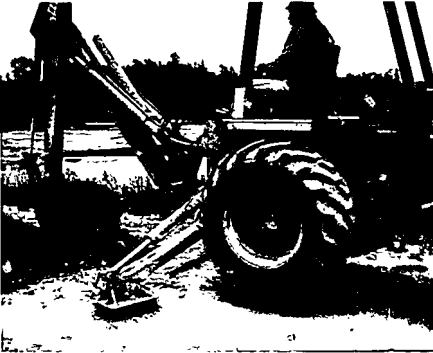
We have concentrated on employing and training Lummi people and at present are developing them in all areas of management and supervision as well as in the crafts.

Agencies we have contracted projects with include: Indian Health Service; Health Education and Welfare; Emergency Employment Act; Economic Development Administration; Bureau of Indian Affairs; Community Services Administration; Housing and Urban Development and private companies.

Through the entire year LICO has employed as many as eighty Lummis at any one time.



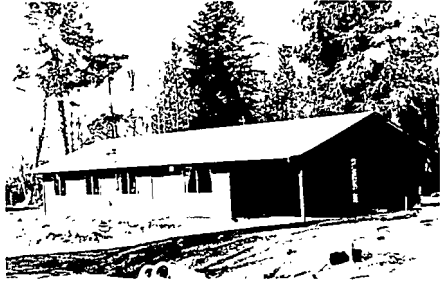
*Construction underway on our Skookum Hatchery siltation pond system, employs more Lummis.*



*Other projects further improve living conditions on the Reservation, like installation of sewer lines.*

## **LUMMI INDIAN CONSTRUCTION COMPANY**

Our future plans call for an expansion of the business and bidding larger projects. Our present volume of business runs between one and two million dollars annually, but future plans should increase volume to above three million annually.



*"Finis!" The end product.*

## Finance & Accounting

The year of 1976 was one of transition and development for the financial, administrative, and accounting areas of LITE.

An important transition was the transfer of accounting and reporting responsibilities of Lummi Tribal grants to Tribal Administration. The transfer of responsibility was made as each grant expired and was re-funded. LITE personnel worked with Tribal Administration in establishing the necessary accounting systems and organization to administer grant programs on a continuing basis independent of LITE support.

This was yet another step toward recognition of the separate missions of LITE and Tribal Administration, and also helps make it possible for LITE to focus on accomplishment of its basic objectives—strengthening the economic base of the Lummi Community and developing the vocational and management skills of Lummi people.

The year 1976 also was one of change and development within the finance, administration, and accounting department:

- The 1975 CSA Audit was completed with good cooperation between the Auditor and Accounting Staff.
  - Increased interest from operating management regarding accounting information, plus the stimulus of the CSA Auditor's observation, challenged the accounting department to develop more timely, more accurate, and more meaningful accounting data for management use while at the same time re-emphasizing the departments basic responsibility for maintaining internal controls that safeguard the assets of LITE.
  - Good progress was made in creating a feeling of responsibility on the part of each cost center manager for his operating budget and accountability for results compared to budget.
  - Budget review procedures were implemented that encouraged on-going review of trends and variances in LITE operations.
- In a first step toward developing a computer capability, the LITE payroll was put on a service bureau computer. Initial planning was started to examine the feasibility of acquiring an inhouse computer.
  - Spearheaded by the efforts of a newly appointed Lummi Supervisor, a centralized purchasing function was developed and activated.
  - LITE's property and casualty insurance program was analyzed to ensure adequacy of coverage as well as maximum return on the insurance dollar expended.

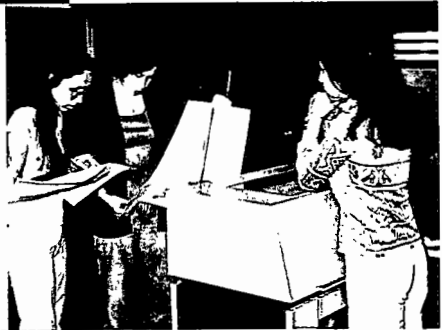
In Summary, it may safely be said that 1976 was not only a year of accomplishment, but also had clearly outlined the goals for 1977!

### CDC ADMINISTRATION

- Finance & Accounting
- Personnel & Training
- Public Relations



*Rod Gabler, Finance and Administration Director (right), discusses budgetary matters with Clayton Finkbonner.*



*Accounting Staff working at the Computer Center, left to right, Marilyn Jefferson, Laurel Ballew, Tina Julius.*



*LITE Accounting Staff from left to right: Brenda Charles, Tina Julius and Laurel Ballew.*

## Personnel and Training is People Power at Work

The key to Lummi success is in adequately preparing and training Lummi on-the-job and through courses specially designed to meet individual needs.

The task of personnel administration and planning for individual training needs is left in the capable hands of two Lummis.

Juanita Jefferson, Personnel and Training Director explains, "All levels of Lummi personnel are in various stages of progress from the Board of Director down to technical and maintenance personnel".

Juanita, with the able help of Personnel Manager, Alta Phair, is responsible for the management of Lummis most valuable resource, that of the Lummi people.

Lummis now hold 95% of jobs and number from 100-150 people.

The emphasis this year is on moving more Lummis into higher levels of management and decision-making positions.

Three approaches have been used by the Personnel and Training Department to accomplish this.

The first approach began in 1972 with a two year project, which combined both academic courses designed for Lummi needs and practical "on-the-job training" assignments working with key non-Indian managers. This helped accelerate the growth of fifteen Lummi manager trainees.

A second approach is training an individual directly on-the-job with specialized training.

A third approach has been to bring Lummis with college degrees and outside experience into the organization.



*Juanita Jefferson, Personnel and Training Director (right) and Alta Phair, Personnel Manager.*



*Managers training seminar.*

By combining these varied skilled people into a cohesive management team, four Lummis have developed into key managers in the Executive Administration and eight Lummis have vital middle management jobs.

"With Lummis in charge of their own destinies, natural environment, and assets, we will have used our time for something of immeasurable value", Juanita said.



*Time management training seminars help managers Jim Smith and Red Jensen use theirs and others time more wisely.*



*Alcoholism training helps managers like Vela Julius, above, cope with employee alcohol related problems.*



*Managers George Lane and Alvin Casmir, right, also attend to the problem.*



*Public Relations Staff, Left, Brenda King, Tour Guide, Right, Cheryl Johnson, Public Relations Coordinator.*

## Public Relations

The Public Relations function is one of the key areas in the Central Administrative component of LITE. This department has been headed up by Lummi Sam Cagey from the beginning and is responsible for internal communications within LITE and the Lummi Community as well as for external relations and communications with governmental agencies, funding organizations, the Federal, State, and local legislative public officials and the general public. Sam Cagey has played the leading role in advancing the Lummi Indian economic and self-determination cause and purposes as well as aiding other Indian tribes for the start-up of their economic ventures. He has become a world traveler and ambassador in support of Lummi Indian Tribal Enterprises' ventures and products.

In mid-1975, Ms. Cheryl Johnson was brought on board to further develop the LITE Public Relations Department and service the general public through publication coordination, venture touring service, information requests, and project information gathering. Her cur-

rent and future department plans include a multi-purpose newsletter to governmental agencies and legislators, and most important of all, the Tribal Community, an annual report, a historical photograph log and library, and the continuous development and showing of slide shows depicting LITE venture progress.

Lummi Brenda King was recently added to the staff to concentrate on the ever increasing public demand for venture tours. A total of 1,519 people have toured the Lummi Aquaculture Project and other ventures in 1976.

What makes or breaks a successful business is its relationship with its employees, the community it serves, and the users of its products and services. With the perseverance of the dedicated Public Relations staff, and the continuance of sound policy development and direction from the LITE Board, and improved relations with the Lummi Community and public, LITE's venture success is assured.



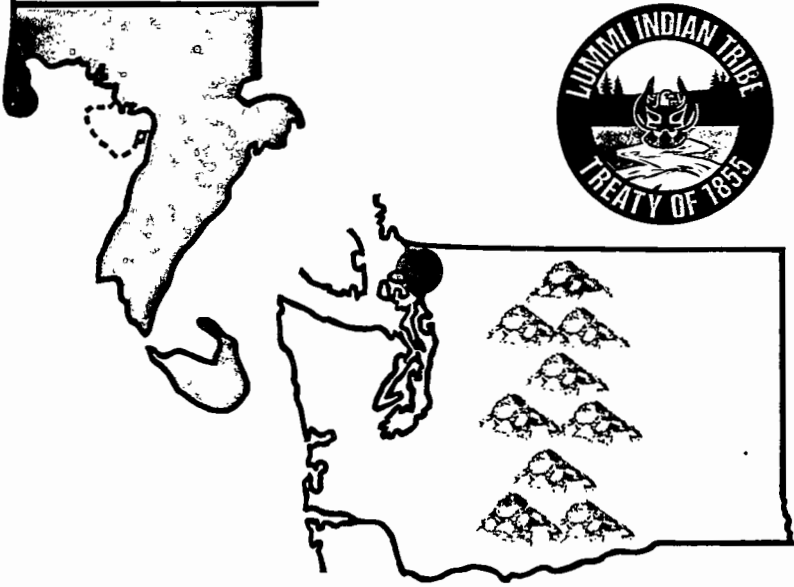
*From left to right — Milo Moore, former Washington State Fisheries Director; Lundy James, Swinomish Indian Tribe; Dr. Keith Murray, moderator of discussion; Donald Moos, Washington State Director of Fisheries; Lewis Bell, Attorney, Tulalip Tribe and Sam Cagey, Lummi Tribe. Discussion of Indian Fisheries at Conference held at Western Washington State College, Bellingham, Washington.*

**ACKNOWLEDGEMENTS**

- (1) Community Services Administration
  - A. Office of Economic Development, Washington, D.C.
  - B. Seattle Area Office
- (2) Economic Development Administration
  - A. Region 9 Offices - Seattle
  - B. Indian Desk - Washington, D.C.
- (3) Rainier National Bank - Lynden, Washington Branch
- (4) Bellingham National Bank - Ferndale, Washington Branch
- (5) Housing & Urban Development Area Office  
Region 10 - Seattle
- (6) Indian Health Services - Portland Area Office
- (7) Bureau of Indian Affairs - Everett District Office  
Portland Area Office
- (8) Northwest Consultants, Bellingham
- (9) American Indian Development Association - Bellingham
- (10) National Congress Community Economic Development -  
Washington, D.C.
- (11) Berkeley Law Project - Berkeley, California
- (12) Yakima Indian Nation
- (13) Western Washington State College - Bellingham
- (14) Whatcom Community College - Bellingham



Lummi Indian Reservation



*Exhibit No. 13*

This exhibit is on file at the U.S.  
Commission on Civil Rights.

*Exhibit No. 14*

## Correspondence and Important Dates - Lummi Indian Reservation Project

Jan-March, 1974      Items 1 to 6 document the need for a sewer system and the health hazard on the reservation. Item 6, a letter from Wilson Bow of the State Health Services Division is usually cited in documenting the health hazard.

March 28, 1974      State declares Lummi Indian Reservation to be a hazard to public health-no documentation beyond the Bow letter.

March 28, 1974      Item 7. Tribe requests placement on the State Priority List for sewer grant funding (a prerequisite to receiving an EPA grant).

April 24, 1974      Item 8. Statement by Dr. Henry Levine, M.D., Public Health Service and Lummi Indian Health Center doctor, further documenting the health hazard.

May 8, 1974      Item 9. Step I and II (Preliminary and Final Project Design) grants for the sewer project placed on State Priority List

May 9, 1974      Item 10. Project expediting memo from EPA to Tribe.

Fall, 1974      EPA and State Department of Ecology award Step I (Preliminary Design) grant-no documentation in this package.

December 12, 1974      Apparently W. Y. Armstrong, President of the Lummi Property Owners Association, wrote EPA headquarters, expressing concern on the project. Item 11 is the reply from the EPA regional office in Seattle.

January 30, 1975      Lummi Property Owners Association dispute findings of Wilson Bow letter in item 12.

January 30, 1975      Lummi Property Owners Association protest composition of the sewer board to administer the project. Item 13.

Feb. 14, 1975      EPA reply to Lummi Property Owners Association. Item 14.

March 5, 1975      Meeting of State and Federal Agencies to discuss how to implement and operate a sewer system on the reservation. Item 15.

May 14, 1975      Jack Schofield's review of an initial ~~xxx~~ sewer contract. Item 16.

May 29, 1975      Whatcom County Council of Governments withdraws support of the project pending resolution of the sewer board conflict ~~xxx~~ between Indians and non-Indians. Item 17.

July 18, 1975      The Economic Development Administration (EDA) indicates reluctance to fund a portion of the sewer project from their regular grant funds. Item 18.

- July 17, 1975 EPA replies to June 11 letter from Jack Schofield outlining his concerns with proposed sewer contract and sewer board. This is an excellent summary of non-Indian concerns. Item 19.
- July 17, 1975 The non-Indians proposed establishment of their own sewer district. The project consultant, Craig Peck, informs EPA and State DOE people of the progress of this development. Item 20.
- July 30, 1975 A further meeting of State DOE, EPA, and the Tribe's attorney on formation of the sewer district by non-Indians. Item ~~21~~ 21.
- August 5, 1975 Further meetings to discuss the proposal for a new non-Indian sewer district. Items 22 and 23.
- August 6, 1975
- August 8, 1975 News article-Lummi Indian Tribe Files Suit Over Sewer District Item 24.
- September 22, 1975 A meeting was held September 17 with the consultant to discuss the project. Item 25.
- October 6, 1975 The consultant for the first time discusses "phasing" design and construction of the project. The possibility of "phasing" has been ~~an~~ an alternative but not a very desirable one ~~x~~ every since this time. Item 26.
- October 6, 1975 Letters from the consultant to Jack Schofield and Ms. Betty Nesbitt, one of the ~~commissioners~~ commissioners of the new non-Indian sewer district, Whatcom ~~County~~ County Sewer District Number 2. Items 27 and 28.
- October 22, 1975 A meeting was held between Jack Schofield and Ted Regowski, EPA's Legal Counsel. Item 29.
- October 30, 1975 EPA statement of support of a single sewer system~~s~~ EPA indicates that it will consider "phasing." Item 30.
- November 26, 1975 The consultant, Craig Peck, indicates that the tribe will canvass Sandy Point, a large non-Indian area inside the reservation but not part of Whatcom ~~County~~ County Sewer District number 2. Item 31.
- November 28, 1975 The consultant is unsuccessful in ~~meeting~~ establishing a meeting with Whatcom County Sewer District #2. Item 32.
- December 10, 1975 Consultant announces public hearing on the facilities plan he has developed for the reservation with the Step I grant. Item 33.
- December 22, 1975 The Whatcom County Sewer District #2, Betty Nesbitt, Secretary request postponing the Jan 10 public hearing. Item 34
- January 6, 1976 The ~~Ri~~ Tribe reconfirms the January 10 meeting date. Item 35.
- January 8, 1976 Jack Schofield indicates material will be forthcoming from Whatcom County Sewer District #2 by January 25th regarding formation of the Lummi Sewer District. Item 36.

- January 6, 1976 Notes from a meeting of Indian Representatives, the Consultant, EPA, and the State DOE delineate the Indian position. This is a good summary of Indian concerns. Item 37.
- January 10, 1976 The Lummi Indian Business Council adopted a resolution ~~was~~ establishing the Lummi Indian Sewer District and adopting the Facilities plan as a prerequisite to obtaining a Step II (Final Design) grant. Item 38. Public testimony at the January 10 hearing was rather inconclusive. Items 39 and 40.
- January 23, 1976 Jack Schofield recommends use of a contract system for Whatcom~~e~~ Sewer District #2. He urges final design be undertaken keeping a contractual arrangement in mind. Apparently an appeal on the legality of Whatcom County Sewer District #2 was dismissed. Item 41.
- March 9, 1976 The issue of preserving archaeological resources was raised. Item 42. Later this issue was resolved.
- April 12, 1976 David Anderson representing the Sandy Point Community Council states objections to the sewer project if its administration is under Tribal control. This group had not been heard from previously and is not located in Whatcom~~e~~ County Sewer District #2. Item 43.
- April 27, 1976 A letter of support for the project was written by the Director of the Lummi Indian Health Center. Item 44.
- April 23, 1976 A meeting of Tribal representatives and representatives of federal funding agencies was convened to discuss project funding. Item 45. The Tribe wrote the State DOE asking that the collection system be placed on the State Priority List for EPA/DOE funding. Item 46. This was not done until 1 year later.
- June 4, 1976 The Lummi Indian Business Council requests a determination on which portions of the collection system could be funded if their project was placed~~on~~ on the State Priority List for collection system funding. Item 47.
- June 24, 1976 The State DOE informs the Lummi~~n~~ Indian Business Council of the criteria for collection system funding. Item 48.
- July 1976 A Step II (Final Design) grant is made to the Tribe by EPA and DC
- November 3, 1976 The Lummi Indian Business Council applied for a portion of the \$2 billion available nationally under the EDA Local Public Works Program, to fund the collection system for their sewer project. EDA funded floats for a marina for the Lummi Tribe instead of the sewer project which the tribe indicated had priority. The November-3 letter from Whatcom Sewer District #2 to the Director of EDA in Seattle is often cited as one reason the collection system was not funded. Some of those involved have indicated Whatcom~~e~~ Sewer District #2 applied political pressure against funding as well. Item 49.

- November 2, 1976 This letter ~~indicates~~ from Jack Schofield indicates that initial negotiations for a contractual arrangement between the Lummi Indian Sewer District and Whatcom County Sewer District #2 have failed. Jack indicates interest in further exploration of this issue. Item 50.
- November 5, 1976 DOE and EPA indicate their willingness to help in any negotiations. Item 51.
- January 2, 1977 A news article describes the situation including comments from the county. Item 52.
- January 20, 1977 A briefing memorandum was prepared by Dan Steinborn of EPA in anticipation of a meeting with other federal funding agencies (later convened by the Federal Regional Council). Item 53.
- February 1, 1977 Notes from the meeting of Federal funding agencies resulted in a commitment from EPA to investigate funding of the collection system. EPA later maintained that the State had to put the project on the State Priority List first before any determination would be made. Item 54.
- February 7, 1977 The consultant indicated the Indian resident population in 1972 was 1,445 (this is an important statistic in determination of collection system funding). Item 55
- February 10, 1977 A news article discusses election of Same Cagay as the new Chairman of the ~~Lummi~~ Lummi Indian Business Council. Item 56.
- February 22, 1977 Jack Schofield urges ~~election~~ an election rather than appointment of Sewer Commissioners for the Lummi Indian Sewer District. Item 57.
- March 15, 1977 A news article indicates both the Lummi Indian Sewer District and the Whatcom County Sewer District #2 have been given rights to construct sewer lines along county right of ways. Item 58. Item 59.
- April 12, 1977 Minutes of the Lummi Sewer Board meeting contain little new information on the project. Item 60. Item 61.
- May 26, 1977 A meeting on federal funding for the project was inconclusive but did confirm those sources of funds known to be available. It was later learned that ~~the~~ the Lummi Tribe would not be eligible for local public works funding for 1977 from the Economic Development Administration because the ~~marina~~ marina floats were funded earlier (in the fall of 1977). Item 62.
- June 1, 1977 The Tribe is preparing to circulate a new, revised copy of their contract, Item 63.

June 2, 1977

EPA requests information from the tribe to complete the determination on how much of the collection system can be funded. Item 64.

June 3, 1977

The concept of using mediators in the Indian-non Indian dispute is cleared with the two parties involved. Item 65.  
Item 66.

June Copy of the update chart on the costs of the project - Dept of Housing and Urban Development will provide \$500,000. in addition to the sum already pledged.

June 22, 1977 Program requirements memo No. 77-8 which summarizes Agency Policy on the award of grants for sewage collection system.

June 23, 1977 explanation of how the one-percent rule is compiled in computing amount of grant

June 29, 1977 Sewer Dist. #2 decision to contract with Ferndale - no longer interested in working out agreement with tribe.

June 29, 1977 Dr. Stitt letter of concern due to the fact that Lummi didn't have own land for treatment plant - concern over the disagreement of LPOA and the tribe.

July 11, 1977 Letter to Jack Scholfield regarding LPOA disinterest in negotiating with the tribe on the sewer.

July 11, 1977 Sewer Mtg - progress on acquisition of two sewage treatment sites - Dave O. prepared two maps for EPA & DOE to be presented July 14. Step II final plan and specification amended the final design for collection system. Schedule for Step III construction grant. List of attendees.

July 22, 1977 Sewer mtg - Federal funding issued (attachment I, II, and III) I.H.S. would fund Indian home connections & service lines. Four alternatives for consideration for funding non-Indian homes - Sandy Point Site considered firm for building sewer facility - Mr. Olsen asking more than the tribe can agree on. List of attachments I (Grant eligible interceptors and collector system) II. (Unfunded ineligible collection system lines) III. (funding package.

July 25, 1977 Letter to Corp of Engineer relating the facts of the/ importance of the sewer system and asking for a fifteen day instead of a thirty day period for public notice.

July 26, 1977 Procedure to follow under A-95 when the applicant for federal funds or permit is a recognized Indian tribe - and the project is on the reservation.

July 27, 1977 Letter of assurance that E.P.A. will pay the 75% of the design costs of sewer.

July 27, 1977 Letter to PMX confirming sites for the sewage treatment plant.



July 30, 1977 Dave Daugherty request for estimate on the collector system for the Lummi Indian reservation -

Aug 1, 1977 Letter of assurance that D.O.E. will pay 15% share of design cost incurred by consultant.

Aug. 2, 1977 Status report: March 28, 1974 Washington State DSHS declared public health hazard existed on Lummi Res. Effort being made to expedite completion of Step II grant and obligation of Step III by Sept. 30, 1977.

Aug. 5, 1977 Telephone conversation between Rick Cocker (congressman Meeds office) and Dave DeBruyn (E.P.A. office) Discussed the situation between the Lummi Indian Property's Association and the Lummi Indian Tribe on the Sewer System.

Aug. 1977 Newspaper clipping about Meeds views before and after his 1976 election.

Aug. 8, 1977 Note from Dave DeBruyn concerning a letter he received from Jack Scholfield August 5, 1977.

Aug. 9, 1977 Billing for period ended Aug. 6, 1977, revision of hourly estimates from PMX.

Aug. 1977 Proposed grant conditions for sewer used charges Lummi Indian Reservation.

Aug. 1977 Questions and answers compiled for Congressman Meeds Office.

Aug. 16, 1977 Letter of assurance to Dave DeBruyn of E.P.A. regarding jurisdiction on the reservation.

Aug. 16, 1977 Correspondence between Reservation Attorney Office and Jack Scholfield regarding efforts to complete Phase II of the Sewer.

Aug. 14, 1977 Correspondance to D.O.E. reaffirming E.P.A.'s position with regard to the sewer system which are 1) that the Tribe not charge the non-Indian a higher user charge than the Indian. 2) Not raise customer charge due to the fact the tribe might not be able to collect delinquent payments.

Aug. 24, 1977 Correspondence between Tribal Office and E.P.A. concerning grant conditions because of the severe time pressure in completing Step II and having to make changes at the last minute.

Aug. 19, 1977 Correspondence between Reservation Attorney and John  
Spencer D.O.E. with regard to the Sept. mtg. and funding  
deadlines.

Sug. 23, 1977 Billing record from PMX.

Aug. Newspaper clipping entitled " Hearings to clear air  
over Indian jurisdiction."

The remainder of this exhibit is on file at  
the U.S. Commission on Civil Rights.

*Exhibit No. 15*

# Puyallup Tribe of Indians

## MEDICINE CREEK TREATY NATION



October 6, 1977

Patricia Harris, Secretary  
Dept. Housing & Urban Development  
7th and D Street SW  
Washington, C.C. 20410

RE: Sec: 109 CDBG Complaint

Dear Secretary Harris,

On December 1, 1975, the Puyallup Tribe authorized the execution of an inter-local agreement to allow the Puyallup Tribe to become members of the "Pierce County Urban Consortium." On December 15, 1975 the Pierce County Commissioners accepted the tribe's membership.

The application for block grant funds of the Pierce County Commissioners, submitted on April 10, 1976, shows that the Puyallup Tribe was allocated \$15,000 for a low income housing land acquisition program. Although funds are distributed on the basis of need, at the end of this program year, all members of the Consortium had their funds or were assured of receiving them, except the tribe.

The third year application submitted on March 21, 1977 (second year of tribe's membership) shows that all jurisdictions were prioritized for funding by the county. Yet, the tribe was the only jurisdiction that was denied these program funds by the County; see letter dated September 28, 1977, attached.

The Puyallup Tribe has proposed a low income housing land acquisition program for funding for the past two years that it has been a member of the consortium. Under this program the tribe would use C.D.funds to acquire blighted and deteriorated housing, put the land into trust and utilize other funds to repair the homes. This is a badly needed program on the Puyallup Reservation.

County attorneys explained they felt this program was discriminatory because

1. land was placed into "trust,"
2. only Native Americans could utilize these homes.

A legal ruling was requested from HUD and the project declared eligible. (See attached correspondence). So long as non-CDBG funds were used in the rehabilitation of these homes, the program could be implemented as outlined with the use of block grant funds.

Patricia Harris

2

October 6, 1977

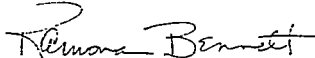
The County then informed the Tribe that they do not accept the HUD ruling and further unless contract changes are made with HUD to protect the County against potential civil rights litigation they would not disburse the funds to implement the Tribe's project.

Finally, the county further stated it was the Tribe's responsibility to get HUD to initiate the contract revisions.

Because of two years of these difficulties, the Tribe requested a reprogramming of these \$85,700 in funds to a new activity that would not create the perceived Civil Rights problems. In response, the County totally reprogrammed these funds away from the Tribe.

Therefore, the Puyallup Tribe request an immediate full-scale investigation as to the violation of rights it and Native Americans have received under Section 109 of the 1974 Housing and Community Development Act. Additionally, we request that HUD makes no further disbursements of CDBG funds to the Pierce County Urban Consortium until the County reinstates and funds the Tribe's Project, plus any additional costs incurred for the resolution of these issues. We will provide additional information as it becomes available or is requested.

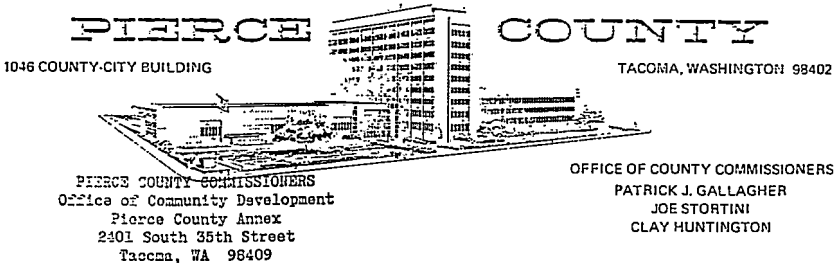
Sincerely,

  
Ramona Bennett, Chairwoman  
Puyallup Tribe

RB:gap

cc George Roybal, HUD Region X  
Larry Pearl, Office of Program Compliance  
Herman Williams, Region X  
Charles Bickley, Area CPD Director  
Ancil Potter, Area OFHEO  
Pat Zell, U.S. Civil Rights Commission  
Norm Dicks, Congressman  
Clay Huntington, County Commissioner

Enclosure



PIERCE COUNTY COMMISSIONERS  
Office of Community Development  
Pierce County Annex  
2401 South 35th Street  
Tacoma, WA 98409

OFFICE OF COUNTY COMMISSIONERS  
PATRICK J. GALLAGHER  
JOE STORTINI  
CLAY HUNTINGTON

September 28, 1977

Rick Erlich  
Puyallup Tribe  
2215 East 32nd  
Puyallup Reservation  
Tacoma, WA 98404

Dear Mr. Erlich:

In view of the County's inability to implement a land acquisition program exclusively for low-income Indian housing, the \$85,700 previously allocated to the Puyallup Tribe was transferred to a new activity entitled "Section 8 Housing Land Bank Fund". This was done in lieu of the Tribe's request to reallocate the funds to acquire land for a tribal marina.

The Section 8 Housing Land Bank Fund which will complement and be closely coordinated with a \$350,000 Bonus Block Grant program recently approved by HUD. The purpose of the Fund is to write down land costs associated with relatively small HUD assisted housing projects. It is anticipated that the program will greatly improve the economic feasibility of low-income housing and provide deconcentrated housing opportunities.

This office regrets the necessity of reprogramming these funds but concurs with the Board of Commissioners decision of September 20th to continue to seek means to provide low-income housing assistance for all lower-income residents including Native Americans.

If you have any questions please feel free to call me at 593-4003.

Sincerely,

Merwin W. Parker  
CD Coordinator

MWP:lrw



# Puyallup Tribe of Indians

MEDICINE CREEK TREATY NATION  
2215 East 32nd Street, Tacoma, Washington 98404  
(206) 572-6480



September 9, 1977

Clay Huntington, Chairman  
Pierce County Commissioners  
Pierce County Annex  
County-City Building  
Tacoma, WA 98402

Dear Clay:

As you are aware, Pierce County has programmed \$85,700 from its community development program for the Puyallup Tribe housing land acquisition program. Because of the perceived problems, the County is experiencing, in the program implementation concerning civil rights issues, the Tribe is requesting that these funds be reprogrammed if the original project does not qualify.

The Puyallup Tribe is requesting that the amount of \$85,700 be reprogrammed for a marina land acquisition program (in trust status). This property is located within the boundaries of the Puyallup Reservation. It is the intention to use these block grant funds as the "match" for other dollars to acquire both the facilities and land. It is certain that this project will receive the necessary funding!

This program is eligible under the block grant program. Land acquisition in trust is an eligible activity if it benefits low and moderate income persons and is undertaken by a public body. The Puyallup Tribe qualifies as a public body under the community development act and as the attached 1970 census statistics demonstrate the Native Americans in Pierce County do qualify as low - moderate income (64% of all Native Americans earn less than \$8,000 in Pierce County).

This land acquisition, in trust, should cause no civil rights problems as the property will be utilized as a marina. Under Section 3 of the act preference in employment will be given to project area residents (Native Americans) and a percentage of moorage facilities will be reserved for Native Americans, as project area recipients.

---

*We have a history...*

1985 *We have a future.*

Clay Huntington

- 2 -

September 9, 1977

Economic Development is an objective of this act and land acquisition, in trust status, is also eligible. I understand that the commissioners need to approve this change in the project and so am submitting it to you for thier consideration.

3

Sincerely,



Richard Erlich  
Coordinator  
Planning & Community Development

RE:gnp

cc Merv Parker

Ancil Potter

Attachment



# Puyallup Tribe of Indians

## MEDICINE CREEK TREATY NATION

(For more information call Rick Erlich: 206-572-3733 or home 582-4537)



### PRESS RELEASE

Due to the paucity of information about Indians in the Tacoma/Pierce County area, the Puyallup Tribal Planning Department is releasing the following information based on the 1970 census. The purpose of this endeavor is to provide the community at large with some basic information about Indians and their living conditions in the Tacoma Pierce County area.

The 1970 census reported 3,170 Indians in the Tacoma SMSA, of which approximately 50.9% lived in the city limits, and the remaining 49.1% lived in the County. It is the tribes position that this represents less than 50% of the Indian people that live in the area. The current estimate of the total number of Indians living in the Pierce County area is 3,717. (Office of Program Planning and Fiscal Management, State of Washington 1974)

### AN OVERVIEW

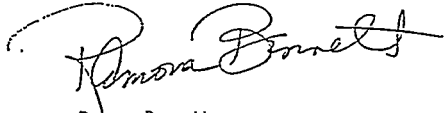
There was a 31% discrepancy between the income of an average Indian family versus non-Indian family in Tacoma Pierce county in 1970. The mean family income in Pierce County was \$11,073 while for Indians it was \$7,548. As expected, with limited income Indians paid 20% less for rent, \$76 versus \$96, and Indian homes were worth 29% less, \$12,400 versus \$17,500. Yet, Indian families were 23% larger, 3.2 persons versus 2.6 persons, than non-Indian families, while only 5% of the homes in Pierce County were overcrowded. 11.9% of the Indian homes had overcrowded conditions. Although the difference in the number of rooms per household was negligible, 5.0 versus 4.8, 10.9% of the Indian homes were lacking some or all plumbing facilities while only 2.3% of the homes in Pierce County were without plumbing.

Twenty-four point six percent of all Indian families were below the poverty level in 1970 compared with eight percent of the area population, while Indian families were 22.5% larger than non-Indian families, 4.35 persons versus 3.55 persons. The percentage of all persons below the poverty level shows 27.3% of all Indians and 10.2% of the general population.

A cursory examination of family income levels shows that 64.6% of all Indian families make less than \$8,000 a year while only 36% of the larger population makes that minimal of an income. Thirty seven point two per cent of the Indian families make less than \$5,000 while 64% of the general population makes over \$8,000 and only 35.4% of the Indian population makes that amount. Finally in 1974 Indian people had a 17.1% unemployment rate for the area, while the general population had a 7.4% rate.



Suffice it to say, that in a society that can respond only to numbers and statistics, the above should prove that whatever gains may be made by Indian people, it will take great effort to provide any equity of opportunity for Indians in the Tacoma Pierce County area.

A handwritten signature in cursive script that reads "Ramona Bennett". The signature is written in black ink and is positioned above the printed name.

Ramona Bennett  
Chairwoman  
Puyallup Tribe



# Puyallup Tribe of Indians

## MEDICINE CREEK TREATY NATION



FACT SHEET: Puyallup Tribal Planning Department

| CATEGORY  | 1970 Census | PIERCE COUNTY | INDIANS/TACOMA SHSA |
|---|-------------|---------------|---------------------|
| Median family income                            |             | \$ 9,859      | \$ 6,779            |
| Mean family income                              |             | \$11,073      | \$ 7,548            |
| Median home value                               |             | \$17,500      | \$12,400            |
| Median rent                                     |             | \$ 96         | \$ 76               |
| Median, # of persons in all occupied units      |             | 2.6           | 3.2                 |
| Median owner occupied                           |             | 2.9           | 3.5                 |
| Median renter occupied                          |             | 2.2           | 2.9                 |
| Median # of rooms                               |             | 5.0           | 4.8                 |
| Owner occupied                                  |             | 61.2%         | 47.4%               |
| Renter occupied                                 |             | 38.8%         | 52.6%               |
| Persons per room greater than 1.00              |             | 5%            | 11.9%               |
| Percent lacking some or all plumbing facilities |             | 2.3%          | 10.9%               |
| Percent of total population 65 & Over           |             | 8%            | 4%                  |
| BELOW POVERTY LEVEL                             |             |               |                     |
| Percent of families below                       |             | 8.0           | 24.6                |
| Mean size of family below                       |             | 3.55          | 4.35                |
| Percent of all persons below                    |             | 10.2          | 27.3                |
| FAMILY-INCOME                                   |             |               |                     |
| Percent of families less than \$5,000           |             | 17.8%         | 37.2%               |
| \$5,000 - 57,999                                |             | 18.2%         | 27.4%               |
| Greater than \$8,000                            |             | 64%           | 35.4%               |
| Unemployed in 1974                              |             | 7.4%          | 17.2%               |

0130

2232 East 28th Street

Tacoma, Washington 98404

206/572-8425



# Puyallup Tribe of Indians

MEDICINE CREEK TREATY NATION

2215 East 32nd Street, Tacoma, Washington 98404  
(206) 572-6480



July 18, 1977

LeRoy Boyce  
Pierce County Prosecutors Office  
County-City Building  
Tacoma, WA 98402

RE: Puyallup Tribe relationship vis a vis HUD Block Grant Program

Dear Mr. Boyce:

As you are aware, the Puyallup Tribe has been a member of the Pierce County Block Grant Consortium. During our first year of membership, \$15,000 was allocated to the Tribe to acquire land for low income housing. This past year \$75,000 was allocated for the same project. Further, discussions have been held as to the allocation of an additional \$15,000 for a beautification project.

All these activities have been declared as eligible by HUD. My understanding is that the county is concerned about its civil rights liability; in that the tribe is subject to different statutes than the County. Understanding, some degree of legitimacy to this concern, what we do not understand is the county's dilatory efforts in presenting to HUD a formal request for a contract amendment exempting the county from enforcing the non-applicable Civil Rights statutes as they pertain to the Tribe.

It would seem a simple problem to solve; however, if your office would like assistance from the tribe in preparing such a document, we would be more than happy to assist. I do not believe that there should be any interference in this problem with any future legal action Pierce County may be contemplating against the tribe. It also seems reasonable that this issue could be resolved within a month if sufficient effort is exerted.

Looking forward to your positive response.

Sincerely,

Richard Erlich  
Coordinator

RE:gnp

cc Clay Huntington, Chairman, Pierce County Commissioners--Merv Parker, Coordinator  
Charles Bickley, CPD Director, HUD Area Office--Ancil Potter, Civil Rights Action HUD  
Area Office

***We have a history...***

***We have a future.***

DEVELOPMENT COORDINATOR  
 AND COMMUNITY DEVELOPMENT

March 7, 1977

Merwin Parker  
 Community Development Coordinator  
 County- City Building  
 Tacoma, WA 98402

RE: HUD ruling, Puyallup Tribe Land Acquisition, February 25, 1977

Dear Merwin:

Now that we have a clear statement from HUD on the Puyallup Tribe Land Acquisition Program, I would appreciate the answers to the following questions no later than Friday, March 18, 1977.

1. What exactly is the process that the Tribe and County must follow to effect the necessary contractual relationship to expend these funds. (This should include time lines for action.)
2. Does the environmental assessment require a specific parcel of property to be described or is census tract location sufficient.
3. Specifically, what legal problems are foreseen. (These should be delineated and cited by statute.)

I apologize for the time constraints, but they are necessary to meet the A-95 review and comment deadline.

If it would be more appropriate to hold a meeting in the coming week, I shall be at your disposal.

Sincerely,

*Richard Erlich*  
 Richard Erlich  
 Coordinator  
 Planning & Community Development

RE:gnp

Attachment

cc Clay Huntington, Chairman



# Puyallup Tribe of Indians

## MEDICINE CREEK TREATY NATION



January 24, 1977

R. Ancil Potter  
 Director  
 Equal Opportunity Division  
 Department of Housing & Urban Development  
 Seattle Area Office  
 1321 Second Avenue  
 Seattle, WA 98101

Dear Mr. Potter:

RE: Applicability of Section 109 of Housing and Community Development Act, 1974, to Indians

It is our position that the legal opinion handed out by Mr. Margulies' office will allow the Puyallup Tribe to purchase land in trust, using Block Grant funds. I refer you to page 2 of the Margulies' opinion, "Therefore, the Puyallup Tribe may, as a sub-grantee, purchase land and have it placed in a trust status. However, housing built or rehabilitated on the land with the use of ODBG funds must be operated in conformity with civil requirements applicable to the Block Grant program."

Our interpretation of these two sentences leads us to the following:

1. Block Grant funds may be used to purchase land and have it placed in trust status.
2. If housing is to be built or rehabilitated on that land and block grant funds are utilized to accomplish that task, then we (the Tribe) are subject to the requirements of Section 109 of the Block Grant legislation.

Since English is a precise language and the attorney preparing this opinion is aware of the term "trust status" means, I should like to elaborate, The Bureau of Indian Affairs may accept land into trust for Indians or Indian tribes under the 1932 Indian Reorganization Act. This land must be used to the exclusive benefit of Native Americans or the Tribe, no other usage is permitted. Once accepted into trust by the Commissioner of Indian Affairs, this land is taken off the tax roles and is subject to the zoning and other regulations pursuant to the tribe on whose reservation that land was taken into trust. Therefore, the attorney preparing this opinion understood that no conditions could be placed upon land being placed in trust and therefore, the caveat is placed on the use of block grant funds for building housing or rehabilitating housing on trust land.

R. Ancil Potter

-2-

January 24, 1977

It is the intention of the Puyallup Tribe to acquire land with Block Grant funds, to place that land into trust, and to use other funds, Bureau of Indian Affairs monies, to rehabilitate housing on the land. This being the case, we believe the January 14, 1977 letter to the County and City from E. G. Moger, Area Director of the Seattle Area Office, to be premature and would expect this letter would be withdrawn by HUD as it clearly implies the acquisition of land by the Puyallup Tribe using Block Grant funds is in conflict with Section 109. This letter further states that both governmental entities should re-allocate the Block Grant funds that were set aside for this purpose.

Looking forward to your prompt and affirmative response, I remain

Sincerely yours



Richard Erlich  
Coordinator  
Planning & Community Development

January 14, 1977

Merwin Parker  
 Community Development Coordinator  
 Board of Pierce County Commissioners  
 1046 County-City Building  
 Tacoma, Washington 98402

10.H:avery:ps  
 M/S 427  
 442-0374

Dear Mr. Parker:

Subject: Community Development Block Grant Program  
 Eligibility of Puyallup Tribe Proposed Land Purchases

As you know in August 1976, following a meeting with you and others in our office, we requested an authoritative ruling from our headquarters on the applicability of Section 109 of the HUDA and other Civil Rights authorities to the Puyallup Tribe proposals. We have now received the requested guidance. It concludes that Section 109 does apply to Indians, and that there is no exemption from Section 109 short of amendment to the Statute. Thus, facilities or activities assisted by CDEG funds cannot be operated or used exclusively for Indians. Specifically, CDEG funds cannot be used to acquire real property to produce housing for occupancy limited to Indians, whether on or off an Indian Reservation. Real property can be purchased with CDEG assistance for any of the purposes enumerated in Section 570.200(a)(1) of the Regulations, provided that the final use of the property is non-discriminatory.

In summary, all Block Grant assisted activities designed to serve Indians must, like all other Block Grant assisted activities, be designed and operated without discrimination. If this condition cannot be assured in the proposed case, due to the conflicting requirements attached to the Indian Housing Funds or for other reasons, we suggest you consider allocating the CDEG funds in question to some alternative activities to serve the needs of the Indians.

Please feel free to contact us if there are any questions.

Sincerely,

E. J. Moger  
 Area Director



REGION X  
Arcade Plaza Building  
1321 Second Avenue  
Seattle, Washington 98101

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SEATTLE AREA OFFICE  
ARCADE PLAZA BUILDING, 1321 SECOND AVENUE, SEATTLE, WASHINGTON 98101  
January 10, 1977

IN REPLY REFER TO:  
10.1E (Potter)  
Phone 442-4307  
M/S 417

Mr. Rick Erlich  
2232 East 28th Street  
Puyallup, Washington 98404

Dear Mr. Erlich:

Subject: Applicability of Section 109 of the Housing  
and Community Development Act of 1974 to  
Indians

The attached is a copy of the opinion of Mr. Irving  
P. Margulies, General Counsel, Central Office, Washington  
D. C., concerning problems in your CDBG planning.  
This copy is forwarded to you for your information.

Sincerely,

R. Ancil Potter  
Director  
Equal Opportunity Division

Attachment



*100-12**M. Young  
attn. M. W. Rodgers  
Region 8*

**W. Baxter Jenkins, Area Council, 10.1G  
Seattle Area Office**

GCB



**W. Leigh Curry, Jr., Associate General Counsel  
for Community Development, CC**

**Applicability of Section 109 of the Housing and Community Development  
Act of 1974 to Indians**

Your memorandum concerning the above subject and specifically requesting a decision by the Office of General Counsel on the matter was referred to the Office of Mr. Margulies, Associate General Counsel for Equal Opportunity and Administration, in view of the nature of the issues and that office's prior opinion on the same subject. We have now received an opinion signed by Mr. Margulies and are hereby transmitting it to you.

There is nothing we can add to the opinion which concludes as before that section 109 of the Act is applicable to Indians and that the only solution seems to lie in mandatory legislation.

*VINCENT R. LANDAU*

*for* Associate General Counsel

**RECEIVED**  
JAN 6 1977

Attachment

EQUAL OPPORTUNITY DIVISION

|     |           |                            |     |                      |          |
|-----|-----------|----------------------------|-----|----------------------|----------|
| cc: |           |                            |     |                      |          |
| CP  | Ball      | 7153                       | GK  | Margulies            | 10244    |
| E   | Blairst   | 5103                       | CV  | McLean               | 7205     |
| CAM | CFD Files | 7151                       | CD  | Parker               | 10216    |
| CC  | Curry     | 10270                      | GCB | RF                   | 10270    |
| C   | Elliott   | 10214                      | GCB | EF                   | 10254    |
| GCB | Kemison   | 10270--- (720 Indians      | GCB | Sullivan             | 10254    |
| GCB | Landau    | 10256 2110 Section<br>109) | IGS | Young, Attn. Rodgers | Region 8 |

GCB:Sullivan:adt 12/27/76 Ext 56948

MUD-86 (7-75) PREVIOUS EDITION MAY BE USED

*Memorandum*U.S. DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENTTO : S. Leigh Curry, Associate General  
Counsel for Community  
Development, GC

DATE: DEC 13 1976

IN REPLY REFER TO:

FROM : Irving P. Margulies, Office of General Counsel, GE

SUBJECT: Applicability of Section 109 of the Housing and Community  
Development Act of 1974 to Indians

We are in receipt of the memorandum to you from N. Baxter Jenkins, Area Counsel, Region X, which you referred to us for our review and comment. The question raised by the Area Counsel's Office concerns whether Section 109 of the Housing and Community Development Act of 1974 prevents the Puyallup Tribe of Indians as a sub-grantee from purchasing land, placing it into trust status, and using CDBG funds to build or rehabilitate housing for "Indians" exclusively.

Our office had advised the Assistant Secretary for Fair Housing and Equal Opportunity in an April 19, 1976 memorandum that Section 109, which prohibits discrimination under any program or activity funded under Title I of the HCDA (Community Development Block Grants), applied to Indian Tribes. We stated that Section 109 sets out the Secretary's responsibilities when a State or unit of general local government recipient of assistance under Title I has failed to comply with Section 109. Section 102(a)(1) defines "units of general local government" to include Indian Tribes, bands, groups and nations. Thus, we advised that Indian Tribes are specifically mentioned as a "unit of general local government" covered by the civil rights requirements of Section 109. Additionally, Section 104(a)(5) requires all applicants for Block Grant funds, which would include Indian Tribes, to provide satisfactory assurances that programs for which funds are sought are conducted and administered in conformity with

2

We have reviewed the issue further and we confirm our initial opinion. Title II of the Civil Rights Act of 1968 preempts Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964 and Executive Order 11063 with respect to the equal protection of persons coming within the jurisdiction of an Indian Tribe. Title VIII, Title VI and Executive Order 11063 do not cover Indian Tribes which are nowhere mentioned in these authorities. However, with regard to the Community Development Block Grant program, Congress has included Indian Tribes as governmental entities coming within the jurisdiction of civil rights authorities applicable to programs and activities funded by the Block Grant program. Therefore, the Puyallup Tribe may, as a sub-grantee, purchase land and have it placed in a trust status. However, housing built or rehabilitated on the land with the use of CDEG funds must be operated in conformity with civil rights requirements applicable to the Block Grant program.

We recommended in our April 19, 1976 memorandum that the Block Grant legislation be amended to include a provision similar to that in the Revenue Sharing legislation permitting Block Grant funds to be used by Indian Tribal recipients exclusively for the benefit of Indians without violating standard civil rights requirements. We reiterate that recommendation.

Section 109 is identical to the nondiscrimination provision, Section 122, of the General Revenue Sharing legislation, the State and Local Fiscal Assistance Act of 1972, P.L. 92-512. Under General Revenue Sharing, Indian Tribes are recognized as eligible entitlement units for revenue sharing funds (see Sections 108(d)(1) and 108(b)(4)). But Section 123(a)(8) of that Act provides a special exception for the benefit of Indian Tribes as follows:

"(8) in the case of a unit of local government as defined in the second sentence of section

3

108(d)(1) (relating to governments of Indian tribes and Alaskan native villages), it will expend funds received by it under subtitle A for the benefit of members of the tribe or village residing in the county area from the allocation of which funds are allocated to it under section 108(b)(4)."

Regulations implementing the Revenue Sharing program at 31 CFR §51.43 interpret this provision as follows:

"Indian tribes and Alaskan native villages as defined in §51.2 are required to expend entitlement funds only for the benefit of members of the tribe or village residing in the county area from which the allocation of entitlement funds was originally made. Expenditures which are so restricted will not constitute a failure to comply with the requirement of Subpart E (nondiscrimination) of this part."

The absence of a specific provision differentiating Indian tribes from other units of local government in the Community Development Block Grant program in a manner parallel to the above provision in General Revenue Sharing indicates that it was not intended that Indian tribes be relieved of the requirements in Sections 104(a)(5) and 109 of Title I.

Mr. Jenkins stated in his memorandum that, even if Section 109 applied to Indians, he did not believe there was a conflict between Section 109 and Title II of the Civil Rights Act of 1968, the general preemptive civil rights authority relative to Indian tribes. He stated that recent court decisions such as McCurdy v. Steele 353 F. Supp. 629 (D. Utah 1973) rev'd on other grounds, 506 F. 2d 653 (10th Cir. 1974) and Groundhog v. Keele 442 F. 2d 674 (10th Cir. 1971) have held that the concept of equal protection may be modified to conform to tribal interests and that tribes can discriminate racially with respect to certain internal matters on the

4

reservation. Therefore, Title II of the Civil Rights Act of 1968 would, in his opinion, be the only legislation tribes must comply with in meeting Section 109.

We do not dispute the legally recognized right of Indian tribes to provide services on the reservations for members of their tribes or other Indians to the exclusion of non-Indians. This is not so much a matter of discrimination as it is a policy of the Federal government to protect and encourage the unique cultural identity and quasi-nationhood status of Indian tribes. Title II of the Civil Rights Act of 1968 is an outgrowth of the Federal government's policy in this regard.

However, Mr. Jenkin's reliance on the two cited cases in this instance is misplaced. Title II is the general provision applying a particular civil rights standard to Indian tribes which possess the powers of self-government. Congress, though, retains the authority to impose different standards if it chooses, in which case Title II and cases interpreting Title II would be inapposite. McCurdy and Groundhog are two of the cases concerning the actions of tribal governments against members of the tribes in which the courts held that Title II was applicable. McCurdy was concerned with a disputed tribal election of the governing business council of the Confederated Tribes of the Goshute reservation. Groundhog was an action challenging the validity of an act of Congress authorizing the President to appoint a citizen by blood of the Cherokee Tribe as the Principal Chief of the Tribe.

These cases helped to establish the parameters of Title II. McCurdy, for example, stated that the Indian Civil Rights Act (Title II) appears to have been tailored by Congress for the purpose of enhancing the civil liberties of individual Indians without unduly undermining Indian self-government and cultural autonomy, McCurdy, supra at 632. Groundhog reviewed the legislative history pertaining to Title II and concluded that Congress intended that the provisions of the 5th, 6th and 7th Amendments

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and in some respects the equal protection requirement of the 14th Amendment should not be embraced in Title II, Groundhog, supra at 681-82.

While we recognize that Indian tribes are concerned with providing housing for Indians only, the CDBG program is not specifically a housing program. It is a program of formula entitlement grants to units of local government to be utilized by the local governments for eligible community development needs specified in Title I of the HCDA. It is evident from Title I of the HCDA that Congress intended enumerated civil rights requirements in Sections 104(a)(5) and 109 of the Act to apply to whatever activities or community development needs the units of local government choose to undertake through the Block Grant program. Had Congress intended a different civil rights standard to apply to community development needs of Indian tribes funded through Community Development Block Grants, it would have so specified as it did in the case with General Revenue Sharing.

A further indication of Congressional intent can be found in Title II of the HCDA where Congress amended the United States Housing Act of 1937 to include in Section 5(c) a special "set-aside" to be entered into by the Secretary in contracts for annual contributions to assist in financing the development or acquisition cost of low-income housing for families who are members of any Indian tribe, band, pueblo, group, or community of Indians or Alaska Natives which are recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs, or who are wards of any State government. This is, of course, a housing program and the funds allocated to benefit Indians are not restricted by the civil rights requirements of Title I of the HCDA or any other new specified civil rights requirements in the HCDA. Thus, Title VI of the Civil Rights Act of 1964 would be applicable to annual contributions allocated under Section 5(a) for low-income housing projects of non-Indian housing authorities. Since Title II of the Civil

6

Rights Act of 1968 is the preemptive civil rights provision for Indians and Title VI of the Civil Rights Act of 1964 is not applicable to Indians, Title II will apply to funding for Indian housing authorities under Section 5(c). Congress did not alter or substitute another civil rights standard here.

It is our opinion that in Title II of the HCDA Congress decided to make special provision for Indian housing needs and the civil rights requirements to be applied under the annual contributions contracts program and that under Title I of the same Act Congress was concerned with different civil rights criteria to be applied to all applicants in a new and unique Federal revenue sharing program.

*James P. Birnbaum,*  
Associate General Counsel  
Equal Opportunity and  
Administration Division

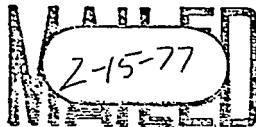
*Exhibit No. 16*

## SUQUAMISH TRIBAL COURT

Law And Order Office  
P.O. Box 556 Suquamish, Washington 98392In department's monthly re-  
port submitted to Council

February 14, 1977

MAY 3 1977

State of Washington  
Law Enforcement Officers and  
Firefighters Retirement Board  
P.O. Box 918  
Olympia, Washington 98504

Gentlemen:

This is an inquiry on behalf of the officers of the Port Madison Indian Reservation Police Dept. in Kitsap County.

Our officers are employed by the Suquamish Tribe and are not United States Government employees. The Suquamish Tribe is recognized as a self governing body responsible for law enforcement on the reservation.

Many of our officers are former deputy sheriffs and police who have participated in the L.E.F.F. Retirement System and are still holding funds in the system. It is our understanding that we are qualified as police officers to participate in the L.E.F.F. system now.

Would you please qualify this question of eligibility for us and advise us what procedures we would have to follow to initiate the Retirement System for our Police Dept.

We appreciate your assistance in this matter.

Sincerely yours,

Jim Ticehurst, Lieutenant



Dixy Lee Ray, Governor  
Robert L. Hollister, Jr., Director

March 2, 1977

Jim Picehurst, Lt.  
Suquamish Tribal Court  
Law and Order Office  
P.O. Box 556  
Suquamish, WA 98392

*Jim - Cho*

*Maclyn*

Dear Sir:

This is in response to your recent letter requesting information regarding the eligibility of the Officers of the Port Madison Indian Reservation Police Department for membership in the Washington Law Enforcement Officers' and Fire Fighters' Retirement System (RCW 41.26).

Regretfully, we must advise you that these individuals are not eligible for membership in this System.

By way of information, the System was created to cover all full time, fully compensated county and municipal law enforcement officers and fire fighters. RCW 41.26.030(2) defines the term "employer", in relevant part, to mean:

"...the legislative authority of any city, town, county or district or the elective officials of any municipal corporation that employs any law enforcement officer and/or fire fighter,..."

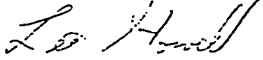
Moreover, RCW 41.26.030(3) defines the term "law enforcement officers", in relevant part, to mean:

"...any person who is serving on a full time, fully compensated basis as a county sheriff or deputy sheriff, including sheriffs or deputy sheriffs serving under a different title pursuant to county sheriff, city police officer, or town marshal or deputy marshal,..."

As you can see, based upon the foregoing statutes, the Suquamish Tribal Court (your employer) does not meet the definition of "employer". In addition the employees of the Port Madison Indian Reservation Police Department do not meet the definition of "law enforcement officer."

Should you have any additional questions regarding this matter,  
please advise.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lee Stowell".

LEE STOWELL  
Administrator  
Retirement Systems

LS:rc

## THE SUQUAMISH TRIBE

P.O. Box 556      Squamish, Washington 98392

March 4, 1977

Mr. Lee Stowell, Administrator  
Retirement Systems  
1025 E. Union  
Olympia, Washington 98504

Dear Mr. Stowell,

This is in response to your letter of March 2, 1977, wherein you advised that our law enforcement officers were not eligible for membership in the Washington Law Enforcement Officers' and Firefighters' Retirement System (RCW 41.26), a statement with which we totally disagree.

Contrary to your letter, our police officers are not employed by the Tribal Court, but by the Squamish Tribe. Since 1965, this Tribe, through their elected representatives, the Tribal Council, has been officially recognized as the legislative authority of the Port Madison Reservation. As the governing body of the Port Madison area, the Squamish Tribe has been responsible for the employment of full-time, fully compensated law enforcement officers to protect the people and property within the boundaries of said Reservation.

Therefore, we find not only does the Tribe qualify as an "employer" pursuant to RCW 41.26.030 (2), but that our Tribal policemen conform, except in name, to the definition of "law enforcement officer" as set down in RCW 41.26.030 (2).

Thus, we request reconsideration and/or further elaboration regarding our officers' eligibility in this system.

Respectfully,

JAMES TICEMURST, LT.  
Squamish Police Department

JT/pg



OFFICE OF THE ATTORNEY GENERAL

SLADE GORTON ATTORNEY GENERAL  
TEMPLE OF JUSTICE OLYMPIA, WASHINGTON 98504

*Handwritten signature: Slade Gorton*

April 4, 1977

Lt. James Ticehurst  
Suquamish Police Department  
The Suquamish Tribe  
P. O. Box 556  
Suquamish, WA 98392

Dear Sir:

This is in response to your letter of March 4, 1977, relating to the eligibility of the law enforcement officers who are employed by the Suquamish Tribe.

I have reviewed the relevant statutes, and it is my view that the tribe does not qualify as a "employer" within the meaning of RCW 41.26.030(2) and that the law enforcement officers employed thereby do not qualify within the definition of that term contained in RCW 41.26.030(3).

Whether they are employed by the governing body of the port or by the tribe, they would not be town marshals, city police officers, or sheriffs or deputy sheriffs. Hence, they are ineligible for membership.

The only solution to this situation would seem to be to seek an amendment to the statutes which would encompass the officers you have described.

I trust I have been of assistance.

Very truly yours,

*Wayne L. Williams*  
WAYNE L. WILLIAMS  
Assistant Attorney General

WLW:a

## THE SUQUAMISH TRIBE

P.O. Box 556      Port Ansh, Washington 98592

April 15, 1977

Mr. Wayne L. Williams  
Assistant Attorney General  
Temple of Justice  
Olympia, Washington 98504

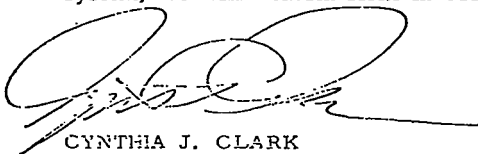
Mr. Williams:

Relevant to your letter of April 4, 1977, and the contrary position it presents regarding our officers' eligibility for LEFF, the following is a rebuttal:

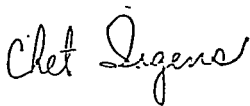
Pursuant to RCW 41:26.050 (2) which avers "employer means the legislative authority of any ... town ... district ... Suquamish is a town, and Port Madison Reservation could be defined as a district in the State of Washington. Moreover, the Suquamish Tribe is the legislative authority within the boundaries of Port Madison of which Suquamish, Washington is a part. Therefore we feel that compliance to the above clause has been met, and with said compliance, it logically follows that the same should apply for our officer's eligibility, since they are "...full-time commissioned law enforcement personnel ... appointed ... by the legislative body ... of Suquamish and Port Madison Reservation.

Your contention that neither the Tribe nor the police officers qualify is unclear and difficult to understand. Perhaps you are drawing your conclusions from other statutes in addition to the RCW. If so, we

would appreciate citation thereof, as it may allievate the semantical cleavage that now exists. Until we are informed of other documents and/or are given a more extensive explanation as to why our officers are restricted from membership in the LEFF system, we will remain firm in our antithetical stance.



CYNTHIA J. CLARK  
Criminal Justice Researcher



CHET IRGENS  
Law and Order Administrator

CJ/pg



## OFFICE OF THE ATTORNEY GENERAL

SLADE GORTON ATTORNEY GENERAL  
 TEMPLE OF JUSTICE OLYMPIA, WASHINGTON 98504

June 15, 1977

*Chet ✓*  
*Cindy c*

Ms. Cynthia J. Clark  
 Criminal Justice Researcher  
 The Suquamish Tribe  
 P. O. Box 556  
 Suquamish, Washington 98392

Mr. Chet Irgens  
 Law and Order Administrator  
 The Suquamish Tribe  
 P. O. Box 556  
 Suquamish, Washington 98392

Dear Madam and Sir:

I have reviewed your follow-up letter regarding the eligibility of Suquamish Tribal Police Officers for membership in the Law Enforcement Officers' and Fire Fighters' Retirement System. Although I am somewhat impressed with the fervor with which you have made your argument, I am not persuaded. It is my view that they are ineligible.

I trust I have been of assistance.

Very truly yours,

*Wayne L. Williams*  
 WAYNE L. WILLIAMS  
 Assistant Attorney General

WLW:dtf

WAVE  $\Phi$ !

JOIN AND WIN!

CITIZEN POWER COUNTS!

PORT MADISON PUBLIC  
MEETING!

SAT.

OCT. 1 - 7:30 P.M.

INDIANOLA COMMUNITY CLUBHOUSE  
for

DISCUSSION OF TRIBAL INDIAN ISSUE

(If you own or rent property on "Reservation"  
it affects YOU!)

AGENDA

1. Report of Committee  
to preserve Proper  
Government Jurisdiction
2. Guest Speakers
3. Question and  
Answer Period

Residents of:

Squamish  
Sandy Hook  
Chief Seattle Park  
Squamish Shores  
Miller Bay  
Indian Bay  
Indianola  
Jefferson Beach

Come one! Come all!



Land-use control

## Interior Department will try mediation of Suquamish issue

By WARREN KING

Representative Norm Dicks said yesterday a representative of the Department of Interior will try to negotiate a compromise between Kitsap County officials and Suquamish Indians who want to regain control of more than 5,000 acres of non-Indian-owned land on their Port Madison Reservation.

Dicks met in Washington, D.C., Thursday with Dan Clem, the Kitsap County prosecutor, and County Commissioner John Horsley. On Friday, the group met with Interior Secretary Cecil Andrus.

The tribe wants land-use control over the property of about 3,000 non-Indians living on the 8-

000-acre reservation.

The Indians cite treaty rights as the basis for such control. They already have passed a preliminary ordinance that would ban new construction on the non-Indian land for a year. Final tribal passage of the measure is expected in late September.

The Suquamish also say that if they had full land-use control, it would be their future "responsibility" to have the power of taxation and control of roads, schools and other local-government functions.

Opposition to the move is growing among non-Indian residents in the Indianola community. They

want control of their property to remain with Kitsap County.

Kitsap officials and Dicks agree with the non-Indian residents.

"I just don't think they (the Suquamish) have the authority to do this," Dicks said yesterday from his home in Kitsap County. "I say that once the land is sold in fee simple, it's no longer part of the reservation."

Dicks said Kitsap has "a rather enlightened group of commissioners" who have progressive land-use policies. He said he'd like to see a compromise giving the tribe input in zoning decisions on privately owned land within the reservation.

Clem said yesterday he would

The Seattle Times - A 21  
Sunday, July 31, 1977

be happy to talk with an Interior Department negotiator, who will be coming to the area the next few weeks. But he was adamant about not wanting to give up any of the powers of the county to the Suquamish Tribe, which now has about 100 members living on the reservation.

Clem said if the construction moratorium is passed and tribal officials take action against private property owners who don't get a building permit from the tribe, the county "will seek to intervene in whatever way we possibly can."

## Port Madison Case At Issue

# High Court To Decide Jurisdictional Dispute Involving Offenses Committed On Reservation

WASHINGTON (UPI) — The Supreme Court today agreed to decide whether Indians have jurisdiction over non-Indians committing offenses under a tribal code in a highly populated area that still is legally a reservation.

The court will hear a case next term involving the Port Madison Indian Reservation in Washington state and will decide it by written opinion.

Washington state, coming in as a "friend of the court," urged the justices to review the decision. It said thousands of non-Indians reside and work on reservations and have created homes and cities in these areas.

Under a lower-court decision they all are subject to tribal laws, the state told the high court.

In one case a federal district court in

Seattle and the 9th Circuit Court of Appeals denied Mark David Oliphant a writ of habeas corpus to prevent a trial before a tribal court.

Oliphant was arrested at 4:30 a.m. on Aug. 19, 1973, by Suquamish police during the annual tribal celebration known as Chief Seattle Days. He was charged with assaulting an officer and resisting arrest and was detained in the Bremerton jail until released on his own recognizance.

In a 2-1 decision the circuit court said the tribes were independent sovereign nations at one time and retain powers not expressly taken away by Congress either through treaty or law. The opinion found no pertinent congressional vetoes.

The "power to preserve order on the reservation" is a necessary element of

sovereignty, the majority said.

The circuit court quoted the Suquamish tribal counsel as having asked for law enforcement assistance at the celebration and receiving one county deputy for eight hours during the entire weekend, while the Federal Bureau of Indian Affairs said the tribe would have to provide its own law enforcement.

Dissenting Circuit Court Judge Anthony M. Kennedy noted that tribal officers may make arrests and turn the offenders over to appropriate authorities. But the tribal counsel said it is so difficult to get federal prosecutors to move in relatively insignificant cases that many offenses go unpunished.

Washington Attorney General Slade Gorton said the decision would affect 23

Indian reservations in the state. He said the non-Indian population is greater than the Indian on the two largest reservations — Yakima and Colville.

Sixty-three per cent of the Port Madison Reservation, only 10 miles from Seattle, is privately owned, 36 per cent is in trust to the United States and only 1 per cent is tribally owned, according to Gorton.

A second man, Daniel B. Belgarde, asked the high court to take his case, too, though the 9th Circuit hasn't yet ruled on it. He fared the same as Oliphant in Seattle District Court.

Belgarde, a resident on the Port Madison Reservation, was arrested on a public highway by tribal police in Kitsap County and jailed in Port Angeles before being released on bail. He was charged with reckless driving.

# Non-Indian land owners organize

Non-Indian residents of the Port Madison area are taking action to try to free themselves from the jurisdiction of the Suquamish tribal council.

A group of 250-300 people packed the Indianola Community Hall Saturday night to begin organizing the Association of Property Owners and Residents of the Port Madison Area.

Indianola and Seattle resident Frank Ruano chaired the meeting of residents who are becoming increasingly alarmed over the spread of tribal jurisdiction in the lives and on the property of non-Indians.

The group is taking steps to affiliate themselves with the Interstate Congress for Equal Rights and Responsibilities, a national organization.

Several residents expressed great concern that a "Third form of government—a tribal government" exists, but is not needed.

"We have no voice in these tribal decisions that affect our lives," said

local resident Gina Whitley.

"We aren't represented in council because we are not Indians. We have enough governments as it is without yet another one," she added.

The group hopes to pressure Congress and the Supreme Court into addressing the whole area of treaties more satisfactorily.

Members of the already established Quinalt Property Owners Association and the Lummi Property Owners Association were on hand to speak to the Port Madison residents about organizational efforts.

People in attendance seemed to believe that the recent building moratorium has increased efforts by non-Indians to speak out on the issue.

The Indianola Beach Club has started a petition which also worked its way into the proceedings. The petition states that "jurisdiction shall remain with elected officials."

## Hydrofoils?

# Survey shows little enthusiasm for plan

Suquamish residents are less than enthusiastic about the prospect of having their town used as a terminal for a new hydrofoil, passenger-only ferry run.

A Herald survey last week found attitudes ranging from half-hearted endorsement to downright resentment of the proposed new ferry.

"It would be good as far as transportation goes. I'd like it for convenience. It beats going to Winslow," said grocery store employee Sharon Smith.

"But parking would be a big problem. Where will they put the cars? I know that during the Chief Seattle days the cars caused an awful mess around here," she said.

"It would be good for business, I suppose, but the crowds and parking will be a problem," said one Suquamish businessman who chose to remain anonymous.

"Also, we'd have to set the zoning laws

(Continued on Page 2)

## Exhibit No. 17

## OAKVILLE SCHOOL DISTRICT No. 400

POST OFFICE BOX H  
OAKVILLE, WASHINGTON 98568  
TELEPHONE (206) 273-8011

JACK M. WANSLEY  
SUPERINTENDENT

WILLIAM FRASER  
PRINCIPAL

May 13, 1976

REC - 11

MAY 17 1976

HUMAN R.

RECEIVED

MAY 17 1976

HUMAN RIGHTS COMMISSION

Washington State Human Rights Commission  
402 Evergreen Plaza  
Olympia,  
Washington 98504

Re: Complaint, 5-3-76, Melvin L. Youckton  
and Confederated Tribe of Chehalis Indians

Equal Education Opportunity to Youckton children and  
all other Indian children.

There are approximately 27% Indian students enrolled in the school. All of these students have the opportunity to participate in every program that we have at school. In the case of athletics, if an Indian student desires to participate, we make sure that he has the equipment. This equipment is purchased thru the use of Johnson O'Malley funds, insurance is also paid in the same way. In the case of classes which require projects, ie., home ec, vocational ag, and leather craft, we also supply the Indian students with needed materials thru these Johnson O'Malley funds.

The faculty members presently employed have graduated from colleges in the State of Washington. During the past three years we have hired five new faculty members. Each year that we have recruited a certificated person I have notified all of the state colleges with in the State of Washington. I have noted that we have approximately 1/3 Indian students enrolled in the school, and have attempted to either hire people, who are from a minority group, or make sure that the person who is hired be compatible, to the community, and able to work with the Indian population.

During the past three years we have had four Indian students drop out of school. Three of these were girls who were pregnant, and they were encouraged to continue school both during pregnancy and after. The other student was a boy that could not be convinced to return and continue his education.

We have had four Indian aides working as tutors at the school. In December 1975 one of them left our employment. I notified Percy Youckton, Chairman of the Johnson O'Malley Committee and Melvin Youckton, Tribal Chairman,

*Very true*

Page 2

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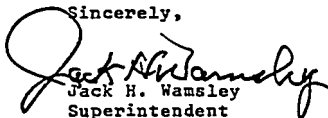
Complaint; Melvin L. Youckton  
and Confederated Tribe of Chehalis Indians

May 13, 1976

of this vacancy and requested them to recommend a person to replace the aide who quit. We were planning on an Indian person to be the new teachers aide. In March, Melvin Youckton, Chairman of the Chehalis Tribe called to say that the Tribal Personnel Committee would be screening applicants for the teachers aide position. They selected a non-Indian person which they, and the Johnson O'Halley Committee recommended to us to be hired as a new aide. The school Directors accepted their recommendation and hired the lady.

The discipline policies for the elementary school students (Kthru 8) were established and approved by the School Directors to apply to all students. The percentage of Indian students who were disciplined is not as high as the percentage of white students.

Sincerely,



Jack H. Wamsley  
Superintendent

**Superintendent of Public Instruction**

DR. FRANK B. BROUILLET • OLD CAPITOL BLDG., OLYMPIA, WASH. 98504



December 9, 1977

Mr. Paul Alexander  
Office of General Counsel  
U.S. Commission on Civil Rights  
1121 Vermont N.W.  
Washington, D.C. 20425

Dear Mr. Alexander:

At the recent hearings in Seattle on Indian Affairs, I was asked to furnish the Commission with two documents:

- 1) A Declaration of Indian Education Policy by the State Superintendent of Public Instruction.
- 2) A progress report on the above policy.

These two documents are enclosed as per your instruction.

Sincerely yours,

A handwritten signature in cursive script that reads 'Emmett S. Oliver'.  
Emmett S. Oliver  
Supervisor of Indian Education

ESO:las  
Enclosure (2)



# Superintendent of Public Instruction

DR. FRANK B. BROUILLET • OLD CAPITOL BLDG., OLYMPIA, WASH. 98504



## A DECLARATION OF INDIAN EDUCATION POLICY BY THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

October 7, 1975

The Superintendent of Public Instruction has and accepts the constitutional responsibility to ensure that each student attending the public schools has an equal educational opportunity.

American Indian children historically have been unable to enjoy the full benefit from public education because of cultural differences, conflicting values, lack of understanding and other factors.

Expressions of Indian leaders, educators and the needs assessments and hearings on Indian education, conducted by the U. S. Congress and other governmental agencies, have generated changes in the existing programs and the emergence of new programs for Indians in public schools. These changes and new programs have presented new opportunities for the public schools to develop a philosophy that is consistent both with Indian self-determination and state educational goals. They have also created an urgent need for statewide coordination and leadership so that Indian students and the schools they attend may share in a unified Indian education effort.

The Superintendent of Public Instruction has established the Office of Indian Education within the Division of Professional Services and Equal Educational Opportunities. The Office of Indian Education was established as a separate section within the Division, thus enabling the Supervisor of Indian Education to serve as a section leader in order that the needs of Indian students might receive priority attention in the education agency.<sup>1</sup>

To further provide stability and positive leadership in the common effort to improve educational services to Indian students, the Superintendent of Public Instruction hereby declares the following statement to be the official policy of his office for Indian education in the public schools of Washington.

### 1. Indian involvement in public education

The Superintendent of Public Instruction actively promotes the involvement of Indians in every aspect of public education, including their participation on school boards, education committees, as professional administrators and teachers, and as paraprofessional and other classified public school employees, and students. This policy is in fulfillment of more general commitments toward affirmative action which are already on record.

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<sup>1</sup>This paragraph is revised due to office move on February 1, 1977.

Declaration of Indian Education Policy  
 October 7, 1975 (Revised February 1, 1977)  
 Page Two

It is the position of the Superintendent of Public Instruction that involvement of Indian parents in the development and evaluation of special educational programs for their children is the most effective means of assuring relevant Indian input. Accordingly, cooperation between parent education committees and educational agencies in such efforts is vigorously encouraged and supported.

2. Administrative, field, and support services for all special Indian education programs in the public schools

Pursuant to his above stated commitment to all public school students, and to all Indian students in particular, the Superintendent of Public Instruction will make all the customary services provided by his staff available to school districts for the purpose of improving the quality of special Indian education programs, irrespective of the funding source of said programs.

3. The development, dissemination and use of appropriate Indian heritage and cultural materials in the public schools

There is presently a great demand for authentic Indian materials and information suitable for curriculum use. There is a public responsibility to make available to all students in the State of Washington an accurate, fair and comprehensive study of the American Indian experiences with and contributions to life on this continent. With the guidance and cooperation of Indian people, the Superintendent of Public Instruction will lead the effort to bring about these needed modifications of public school curricula.

4. Special training for teachers of Indian students

American Indians have complex cultures, unique value systems, and many of them enjoy special treaty relationships with the federal government. These factors call for the promotion of better intercultural understanding. Since the school systems have the potential for fulfilling this need, the Superintendent of Public Instruction will cooperate with teacher education institutions, school districts, Indian tribes, and other agencies and organizations to develop and provide opportunities for the training of educators in the Indian heritage, in the specialty of teaching Indian children, and those of other minority cultures. In this way teachers may be better equipped to respect the uniqueness of each learner and to emphasize that cultural, ethnic and racial differences contribute positively to our nation's future.

5. Identifications of Indian students in the public schools

Inadequate identification methods have created considerable confusion concerning the numbers of students eligible for special Indian programs in the public schools.



Declaration of Indian Education Policy  
October 7, 1975 (Rev. February 1, 1977)  
Page Three

The Superintendent of Public Instruction will develop recommended procedures which will ensure the accurate identification of eligible Indian students. This policy will be implemented in a manner that will fully respect the rights and privacy of students and their parents.

6. Involvement in national Indian educational policy development

Indian education is a subject of national concern and action. Realizing that federal legislation and the regulations of federal agencies which provide categorical educational funds for Indians in public schools will continue to have a strong influence upon special Indian education programs in the schools of Washington State, the Superintendent of Public Instruction will take positive steps to ensure that the special interests of the public school students of this state will be adequately represented in the development of all such policies.

7. Career ladder training for Indian paraprofessionals

Indian persons have proven very effective as educators in paraprofessional roles. Since there is a need for a higher proportion of Indian people in the education profession, the Superintendent of Public Instruction promotes programs of in-service education to enable such persons to upgrade their skills and to achieve professional status wherever possible.

SUPERINTENDENT OF PUBLIC INSTRUCTION  
INDIAN EDUCATION

PROGRESS REPORT: INDIAN EDUCATION POLICY

The Washington Indian Action Committee for Education and the Washington State Native American Education Advisory Committee both have a vital interest in the Indian Education Policy of the Superintendent of Public Instruction.

The following pages contain an open-ended summary of progress in the implementation of that Policy since its announcement on October 7, 1975.

The format of this report is designed to allow each committee member to add comments for input at the joint committee meeting scheduled for 12/16/77.

Harold L. Patterson

## SUPERINTENDENT OF PUBLIC INSTRUCTION INDIAN EDUCATION POLICY

## I. Indian Involvement in Public Education

## A. Implemented or in process

1. Washington State Native American Education Advisory Committee appointed and functioning.
2. Big 12 has developed more definitive role; e.g., input and sign-off on state JOM education plan.
3. State money placed in Indian Education budget.
4. Supervisor of Indian Education office in SPI elevated to the section level.

5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_

## B. To be implemented

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

II. Administrative, Field and Support Services for All Special Indian Education Programs in Public Schools

A. Implemented or in process

1. Indian Education manual rewritten and disseminated.
2. Co-sponsored Title IV-A workshop in Fall, 1976, assisted in Fall, 1977.
3. Providing SPI staff assistance for Northwest Indian treaties curriculum project.
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

B. To be implemented

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

III. The Development, Dissemination and Use of Appropriate Indian Heritage and Cultural Materials in the Public Schools

A. Implemented or in process

1. Reprinted curriculum guide "The History and Culture of the Indians of Washington State".
2. Supervisor of Indian Education worked with Northwest Regional Educational Laboratory on development and dissemination of Indian readers.
3. Assisted in funding curriculum guide for Yakima cultural materials.
4. SPI staff participation in development of "U.S. Treaties, A Northwest Perspective".
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_

B. To be implemented

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## IV. Special Training for Teachers of Indian Students

## A. Implemented or in process

1. Partial funding for Indian Teacher Education Programs - University of Washington.
2. Supervisor of Indian Education and Associate Supervisor of Indian Education participated in site visits to colleges and universities as part of SPI evaluation team.
3. Supervisor of Indian Education is attending regular meetings of the Council of Deans of Education.
4. Cooperate with and fund experimental project for training of Indian counselors and para-counselors at Western Washington University.
5. Conduct workshops for teachers of Indians in public schools on on-going basis.
6. Fund in-service training projects in local school districts and regional JOM consortia.
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_

## B. To be implemented

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

V. Identification of Indian Students in Public Schools

A. Implemented or in process

1. Assist in implementation of annual census of Indians eligible for services under P.L. 92-318, Title IV-A.
2. Assist in annual census of Indian students eligible for services under P.L. 93-638 (JOM).

3. \_\_\_\_\_  
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4. \_\_\_\_\_  
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5. \_\_\_\_\_  
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B. To be implemented

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4. \_\_\_\_\_  
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VI. Involvement of SPI in National Indian Education Policy Development

A. Implemented or in process

1. Participated in 13 state consortium meetings on national Indian education policy.
2. Input in regulations for 93-638.
3. Direct contacts with Bureau of Indian Affairs Director of Education, Interior Assistant Secretary for Indian Affairs, Deputy Commissioner for Indian Education in U.S.O.E.
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

B. To be implemented

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_



VII. Career Ladder Training of Indian Paraprofessionals

A. Implemented or in process

1. Para-counselor Training Program at Western Washington University.
2. Indian Teacher Education Program at University of Washington.
3. Fund LEA's and Regional Consortia for in-service training of aides, under JOM.
4. Assisted in developing process for direct certification of teachers of Indian language through SPI channels.
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_

B. To be implemented

1. \_\_\_\_\_  
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*Exhibit No. 19*

**Thurston County Fire Protection District No. 1**

Rochester, Washington

September 26, 1975

RECEIVED

OFFICE OF THE ATTORNEY GENERAL

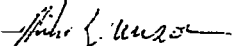
Chehalis Indian Reservation  
Tribal Council  
P.O. Box 243  
Oakville, Washington 98568

Gentlemen:

We understand that there properties within our district on which no property taxes are paid. The Commissioners of Thurston County Fire District No. 1, therefore, wish this letter to serve as notice to your Council that we will not respond to fires on properties in our district not covered by taxes or with a direct contract with the Fire Department, henceforth.

Sincerely,

Mike D. Dunson, Commissioner



MD/lcd

October 16, 1975

RECEIVED  
 CC 075  
 CHEHALIS INDIAN TRIBE  
 ROCHESTER, WASHINGTON

Mr. O'Dean L. Williamson  
 U.S. Dept. of the Interior  
 Bureau of Indian Affairs, Western Wash. Agency  
 Hoquiam Service Center  
 P.O. Box 120  
 Hoquiam, Washington 98550

Re: Fire Protection

Dear Mr. Williamson:

We are in receipt of your correspondence of October 6, 1975, with Mr. Miller, Chief of our Fire Department. Neither Mr. Miller nor the department are able to handle this situation. The Thurston County Fire District No. 1 Commissioners and not the Fire Department are able to contract for fire protection on Indian lands not on the tax rolls. Please, therefore, direct all correspondence on this matter to the District.

In reference to your letter, we need the following information before we can submit a contract to your Bureau. First, we need the property descriptions of properties within our fire district that have been removed from the tax rolls and that you wish to have covered with fire protection. Secondly, we need the current assessed valuations of said properties.

When we have received the completed information from you as stated above, we will be able to submit a contract and price to you for fire protection.

Sincerely,

*Laura C. Dunson*

Laura C. Dunson, Secretary, Thurston County Fire District No. 1 Commissioners  
 c/o Route 2 Box 7, Rochester, Washington 98579

CC Mr. Mel Yuckton  
 Chehalis Indian Reservation, Tribal Council

THURSTON COUNTY RECEIVED

COUNTY COMMISSIONERS  
GEORGE F. YANTIS, JR.  
KEN STEVENS  
MARJORIE YUNG

DEPARTMENT OF PUBLIC WORKS  
COUNTY COURTHOUSE  
OLYMPIA, WASHINGTON 98501

M. G. WALKER  
DIRECTOR  
OFFICE: 753-5051  
JUN 13 1975

June 11, 1975

CHEHALIS INDIAN TRIBE  
OAKVILLE, WASHINGTON

Tribal Council  
Chehalis Indian Reservation  
P. O. Box 243  
Oakville, Washington 98568

Re: Anderson Road  
Bridge Replacement

Gentlemen:

This request is concerned with the replacement of the Anderson Road Bridge, which is located within your Reservation. It is a two (2) span timber frame bridge spanning an overflow channel.

The Anderson Road Bridge is, as you are aware, on the major access road onto your land. This facility is used by the Rochester and Oakville School Bus Routes as well as your Health Clinic, Day Care and Headstart Programs. It will also be serving the proposed Reservation housing to be built in the near future.

This bridge is seriously deficient structurally, operationally and hydraulically. The following very brief facts and comments on each of these aspects point out the need for complete replacement.

STRUCTURAL FAULTS

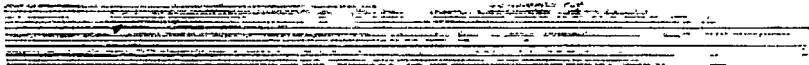
The bridge in general is structurally inadequate and cannot continue to carry the heavy loads being imposed upon it. The substructure is in critical condition. Serious stages of decay are clearly visible on the piling, caps and timber backwalls. This decay has seriously weakened the bridge and can only be remedied by replacement. The timber backwalls are approaching complete structural failure.

OPERATIONAL DEFICIENCIES

The operational characteristics are very deficient. Its narrow width creates a very unsafe condition. The high degree of hazard in the narrow bridge situation, both real and perceived by the driver, has been recognized for many years. The narrow bridge problem becomes more serious at night, and in fog or dust especially during adverse weather conditions. Studies indicate narrow rural bridges are involved in 1.6 percent of all accidents and 3.4 percent of all fatalities on non-Interstate Systems.

HYDRAULIC CONDITIONS

Hydraulically the bridge opening is not capable of passing "near flood" conditions. The overflow channel completely inundates the structure during



continued

Page 2

## Anderson Road Bridge Replacement

"flood" conditions. The flood waters begin to pass over the roadway south of the bridge. In many instances the bridge and roadway become impassable.

A preliminary hydraulic analysis indicates the approximate velocity of the flood waters passing through the bridge opening is 9.5 feet per second. The approach channel is 200 feet in width with a slope of 0.10 in 400 feet which results in carrying a velocity of 1.935 cubic feet per second. Thus when this 200 foot wide channel is suddenly "necked down" in order to pass through the narrow bridge opening the resulting velocity causes scour and forces the water to "pond up" and seek another channel.

Based upon this preliminary study we feel the replacement structure should be doubled in length and contain abutments designed to carry the water through the opening more efficiently. The abutments should also be skewed in the direction of the overflow channel. Present day costs, including design and inspection of the new structure, would be in the neighborhood of \$75,000.00.

We strongly feel the Anderson Road Bridge needs immediate replacement. Its present condition presents a definite and grave safety hazard to the residents of the area who must travel over this structure.

Thurston County does not have the necessary funds to replace this much needed construction project. The County has 118 bridges on its road system. Fifteen (15) of these bridges are rated in "CRITICAL" condition. "Critical" indicates immediate replacement if funds were available. We do have quite a few bridges within the County in far worse condition than the Anderson Road Bridge and they, understandably, must be replaced ahead of your bridge.

We do not anticipate budget relief in the foreseeable future. Our gas tax allocation has been reduced and coupled with the drastic price increases we all are experiencing, Thurston County's yearly construction budget will be sharply curtailed. Hopefully the Council will be in agreement to replace the Anderson Road Bridge if a method of funding its replacement can be found.

If we can be of assistance in developing your long range planning efforts relative to roads and bridges please don't hesitate to call. My assistant, Mr. Jim Stein is available to offer his help in your planning effort. Mr. Stein has already discussed this possibility with Mr. Youcton and Mr. DuPuis. They jointly determined that funds and grants become more available if long range plans are formulated for all aspects of community living such schooling, housing, transportation, employment and so forth.

Thanks for taking the time to read this rather lengthy letter as we feel it is an important matter.

Very truly yours,



M. G. WALKER

Director of Public Works

MCW:vw

cc: Mari Yung, Commissioner  
District No. 3

233

*Exhibit No. 20*

**REPORT TO THE GOVERNOR**

on the

**Department of Social and Health Services**



*Prepared by the*

**GOVERNOR'S SELECT PANEL**

on the

**DEPARTMENT OF SOCIAL**

**AND**

**HEALTH SERVICES**

Olympia, Washington

**August 1977**

State of Washington  
 REPORT TO THE GOVERNOR  
 ON THE  
 DEPARTMENT OF SOCIAL AND HEALTH SERVICES

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GOVERNOR'S SELECT PANEL  
ON THE  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

GOVERNOR DIXY LEE RAY, CHAIRMAN  
LOUIS R. GUZZO, EXECUTIVE CHAIRMAN  
MARTHA A. DARLING, EXECUTIVE DIRECTOR

MEMBERS

- SUE AMMETER, Seattle. President, National Federation of the Blind of Washington. Handicap Specialist, Washington State Human Rights Commission.
- HENRY BEAUCHAMP, Yakima. Executive Director, Yakima Valley Opportunities Industrial Center (OIC).
- RICHARD BRADLEY, Port Angeles. Director of Juvenile Court Services, Clallam and Jefferson Counties. Past President, Washington Association of Juvenile Court Directors. Board Member, Washington Corrections Association.
- SCOTT BRIAR, Ph.D., Seattle. Dean, School of Social Work, University of Washington.
- RT. REV. GERALD DESMOND, O.S.B., Ph.D., Olympia. Professor of Sociology and Anthropology, St. Martin's College. Board Member, Washington Association for Social Welfare. Member, Washington Corrections Association.
- DONNA M. HANSON, Spokane. President, Spokane Junior League. Associate Director, Catholic Charities of the Diocese of Spokane.
- TSUGUO IKEDA, Seattle. Executive Director, Seattle Atlantic Street Center (his focus is youth in conflict). Involvement in many community service organizations, committees, advisory boards.
- PAYSON JEYNES, Tacoma. Former State Supervisor of Field Services, Division of Vocational Rehabilitation, Department of Social and Health Services.

HENRY D. KASS, Ph.D., Cheney. Director, Graduate Program in Public Administration, Eastern Washington State College.

HARLAN P. McNUTT, M.D., M.P.H., Tacoma. Former Director, Tacoma-Pierce County Health Department. Secretary, Department of Social and Health Services. (Vice Chairman of the Panel)

ALLAN W. MUNRO, Seattle. Attorney, Graham, Cohen, Wampold, Wesley and Munro. Board Member, Northwest Center for the Retarded (1970-present). Past Board President, Seattle Mental Health Institute (1970-74).

GILBERT S. OMENN, M.D., Ph.D., Seattle. Associate Professor, Department of Medicine; Director, Robert Wood Johnson Clinical Scholars Program, University of Washington. Effective June 1, 1977, on leave as Assistant Director, Office of Science and Technology Policy, Executive Office of the President, Washington, D.C.

ALBERT D. ROSELLINI, Seattle. Former Governor, State of Washington.

JILL RUCKELSHAUS, Medina. Presiding Officer, Presidential Commission for International Women's Year, 1975-76. U.S. Delegate to United Nations Conference on Women, Mexico City, 1975. Board of Directors, Population Council. Board of Trustees, Kenyon College and University of Puget Sound. Former Vice-President, National Center for Voluntary Action.

FABIOLA WOODS, Seattle. Mortgage Servicer, Real Estate Division, Bank of California. Extensive voluntary community organization involvement.

\* \* \*

Jon W. Halvorson, Chief Staff Assistant, Governor's Select Panel.

Melissa Cadwallader, Staff Assistant, Governor's Select Panel.

Susie Hubbard, Staff Assistant, Governor's Select Panel.

Sarah F. Perkins, Staff Assistant, Governor's Select Panel.

Donald J. Rolstad, Staff Assistant, Governor's Select Panel.

Elaine G. White, Staff Assistant, Governor's Select Panel.

Cherry Bowen, Administrative Assistant, Governor's Select Panel.

## SUMMARY

Critics of the Department of Social and Health Services (DSHS) have often asserted that the problems of the Department could be attributed to its "umbrella" nature. Low staff morale, poor services and the huge amounts of paperwork have all been blamed on the DSHS organizational and regional structure. In her charge to this Panel, however, Governor Ray made no prejudgments. Instead, she called upon the Panel to evaluate the services actually provided to people in need. She asked whether changes in current organizational structure and policy guidelines would improve the quality and quantity of services, and she directed the Panel to explore whether clearer lines of authority, accountability and responsibility could be established within the present organizational structure of DSHS.

After reviewing the short history of DSHS and studying the Department's current operations in Olympia and in the field, the Panel has concluded that the integration of services intended when DSHS was established in 1970 has neither been accomplished nor really even been pursued. Similarly, the umbrella concept has remained more a concept than an operating principle; the separate programs which were brought together under the umbrella continue to resist coordination and even cooperation in many areas. The shortcomings of DSHS, in summary, seem not to result from trying too much or going too far, but from trying too little, with too little commitment and support from the Department's top leadership over the past five years.

Washington State's goal in human services should be to assist people to become independent and self-sufficient as quickly as possible, or to maintain them in dignity at an economical cost to the state when independence and self-sufficiency cannot be achieved. Yet needs for services outrun available resources. Washington, like many other states, offers services beyond its present ability to fund and staff them. Excessive expectations can be avoided by making choices and openly explaining which services are to be provided and which are not. The Panel

has made recommendations about the many programs of the Department. Some of these recommendations would require additional funds if implemented. The Panel therefore regards certain of its recommendations as goals for the future. However, within existing budgets, substantial improvement in services and in management of the Department seems altogether feasible. Every section of the Panel report identifies areas and mechanisms for such improvements.

Two principles of administration and management are essential to the Department's primary mission of developing effective programs and delivering services to people in need:

- o All DSHS staff positions should be justified on the basis of enabling direct service staff to provide services in the most effective, efficient and economical manner possible. Therefore, the Panel has recommended that the Department's administrative support capacity be redirected to serve the program divisions and their respective field operations. The program divisions' capacity to plan, budget and manage personnel and training matters should be established or, where it already exists, strengthened. Program integrity requires program control of these functions.
  
- o All DSHS employees who work face-to-face with persons seeking help should be highly qualified and well-trained. These front-line workers must be mature, patient and sympathetic in understanding personal and social problems and the many ways people can be helped to manage their own lives as independently as possible. In addition, the Panel has noted underrepresentation of minorities among the Department's direct service staff and has recommended that DSHS launch an outreach effort to recruit minority and bilingual persons for client contact positions in service delivery.

The majority of the Panel has recommended against the separation of any programs from DSHS. At the outset, the entire Panel agreed that the reasons for removing a program from the DSHS structure should be compelling and that any expected benefits should outweigh both the human and financial costs of separation. Two minority recommendations propose separation of Adult Corrections' and Mental Health and of Vocational Rehabilitation and Services for the Blind.

The delivery of social and health services in Washington State is fragmented. Programs and organizational lines of responsibility have been designed around narrow categories of persons or available federal funding sources. In the Panel's opinion, the state has paid a high price for a policy that tries to maximize federal dollars. Categorical programs have developed unevenly and narrowly and often fail to serve the broad array of needs of individuals and families. The Panel has therefore recommended a realignment of programs into a new divisional structure, with the expectation that this realignment would facilitate the development of more comprehensive approaches to the service needs of our people. The organizational structure and location of the Adult Corrections Division would remain unchanged. New divisions include Services to Families, Children and Adults; Services to the Elderly; and Vocational Rehabilitation and Services to the Disabled. An enlarged Division of Health would serve the broadly-defined health needs of the people, including mental health, drug abuse and alcoholism services.

The Panel has recommended that the Department develop a single entry system for all DSHS services to expedite the initiation of services to eligible clients and to streamline paperwork required of clients and staff. The Panel also has recommended the implementation and testing of a regionalized integrated service delivery system on a pilot project basis which would include both the economic and social services currently delivered through the local Economic and Social Services Office (ESSO) system and the categorical programs (e.g., vocational rehabilitation, developmental disabilities, alcoholism) which have their own service delivery systems.

The Panel has urged that a coherent policy-making and priority-setting process in human services be developed in Washington. The Governor, the Legislature, the Secretary of DSHS and the departmental staff, and citizen groups all have important roles to play in the policy-making process. The Panel has recognized the central position of the Governor and the Legislature: first, because a state policy for human services will affect the lives of many citizens and should be stated openly and clearly by the state's highest elected representatives; and, second, because the policy and program guidelines set forth by the Governor and the Legislature should be reflected in the funding priorities of the budget. Clearly articulated policies are essential so that funding decisions may be made on criteria reflective of the broad interest of all citizens of the state.

## I. INTRODUCTION

A. SHORT HISTORY  
OF THE  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES\*

In 1968 the former Governor of Washington State created a task force to review state government and identify groups of agencies which could provide services more effectively if combined. A major recommendation of the task force was to create a human services umbrella agency. Some resistance to the idea came from people who questioned the benefits of "big government" and from the agencies to be combined. Nevertheless, during the 1970 legislative session Senate Bill 52 was passed creating the Department of Social and Health Services (DSHS) by combining five agencies--Department of Institutions, Department of Public Assistance, Department of Health, Department of Vocational Rehabilitation, and the Veterans Rehabilitation Council.

The legislation gave extensive powers to the Secretary of the new department. The Secretary was given all the powers and authorities previously held by the five separate agencies and was accountable only to the Governor. Only two restrictions were placed on the authority to organize DSHS: first, an amendment to the bill required division status for the vocational rehabilitation program as a result of special interest concern that vocational rehabilitation would lose its identity in the new umbrella agency. The other restriction was that the Governor approve the Secretary's reorganization decisions.

On July 1, 1970, the Department of Social and Health Services came into existence, with the five former agencies becoming divisions of the new

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\*This section is based on DSHS historical documents and on a 1974 history written by R. R. Rathfelder, former Director of the Personnel and Training Division of DSHS.

department. Sidney Smith, until then head of the Department of Public Assistance, was appointed the first Secretary of DSHS. He immediately launched a planning effort to determine the organizational structure of the new department, based on the goals for its creation. The 1968 task force on governmental reorganization had set forth these goals as:

- o Program integration: improved capability to deliver coordinated services to individuals.
- o Management effectiveness: better internal coordination of functions; creation of tools for economical, efficient and effective delivery of necessary services; and enhanced capability for dealing with the federal government.
- o Policy-making: more direct and more expeditious implementation of the policies of the Governor and the Legislature.

The legislation creating the Department also stated as its purpose, "...to create a single department which will unify the related social and health services of state government. The department is designed to integrate and coordinate all those activities involving provision of care for individuals who, as a result of their economic, social or health condition, require financial assistance, institutional care, rehabilitation or other social and health services."

The 1968 task force on reorganization had suggested a number of organizational structures which were reviewed during this planning period. The result was a paper entitled "Concept of Organization" which was submitted to the Governor in January of 1971. The paper recommended organizing the Department on a functional basis around three major areas:

- o Program development: problem identification, policy determination, monitoring and evaluation.



- o Service delivery: the actual operations of providing services to clients throughout the state.
  
- o Management services: many of the supporting services, such as data processing, budgeting, accounting and facilities.

The structure decided upon at that time called for the creation of a Management Services Division, four program development divisions reporting to a Deputy Secretary, and a Service Delivery Division, with all operating programs placed under it.

In April 1971, the new division directors were named. However, another three to four months were spent in planning before the new structure was actually implemented, during which some 3,000 citizens, including departmental staff, departmental clients, legislators, officials of local and county government and special interest groups, helped determine the regional boundaries and identified the services to be provided and the manner in which they should be delivered. Only on July 1, 1971, was the new organizational structure implemented, and the regional structure was not implemented until seven months later.

Under the new organizational structure service delivery was divided into two major branches, Regional Services and Central Services. Regional Services included as many different programs as could be regionalized effectively under ten regional administrators. Central Services encompassed all those programs which could not or should not be regionalized. The underlying premise was that the structure would permit centralized policy-setting through the program development divisions to ensure adequate standards in all programs, and decentralized operations through the regional administrators. In February 1972, the ten regional administrators were appointed and gradually assumed line authority and responsibility for all the programs then scheduled for regionalization. These included: social services, medical services, income maintenance, vocational rehabilitation, adult probation and parole, and juvenile parole. It was

contemplated that at a later date some of the institutional programs, such as the schools for the retarded, the mental health hospitals, and the schools for the blind and deaf might also be placed under the regional administrators' line authority. Simultaneously, many of the supporting services were consolidated, including data processing, budgeting and accounting, and personnel and training.

By mid-1972 several major problems had begun to emerge. Some members of the public and some legislators began to call attention to the fact that two years had passed since the creation of DSHS and, except for some cost savings in supporting services which were offset by rising costs in some program areas, the anticipated benefits of the new department were not being realized. Within the Department, a series of organizational and human problems were evident:

- o Techniques for coordination and problem-solving in the enlarged departmental structure were not well established. It was much easier for a division to veto or delay a decision than to resolve the problem with the concurrence of others involved.
- o There was considerable resistance to, and some misunderstanding of, the division of authority, responsibility and accountability between the program development divisions and the service delivery division. Program professionals, who were accustomed to think of program development and program implementation as stages in a single process, found it difficult to divorce themselves from the delivery of services in the new organizational structure.
- o Some staff in programs which formerly were centrally administered objected to being put under the jurisdiction of a regional administrator.
- o There was also a strong undercurrent of resistance on the part of many persons, both clients and staff, to the "public assistance

takeover," i.e., to being associated with income maintenance and social service programs.

- o There was a lack of common management systems (e.g., accounting systems, reporting systems), yet few resources were available for remedying this problem.

At about the same time, the 1972 campaign for Governor commenced. The organization of DSHS became a major campaign issue, as the Democratic candidate proposed dismantling DSHS and returning the components to their original status as five separate agencies. Under these circumstances, staff opposed to integration were encouraged to resist change, if not to frustrate the objectives of the reorganization openly. The posing of the issue in these terms also had the effect of halting development toward regionalization and service integration, as the leadership of the Department ceased its advocacy of these original aims. Several serious incidents in the adult corrections field also gave widespread and unfavorable publicity to the Department. In short, during this period it became popular to blame every problem occurring in the Department on its "super-agency" structure. In some cases, problems did arise from the fact that the new structure was not yet working smoothly; in many other cases, however, problems had existed prior to the creation of DSHS and would probably have persisted in DSHS' absence.

Although the incumbent Governor was reelected in November 1972, the Secretary announced that he intended to leave as soon as a replacement was found. All plans for further organizational change were suspended until a new Secretary, Charles Morris, and Deputy Secretary, Milton Burdman, were hired in August 1973. The momentum that had been generated for regionalization and service integration was lost during this period of uncertainty about the future.

The new Deputy Secretary served as Acting Secretary until the Secretary arrived in November. During this three-month period, an ad hoc committee

with representation from inside and outside DSHS reviewed the Department's organizational structure. Those committee recommendations that were implemented in November 1973 included:

- o Elimination of the program development divisions.
- o Creation of a separate Adult Corrections Division.
- o Shift of adult probation and parole and juvenile parole from regional control back to a centralized structure. (Vocational Rehabilitation had been recentralized earlier at the insistence of the U.S. Department of Health, Education and Welfare, which claimed Washington's regional structure violated the single state agency concept of the federal law, see page II-93.)
- o Reduction of the number of regions (which now had responsibility only for income maintenance and social service programs) from ten to six.

The new administration of the Department also placed considerable stress on strengthening centralized management systems. A Management and Budget Division and a Planning and Research Division were created. These organizational changes clarified the lines of authority and responsibility. They also represented a significant retreat from the service integration and regionalization which had been achieved; management has since proceeded slowly and cautiously toward regionalization and many programs have never been regionalized.

The organizational changes effected in late 1973 produced an organizational structure which has remained relatively unaltered in the years since (see organizational chart, Chapter VII). A number of bills have been introduced in the Legislature which would either split off parts of the Department or require certain internal reorganizations. Only three of these bills have passed. In 1973 legislation was vetoed by the Governor which would have separated correctional programs from the Department. (By administrative

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action in November 1973 the adult corrections program was made a new division within the Department, see above.) In 1976, over the Governor's veto, a separate Department of Veterans Affairs was created. In 1977, the Legislature passed and the Governor signed legislation to create an independent Commission for the Blind.

B. THE GOVERNOR'S SELECT PANEL  
ON THE  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

During the 1976 gubernatorial campaign, Democratic candidate Dr. Dixy Lee Ray questioned how well the social and health services needs of Washington State citizens were being met by the state's umbrella human services agency, the Department of Social and Health Services. Six years had passed since the reorganization which produced DSHS. Many promises had been made initially about the benefits which would come from the creation of an umbrella agency. Dr. Ray heard of many problems with the agency during her campaign travels. She decided, if elected, to appoint a knowledgeable group of citizens to take an in-depth look at DSHS' achievements and to determine what problem areas remained.

On December 17, 1976, Governor-elect Ray announced the names of 15 persons who had agreed to serve on a Governor's Select Panel on the Department of Social and Health Services, which she herself would chair. In her charge to the Panel she asked the members to determine to what extent the intentions of the DSHS organization had been realized. Specifically, she wanted to know:

"Have services improved? Are people getting the services they need? Would changes in current organizational structure and policy guidelines improve the quality and quantity of services provided to people?"

She also asked the Panel to explore whether clearer lines of authority, accountability and responsibility could be established within the present organizational structure of DSHS.

In the months following their appointment, Panel members have worked hard on their large task. The Panel divided into five working groups which traveled widely across the state--from Bellingham to Colville to Walla Walla, Vancouver, Port Angeles and many points in between--drawing on the knowledge, insights and experiences of over 1,000 citizens. The working groups met with clients and consumers of DSHS services; caseworkers, counselors and supervisory workers in the Department; DSHS top managers and regional administrators; private providers of services; county and local officials; representatives of nongovernmental community organizations and private human service agencies; legislators; and, of course, taxpayers. From these interchanges, from all the information and impressions gathered, verified and analyzed, the Panel has compiled its Report to the Governor.

The Panel's review of the Department's administration and programs has revealed many strengths and achievements; we have not, however, dwelled on these. Instead we have devoted most attention to the definition of program objectives and the degree to which they have been accomplished. We have identified major problems which cut across services, programs and divisional lines of authority as well as those that are specific to a single program. In keeping with our charge from the Governor, our recommendations are for the most part general and stated in terms of outcome expectations rather than as blueprints for program implementation.

## II. REVIEW OF PROGRAMS

This section of the report will review the programs of the Department from a perspective independent of the Department's present organization. We have organized programs into three major groupings: foundation programs, correctional programs and categorical programs. Foundation programs help people who are eligible meet their basic needs for food, clothing, shelter and medical care. Correctional programs protect the public through the punishment and/or rehabilitation of offenders. Categorical programs provide services to a wide range of specifically defined categories of persons who are either physically or mentally handicapped or temporarily incapacitated. Some DSHS programs have income eligibility criteria (a means test) for receiving services, and others do not. The foundation programs deliver social, economic and rehabilitative services through the Economic and Social Services Office (ESSO) system. None of the categorical programs currently delivers services through the ESSOs; some have their own direct delivery system, but most purchase services through contracts with public or private vendors.

The interrelationships among foundation, correctional and categorical programs are many, and services provided by one program are often indispensable to another. Many community-based rehabilitation and treatment programs--for juvenile offenders, the developmentally disabled, the mentally ill, adult probationers and parolees and the blind--depend for their effectiveness on the foundation programs. For example, the Department's recent and continuing effort to reduce the number of persons in state institutions depends upon the availability of medical care, homemaker aid and other social services and income support to persons discharged into the community from institutional settings. Community diversion programs for juvenile offenders, vocational training programs for the handicapped and work/training release programs for adult offenders also rely on these services. Without the foundation programs, there would be few community-based treatment programs. Similarly, people seeking services through the foundation programs may have problems which could benefit from

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services offered through the categorical programs. For example, the family whose child is removed to a foster home because of child abuse may require mental health counseling or alcoholism services.

## A. FOUNDATION PROGRAMS

Basic life needs are met by three essential programs: community social services, income maintenance and community health services. Community social services and income maintenance programs are developed and administered within the Office of Family, Children and Adult Services (OFCAS) and the Office of Income Maintenance in the Bureau of Social Services, Community Services Division. Services are delivered in six regions through 63 Economic and Social Services Offices (ESSOs). Community health services are located within the Health Services Division. Services are delivered through county health departments, ESSOs, private medical vendors and other delivery systems. Community social services, income maintenance and medical assistance programs represent approximately \$1 billion (67 percent) of all DSHS dollar expenditures, approximately 80 percent of all DSHS clients, and approximately 32 percent of all DSHS employees. The 1977-79 biennium caseload projections are 592,959 persons for social services; 199,068 persons for income maintenance; and 249,865 persons for medical assistance. (These figures reflect some double-counting though the exact extent is unknown and cannot be determined. For example, an elderly person receiving medical assistance, social services and supplemental income would be counted in each of these three categories.)

The Department's organization for the delivery of foundation program services is highly fragmented. The local ESSO staff is divided into financial workers who assess only the financial eligibility of clients for medical assistance and income maintenance programs; social service workers who help clients to find and use program resources to meet their basic needs for medical care, social services and income support; and clerical workers who keep records, handle much of the communications and frequently



serve as receptionists for clients. While this division of labor may appear to be logical, physical separation, time constraints, and different educational levels and professional perspectives create a number of problems. Financial and social services are often physically separated, located on different floors or in different buildings. Due to time constraints (see discussion of workload standards and performance measures, page V-7), financial eligibility workers have scant time and no incentives to refer clients to social service staff for further exploration of their needs; consequently, social needs assessments are not made at entry. Social service staff work principally with clients who ask for specific services or with individuals or families referred by the courts for help. Untrained clerical personnel perform the reception-entry function in some ESSOs and make decisions about whether a case is an emergency. Clients protest that there is a lack of information about what services are available, about eligibility criteria and about documentation requirements. It is extremely difficult for non-English speaking clients to obtain information. In summary, the separation of financial and social service systems, unbridged by an adequate referral system or highly trained receptionists, has become a significant barrier to the development of a comprehensive approach to the needs of families and individuals who seek aid from DSHS. For example, one client informed us that she had never met a service caseworker in her 5½ years on assistance. In addition, she had DSHS Medicaid-paid heart surgery, but no one informed her about homemaker or chore services to help with her three children during the recovery period.

Even if a single entry system or an adequate referral system could be created for financial and social services in the ESSOs, another organizational barrier exists to frustrate the delivery of services to persons in need: the conceptual and often physical separation of ESSO services from categorical services. In DSHS, programs and organizational lines of responsibility are frequently designed around a category of persons or the federal funding sources rather than around the needs of the individual. The state has paid a high price for maximizing federal

categorical dollars, as categorical programs have developed unevenly and narrowly and often fail to serve the broad array of needs of the individual client. Narrow categorical definitions of problems make comprehensive approaches to human needs very difficult, if not impossible. There are no real incentives to coordinate categorical programs with each other or with foundation programs.

As categorical programs have been expanded or as new ones have been developed, delivery systems separate from the local ESSO have been established. For example, non-ESSO programs such as the Area Agencies on Aging and vocational rehabilitation, which may serve members of the same family or members of a family receiving ESSO services, have their own entry systems with completely different application forms. As a result, some services are duplicative (e.g., vocational training provided under both developmental disabilities and vocational rehabilitation program auspices), while some needy persons go unserved.

This separation also fosters the creation of artificial barriers between programs by various service staff. Communication and cooperation among service staff across ESSO and categorical programs is limited. Differing levels of support services and differing eligibility and parental financial participation criteria between less-favored ESSO programs and more-favored non-ESSO categorical programs have contributed to low morale among ESSO staff. This situation is exacerbated by salary discrepancies: vocational rehabilitation counselors and parole officers receive considerably higher pay than do social service caseworkers although all three positions have many common elements (see Table 1). It is our impression that the quality of service delivered has not been improved substantially through the separate delivery systems. (This problem is addressed more extensively in Chapter VI.)

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Table 1

Salary Ranges as of July 1, 1977

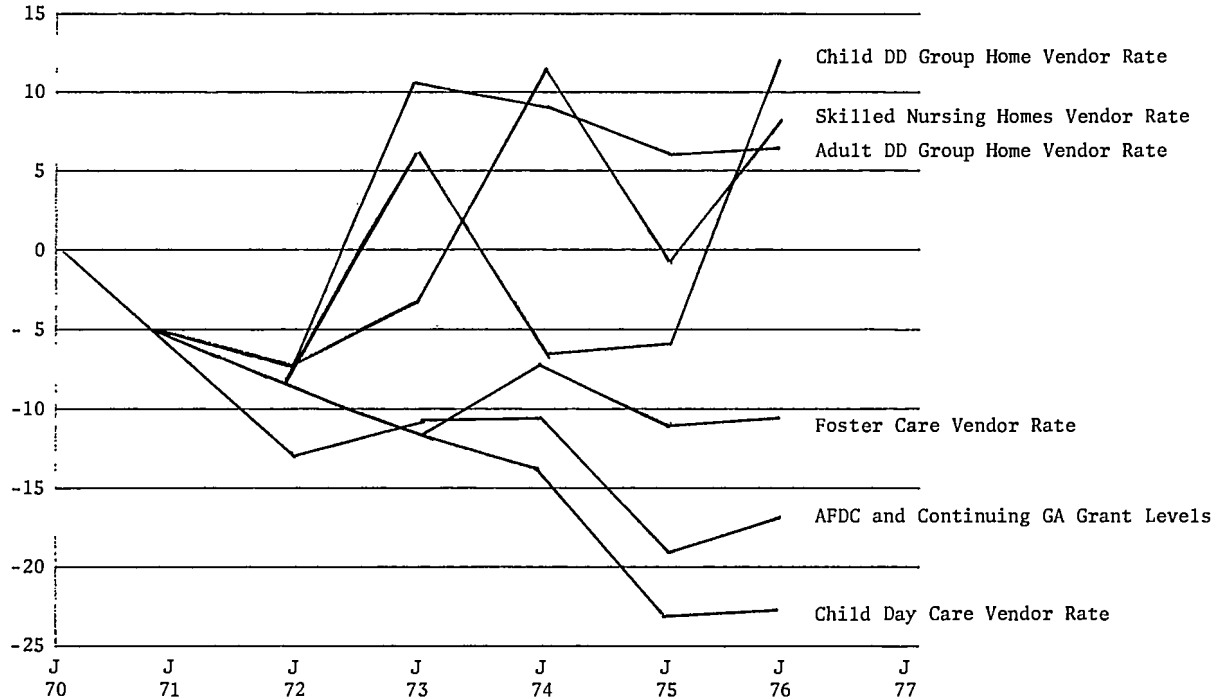
|  |                 |
|--|-----------------|
| Caseworker I                             | \$ 888 - \$1132 |
| Caseworker III                           | \$ 979 - \$1250 |
| Vocational Rehabilitation Counselor I    | \$ 933 - \$1190 |
| Vocational Rehabilitation Counselor III  | \$1190 - \$1518 |
| Juvenile Parole Counselor I              | \$1079 - \$1377 |
| Juvenile Parole Counselor III            | \$1250 - \$1594 |
| Adult Probation and Parole Counselor I   | \$1079 - \$1377 |
| Adult Probation and Parole Counselor III | \$1250 - \$1594 |

Finally, categorical approaches to human needs are not particularly conducive to early intervention and prevention programs designed to avoid more expensive services later. At present, many individuals do not receive services because they do not fit the narrow requirements for a specific category of services; too often people are not served until they are seriously incapacitated. Yet in budgetary terms, categorical programs and their interest groups have fared relatively well over the last several years, while support for the foundation programs and primary preventive programs has been greatly diminished (see Chart 1 on following page).

Chart 1

Department of Social and Health Services - Selected Budget Categories

Percent Budget Growth Since 1970, Using 1970 Dollars\*



\*Information provided by House Appropriations Committee, July 28, 1977.

Recommendations

- *The Department should develop a single entry system for all services and a computerized common data bank for financial eligibility determinations. Remote access computer terminals should be installed in every ESSO. The streamlining and elimination of paperwork in a single entry system would both reduce costs for the Department and speed service initiation for clients. A common financial data bank with remote access terminals in the ESSOs would allow the ESSO line worker to punch in an identifier code and basic eligibility information and instantly know which DSHS services an individual was eligible to receive. This system would permit more rapid response for new applicants and transfer clients, improvements in management information systems, and the ability to provide unduplicated counts of people served and data on service overlap. The information available to the Panel indicates that the single entry system is feasible; in the opinion of authorities, it would also be cost-effective.*

*We recognize that a computerized common data bank raises questions about potential confidentiality problems. Technical experts with the State Data Processing Authority have informed us that it would be technically and economically feasible to separate social profile data from economic or financial data. Social profile data could remain in separate secure systems.*

- *The Department should adopt a system employing a single case number per client to simplify eligibility verification for inter-county transfers and general record-keeping.*
- *The most sensitive, tolerant and skillful employees of the agency should serve as reception staff. A professional service person rather than an untrained clerk should perform the reception-entry function and make decisions about whether a case is an emergency.*

- *The Department should develop a system for informing clients of services available and the eligibility and documentation requirements. Video cassettes, group orientation or recorded messages in the waiting room of an ESSO could be employed. Bilingual materials should be available for non-English speaking clients.*
- *The Department should integrate ESSO and non-ESSO services to develop a more comprehensive approach to services for people. The Department should experiment with the case manager approach to service delivery (along the lines of the vocational rehabilitation model) for all services. (See Chapter VI for more detailed discussion of these recommendations.)*
- *The setting of priorities by the Governor, Legislature and the Department should not be confused with the granting of special privileges to certain client groups. Policies should eliminate the current pecking order of clients which is so clearly evident among the Department's programs (i.e., income maintenance clients appear to be treated as less deserving than most of the other DSHS client groups) and staff (the salaries of social service caseworkers are lower than their counterparts in vocational rehabilitation and parole programs). The Department should equalize the facilities which house ESSO and non-ESSO services and should propose a lessening of pay discrepancies which now exist between DSHS service staff whose jobs are comparable.*
- *To promote the development of programs around clients and their needs and to facilitate client advocacy, the Panel recommends that the Community Services Division be abolished and two new program divisions be created in its place: a Division of Services to Families, Children and Adults and a Division of Services to the Elderly (see following pages).*

1. Services to Families, Children and Adults

Families are the basic unit of our society. We Americans tend to judge societal health and welfare in terms of the healthy functioning and well-being of the family. The family is charged with the principal responsibility for the upbringing of children and the maintenance of its members. Family breakdown--the incidence of mental illness, juvenile delinquency, alcoholism, child abuse or the loss of a parent--is therefore viewed by many as a legitimate concern of society: to be prevented if possible, or to be countered with social, economic and health policies designed to restore or enhance the family's independent functioning. Many families, previously self-sufficient, must turn to state and federally funded services because of limited or nonexistent earning power, resulting from death, divorce or abandonment of a parent. Others simply cannot cope with severe and chronic family dysfunction even though the family unit may be intact and earning an adequate income.

The Office of Family, Children and Adult Services (OFCAS) in the Bureau of Social Services, Community Services Division, develops and monitors social services delivered to families, children and adults through local ESSOs. The Office of Income Maintenance in the same bureau provides financial support services to families, children and adults (see pages II-17 ff.). The Office of Medical Assistance in the Health Services Division provides medical care services (see pages II-41 ff.).

a. Community Social Services

Community social services are funded by the Social Security Act of 1935, Title IV-B, Child Welfare Services, and Title XX, General Social Services (1974 Amendments).

The purpose of Title XX, which matches 25 percent state dollars with 75 percent federal dollars, is to enable states to provide a

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comprehensive social service program for persons in need and to allow them flexibility in resource allocation among those services. Two services are mandatory under Title XX:\*

Child Protective Services  
Family Planning

In addition to these mandatory services, the state of Washington has chosen to offer all the specified optional services, with the single exception of Family Services. These are:\*

Child Foster Care  
Adoption Services  
Health Support Services  
General Support Services  
Alternate Care Services  
Information and Referral  
Homemaker Services  
Chore Services  
Child Day Care  
Adult Day Care  
Adult Protective Services  
Adult Placement Services

These social services divide into four major groupings: -

- o Services to protect individuals from abuse, neglect or exploitation, e.g., protective services for both children and adults in their own homes.
- o Placement services and supervision for appropriate alternative care when an individual cannot remain in his or her own home, e.g., foster care, group care or institutional care.
- o Services to maintain children and adults in their own home, in the community or in the least restrictive residential alternative,

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\*See Appendix B for program descriptions.



e.g., child welfare services, day care, chore services, and health maintenance and supervision.

- o Employment and employment-related services, e.g., education and training through the Work Incentive (WIN) program, child day care.

These broad basic services are often utilized by families who also seek services from other DSHS bureaus and divisions, such as mental health, developmental disabilities, alcoholism, juvenile rehabilitation, income maintenance and medical assistance. Yet each of these programs exists independently in a fragmented array of services and delivery systems. Even the number of offices to which clients must go to receive services adds to the burden for those in need: In some cases co-location of services brings services together physically for easier access; in other cases, offices are widely scattered, and information and referral services are not adequate to help the multi-problem family find the right doors.

Funding and staff support levels constitute the most serious problem in services to families, children and adults. The need for these services is greater than the limited funds available, and Washington, like many other states, offers services beyond its ability or willingness to fund and staff them: An array of services is promised the public by the Department and the Legislature although the effects of inflation on a services budget which has remained virtually unchanged since 1971 and a 30 percent casework staff reduction since 1974 have severely limited services to families, children and adults. Yet, priorities for services go largely unstated, and decisions to eliminate categories of services are exceedingly rare. In this situation, unrealistic expectations for services and misunderstandings by clients, citizens and even departmental staff of what can be expected are widespread. For example:

- o Because the Department does not do full social needs assessments of families applying for DSHS services, families at risk of developing serious problems are not likely to get the preventive services which could allow them to cope and solve their own problems. The family's situation must become serious enough to attract the attention of child protective services or the juvenile justice system, or the family must have already made the painful decision to remove a child from the home and then seek foster home placement services. Until 1973, the Department provided regular annual needs assessment of AFDC (Aid to Families with Dependent Children, see Appendix C) families and arrangements for delivering services to them under its family services program. Low-income AFDC families were viewed as particularly susceptible to problems which could lead to family breakup, through illness or the loss of a child to the juvenile justice system or to foster care. The regular assessment of needs was a preventive measure designed to identify emergent problems and to deal with them before they became serious. In 1973 a decision was made to drop all family services. Subsequently, AFDC families have had to initiate requests individually for social services provided under Title XX and compete with a myriad of often well-organized specialized client groups for limited funds. The result has been a considerable drop in the provision of general and preventive social services to AFDC families.
  
- o The Department provides child protective services and has recently extended service to 24-hour coverage. No increase in staff accompanied this extension, however, and even pre-existing staff levels were considered insufficient to meet the desired timeliness in investigating complaints.
  
- o While the Department does provide placement services for those needing alternative living arrangements, staffing is insufficient to develop alternative living resources, such as foster homes or

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group homes, or to provide the support required for quality out-of-home placements. For example, staffing is not adequate to provide the degree of support requested by foster parents, turnover of foster families is high, and there is a continuing need to recruit more foster parents into the foster home program. In Washington, children remain in foster care far longer than necessary, often because foster care workers are fully occupied with crisis intervention and do not have the time to work for the return of the child to his or her own home. Yet if children are returned to the same environment and no work has been done with the family, the problems which first caused the foster care placement may recur. Natural parents receive few services and consequently children remain in care longer than necessary.

- o The Department is responsible for licensing, monitoring and providing consultation and technical assistance to child day care providers. A staff of 36 is responsible for licensing 400 day care centers and 7,550 family day care homes throughout the state. Due to the heavy workload, personnel concentrate on licensing activities; monitoring and consultation to providers is nearly nonexistent. Provider monitoring and consultation are done on a crisis basis, often only in response to complaints. Many facilities are visited by staff only when their licenses are up for renewal every two years. This procedure cannot ensure that children are receiving care in safe, well-supervised facilities. In addition, large numbers of children are in unlicensed day care.
  
- o The Department provides day care, but only at a level of income eligibility that creates a gross inequity between income maintenance recipients, whose day care costs are fully covered if they work or are in training, and low-income working parents, who are not eligible for any assistance. Because of the low income level at which eligibility for day care services ceases, current state

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policy provides no incentives for single parents to work; although many may wish to work, most would suffer financially if they took a job.

- o The Work Incentive (WIN) program under AFDC served 17,400 clients in training programs in fiscal 1976; 7,400 clients found jobs at a savings in assistance grants of over \$12 million. However, employment-related services are very limited. Many AFDC mothers do not have the option of WIN training or employment due to the limited availability of day care services. DSHS depends upon the State Department of Employment Security for job development. Given current unemployment problems, Employment Security has not been able to place DSHS-referred clients with marginal skills and work habits.
  
- o Services to adults between the ages of 18 and 65 without dependent children are extremely limited. Those who meet eligibility criteria as physically or mentally incapacitated may receive general financial assistance and medical assistance for a short time. If their incapacitation is not severe enough to merit hospitalization or placement in a nursing home or congregate care facility, they are left to fend for themselves in the community. There is a sizable number of mildly retarded, mildly mentally ill, and just plain eccentric nonelderly adults who are in need of but not eligible for the Department's adult protective services. Adult protective services are provided to adults who are neglected, abused or exploited or whose living situation and/or life style is such that they are endangering their own health or the safety of others. Homemaker or chore services are available on a limited basis to correct unhealthy and unsafe conditions, but the new environment does not last long for the chronic cases. Currently, adult protective services are provided through the ESSOs by the same service unit that arranges for nursing home placements. These units are overworked and understaffed, with caseloads

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reaching 200 per worker in several ESSOs. As in other programs, it is not possible for the Department to serve these individuals adequately at present staffing levels.

Most of the inadequacies cited in services to families, children and adults derive from staffing and funding levels that are insufficient to provide promised services. These problems could be resolved by either the appropriation of more monies or the reduction in promised services, or both. (In this connection, it should be pointed out that the limitation on federal funds available under Title XX tends to make people think that Title XX is the only source of funds for social services. Yet other DSHS programs are funded with state-only monies, and the Department and the Governor could request and the Legislature could allocate more state funds to social services--at the expense, obviously, of other budget items.)

Funding aside, however, the Panel firmly believes that greater effectiveness and efficiency in existing services can be achieved through greater coordination and integration of services in support of families, children and adults. Our recommendation of a new organizational location for services to families, children and adults is based on the premise that more comprehensive approaches to the needs of people can be developed by bringing together existing program resources.

#### Recommendations

- *To facilitate the development of a comprehensive approach to services for families, children and adults, the Panel recommends the creation of a Division of Services to Families, Children and Adults. The new division should consist of three bureaus: Services to Families, Children and Adults; Income Maintenance; and Juvenile Rehabilitation. Maternal and child health programs, including Early and Periodic Screening, Diagnosis and Treatment (EPSDT), family planning and genetic screening and counseling,*

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*should be transferred from the Health Services Division to the Bureau of Services to Families, Children and Adults. Most maternal and child health recipients are also clients of services in this division, and most are healthy, receiving normal prenatal and well-baby services from providers. EPSDT and family planning services are already mandated for children covered by AFDC programs. We trust that a division committed to various services for families and children would take a greater interest in contracting for these programs than has the division currently charged with these responsibilities. (See also page II-52.) The current Bureau of Juvenile Rehabilitation should be expanded to include community diversion programs (see pages II-73 ff.). The Bureau of Income Maintenance should include those functions performed by the Office of Income Maintenance, including the newly added Supplemental Security Income (SSI) coordinating unit (see pages II-17 ff.).*

- *A careful review, with citizen input, is required to analyze just which Title XX services or types of services within the Title XX categories merit the highest priority. Since costs can be projected into the next biennium, difficult decisions will have to be made after an analysis of which services are simply not affordable, rather than raising expectations of clients, citizens and staff while underfunding and understaffing promised services.*
- *Programs and services for families, children and adults have been particularly subject to underfunding and understaffing in recent years. Although it is unlikely that funds will become available in the short- or medium-term, in the Panel's opinion the following service needs should be regarded as goals for the future and should receive careful consideration in the review of Title XX service priorities each year:*
  - *A full social as well as financial needs assessment of families seeking assistance should be made. Services and*

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*staff should be made available to families at risk of breaking up or losing a child to a foster care placement or to the juvenile justice system.*

- Adequate staffing levels should be developed to assure the provision of child protective services on a 24-hour basis; preventive as well as crisis placement services for children and adults; adult protective services; and other services to families, children and adults.*
  
- Child day care policy should assist low-income single and two-parent families to enter and remain in the labor force and should assure quality services for children in day care. Day care policy should be altered to eliminate eligibility criteria that discriminate between single and two-parent families and between income maintenance recipients and working low-income parents. A parental fee scaled to income should be instituted for currently ineligible low-income working families.*
  
- More staff time should be devoted to developing resources for out-of-home placements such as foster care, family day care and adult day care. To assure quality care, adequate staff should be assigned to provide monitoring, consultation, licensing and general support to day care providers and foster care parents.*
  
- Employment-related services such as day care, training programs and job development, should be more visible and better coordinated within DSHS and with Employment Security to increase their utilization.*

b. Income Maintenance

The Social Security Act of 1935 established the first national programs to provide income maintenance to families and children

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(Title IV-A) and to the aged, blind and disabled (Title XVI).  
Current income maintenance programs include:

- Aid to Families with Dependent Children (AFDC)
  - 51 percent federally funded
- Supplemental Security Income (SSI)
  - 100 percent state funded
- General Assistance
  - 100 percent state funded
- Food Stamps
  - 100 percent federally funded

The primary DSHS role in income maintenance programs is to determine eligibility (see Appendix C for eligibility criteria). The Department's performance of this function appears to be dominated by concern with error rates and cost control, with an overemphasis on counting and an underemphasis on monitoring the quality of services. The preoccupation with cost control has led to the development of several "assembly line" management systems. Sometimes the management tools developed bear little relationship to the nature of the service provided. For example, the Local Office Rating System has "stability of caseload" as one of its criteria for evaluating ESSO administrators; bonus points are earned for holding down income maintenance caseloads. The Workload Planning and Control (WLPC) measurement for the financial service workers who determine eligibility specifically excludes human interaction behavior (i.e., time for meeting and greeting the client). Reading manual or procedural updates and attending training or conferences is defined as nonproductive time under WLPC standards. (See also page V-7.)

The Panel does not advocate laxness concerning costs, fraud and errors in income maintenance eligibility determination. However, we do believe that financial service delivery can be humane and respectful of the client and at the same time be accurate and



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efficient. While cost and error considerations are and must remain valid, how the Department has chosen to incorporate these considerations in eligibility procedures--the excessive paperwork, the complex and lengthy forms, the sometimes overly extensive verification of financial data and the pressure of limited time for face-to-face interviews--contributes to poor staff attitudes--"guilty (of fraud) until proven innocent"--and staff behavior--insensitivity, rudeness and hurried interviews after long waits. Yet sensitivity in the application of means tests for eligibility cannot be overemphasized. This point is all the more important since a great many of the recipients of income maintenance and other DSHS services are not capable of fighting the system. Many of these people are single parents with young children, elderly, infirm, disabled, or just plain confused by the system.

The Panel recognizes that obtaining funds for increased income maintenance grants is a very serious and complex problem. First, the lack of revenue available to the state is tied to our limited tax base. It is not likely that additional revenues will be available until tax reform proposals are implemented. Second, there is much disagreement as to how limited state resources should be allocated. Approximately 51 percent of the 1977-79 biennium budget has been allocated for public schools and other educational programs. About 34 percent has been allocated for DSHS and other human resource programs. Within DSHS, approximately 30 percent of the budget is spent on income maintenance. Finally, the taxpaying public and legislators appear to be unwilling to support the program at a higher level of funding, despite the fact that single parents and their children constitute approximately 85 percent of those on assistance and that Washington has the third lowest eligibility error and fraud rate in the nation. The preventive aspects of income maintenance are rarely discussed and are frequently lost in rhetoric about "lazy no good

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welfare cheats." Income maintenance payments which help families stay together, prevent more serious problems from developing and allow families to attain self-sufficiency through education and training for employment are, in the Panel's opinion, a good investment.

Income maintenance grant standards have fallen 28 percent behind the increase in the cost of living since 1969. Few of us really understand how difficult it is to survive on current welfare grants. The figures have been most stark for recipients of noncontinuing general assistance (100 percent state funds). Unemployed but employable single persons and childless couples between the ages of 18 and 65, who have been unable to find work and have no source of income, have been eligible for only \$53 a month for a single person and \$84 for a couple. By recent legislative action, these individuals will be eligible for the general assistance grant as of August 15, 1977 (see Table 2, below). Such persons must have exhausted all other sources of assistance and must reapply every two weeks to receive half the monthly amount. They must convert any resource such as the equity in a car or any other type of conveyance to cash within seven days, taking the quick sale value. Such cash is counted as a resource, reducing the amount for which they are eligible.

Households receiving Aid to Families with Dependent Children (AFDC), which will be matched by the federal government at a rate of 51 percent in the 1977-79 biennium, fare slightly better. DSHS provides different amounts to recipients in Area 1 (King, Pierce, Snohomish and Thurston counties) and Area 2 (the other thirty-five counties). Table 2 compares Washington's grants with the Department of Health, Education and Welfare's 1976 poverty levels.

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Table 2

Washington Grants and the Federal Poverty Level

| <u>No. of<br/>Persons</u> | Grants<br>(effective July 1, 1977) |               | <u>1976 Poverty<br/>Level</u> |
|---------------------------|------------------------------------|---------------|-------------------------------|
|                           | <u>Area 1</u>                      | <u>Area 2</u> |                               |
| 1                         | \$201                              | \$190         | \$233                         |
| 2                         | 292                                | 263           | 308                           |
| 3                         | 355                                | 330           | 406                           |
| 4                         | 416                                | 391           | 485                           |

Recent trends in recipient expenditures for food are a cause for grave concern. The number of income maintenance grant recipients in Washington who purchase food stamps has dropped from 70 percent to 42 percent since 1975. It is hypothesized that the lack of available cash, due to inflation in the cost of housing and utilities, is the reason for this decline. It is estimated that the average welfare household spends less than one-third of its budget for food. According to this estimate, a four-person household in Area 1 would have about \$139 available for food. That amount is \$75 a month less than the U.S. Department of Agriculture's Low Cost Food Plan (Revised, 1974) and \$26 below its emergency food plan.

The long-range effects of certain dietary shortages on children have been well documented. Poor families frequently have cheap starchy diets high in carbohydrates and low in protein. A child's brain grows to 80 percent of its adult size in the first three years of life and this rapid brain growth is primarily the result of protein synthesis. Protein deficiency can cause irreversible stunting in this natural growth process. In Washington, approximately 94,000 children are living on inadequate maintenance grants. The real tragedy of low grant levels is that we may be hampering the physical and mental development of these children to such an extent that they will be unable to compete successfully as adults. Some may not only fail in the economic

marketplace but also may require extensive and expensive rehabilitation services to become self-sufficient. Others may never achieve self-sufficiency.

Although President Carter's national welfare reform proposals will undergo substantial alteration before legislation is enacted by Congress, we can anticipate significant changes in federal financial participation, eligibility criteria, benefit levels and administrative arrangements affecting income maintenance programs in Washington State over the next several years. The state's financial and administrative role in the system that will emerge is necessarily unclear. However, it is unlikely that national welfare reform will bring any dollar savings to the state, given early indications of proposed grant levels and eligibility criteria. The Governor, the Legislature and the Department will obviously be giving close attention to the evolution of national welfare reform proposals.

#### Recommendations

- *The Department should develop workload standards for adequate staffing of services which reflect values such as the effectiveness and humaneness of service in addition to the measurement of time and efficiency. DSHS supervisors and managers should be expected to monitor staff treatment of clients. Failure of staff to treat clients with dignity and respect for their rights should be cause for disciplinary action and, if it persists, cause for dismissal.*
  
- *To facilitate eligibility determination, the Department should develop a computerized common data bank for financial eligibility for all DSHS programs. Remote access computer terminals should be installed in every ESSO. (See also page II-7.)*

- *Together with citizen advisory committees, the Department should educate the public about the purposes of income maintenance programs, their preventive aspects, and their essential supportive role for community-based rehabilitation programs such as alcoholism treatment, developmental disabilities, mental health and juvenile and adult probation and parole. When additional funds become available, high priority should be given to income maintenance programs. The very serious and ongoing budgetary problem of inadequate maintenance grants should be addressed at the earliest date through the policy-making and priority-setting process described in Chapter IV of this report.*
  
- *The state should remain flexible in its approaches to income maintenance in anticipation of the adjustments in policies and procedures that will be required once national welfare reform legislation is enacted.*

## 2. Services to the Elderly and Nursing Homes

### a. The Elderly

The elderly have a wide range of social and health needs. Many individuals, previously self-sufficient, must turn to state and federally funded services in their later years because of limited or nonexistent earning power, inflation-eroded retirement resources or costly illness. In Washington State, despite the existence of an umbrella social and health agency, there is no comprehensive planning for setting priorities or implementing services for the aged. Separate planning is done through the Office on Aging and local Area Agencies on Aging, the Office of Nursing Home Affairs and the Office of Family, Children and Adult Services (OFCAS) Title XX planning. A comprehensive plan for the needs of the elderly should be developed and, subsequently, available local,

state and federal funds should be utilized to develop the state's priority services. Currently the procedure is reversed; funding availability, particularly federal funding, determines the services to be implemented. The history of federal funding has resulted in a definite skew of available services toward the availability, and consequent use, of medical services and long-term health care, especially nursing homes. In Washington, Title XIX (Medicaid) is an unlimited federal program of approximately 51 percent federal monies to 49 percent state monies. The only other major federal funding source is Title XX (General Social Services), a limited program of 75 percent federal dollars to 25 percent state dollars. Washington claims up to its limit each year, and Title XX social services for the aged must compete with myriad other social programs as diverse as child protective services, services for the developmentally disabled, and alcoholism treatment programs.

#### Services for the Elderly in the Community

Although availability of Medicaid has resulted in the development of institutional health services, the individual preference of almost all elderly is to remain in their own homes and in their own communities as long as possible. Consequently, supportive community-based services of a social service orientation as well as a medical emphasis should be developed and coordinated. Service development and coordination to prevent premature nursing home placement require the close cooperation of staff and programs currently located in DSHS' Community Services Division and Health Services Division. These divisions do not always work well together for a number of reasons, among them attitudes of professional superiority and confusion over program purpose.

There is a definite need for cooperation and integration of program goals in services directly provided by DSHS staff.

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Health Services Division nursing care consultants review an individual's nursing needs and the Community Services Division caseworkers provide placement services in skilled nursing facilities (SNFs), intermediate nursing care facilities (ICFs), congregate care facilities (CCFs), and adult family homes. These staff should work together as a team and share their professional expertise to assure adequate assessment of a client's needs, appropriate placement, and subsequent monitoring of services. The current dominance of medical considerations should be turned around in favor of broader based community programs.

Other areas requiring review and elimination of duplication are three in-home support services funded through two separate sources and managed by two separate DSHS divisions. These services are home health services, chore services and homemaker services. The Health Services Division's home health services (including home health aides) are purchased from a licensed home health agency with Title XIX (Medicaid) funds for eligible clients. Chore services are purchased from a provider with Title XX (General Social Service) funds for those eligible. Homemaker services are directly provided to eligible clients by DSHS staff who are hired through Title XX funds. Chore and homemaker services are managed through the Community Services Division. In many instances there is great overlap in the specific tasks performed by individuals under these three programs for a wide range of fees. The similarities of these programs suggest that their integration would result in a more effective usage of limited program dollars.

#### Mental Health Services

The lack of comprehensive planning for the elderly results in service gaps as well as duplication of services. The aged receive almost no services to promote mental health. Mental

illness is a major problem among the aged. Many senior citizens in the community or in nursing homes manifest symptoms ranging from confusion to lack of contact with reality to psychosis. Currently residents of SNFs or ICFs receive no mental health services as part of the restorative care component covered by cost reimbursement. In some areas, community mental health centers have Medicaid nursing home residents in adult day treatment for three to five days a week at approximately \$23 a day in addition to the \$15 to \$18 average per day nursing home rate. The result is a costly program for a few but no mental health services for the vast majority.

#### Supportive Living Accommodations

Because of increasing frailties, many elderly are not able to continue living in their homes or apartments. These frailties make it very difficult, if not impossible, to cope with upkeep, maintenance and the activities of daily living (e.g., laundry, meal preparation, bathing). At this time few housing alternatives are available to low-income elderly. These alternatives are congregate care facilities (CCFs) and adult family homes. Departmental standards of support vary for alternate living arrangements (see Table 3, page II-27).

Congregate care facilities throughout the state vary greatly in their social environment, atmosphere and privacy. Some look like modern apartment complexes offering studio or one bedroom units, others are a wing in a licensed SNF/ICF with two to three beds to a room and a heavy medicinal aura, while still others are mini-institutions with dark halls, smoke-filled T.V. rooms and individuals staring off into space while rocking back and forth in their chairs. Some facilities currently require individuals to move if their condition deteriorates beyond use of a walker to the point of needing a wheelchair. CCFs should be able to accommodate the active, nonambulatory individual.



Table 3

## STANDARDS OF SUPPORT FOR VARIOUS LIVING ARRANGEMENTS

January 1977

| <u>Living Arrangements</u>  | <u>Monthly Rates</u>  |
|---|---|
| Independent Living (Supplemental Security Income-SSI)<br>Individual Alone | \$201.90 <sup>1</sup> /185.65 <sup>2</sup>  |
| Couple  | \$287.80 <sup>1</sup> /257.85 <sup>2</sup>  |
| Adult Family Home   | \$200 <sup>3</sup> /229 <sup>4</sup> + \$25 a month (clothing and personal incidentals-CPI)   |
| Congregate Care Facility (Regular)  | \$300 <sup>7</sup> /315 <sup>6</sup> /360 <sup>5</sup> + \$25 a month CPI   |
| Congregate Care Facility (DD and MH)                                      | \$330 <sup>7</sup> /346 <sup>6</sup> /424 <sup>5</sup> + \$25 a month CPI   |
| Group Homes (DD)  | \$330 <sup>7</sup> /346 <sup>6</sup> /424 <sup>5</sup> + \$25 a month CPI   |
| Alcoholism Treatment  | \$330 <sup>7</sup> /346 <sup>6</sup> /424 <sup>5</sup> + \$15 a day service component + \$25 a month CPI  |
| Intermediate Care Facility (ICF)<br>\$14.72 per day                       | Average \$441 - includes nursing services and restorative care component of approximately 27% or \$120 per month (\$322 for subsistence) + \$25 a month CPI |
| Skilled Nursing Facility (SNF)<br>\$18.70 per day                         | Average \$561 - includes nursing services and restorative care component of approximately 36% or \$201 per month (\$360 for subsistence) + \$25 a month CPI |

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<sup>1</sup>Area 1 - King, Pierce, Snohomish and Thurston Counties

<sup>2</sup>Area 2 - All other counties in the state

<sup>3</sup>Basic rate

<sup>4</sup>Basic rate plus limited nursing care

<sup>5</sup>1 - 10 beds

<sup>6</sup>11 - 20 beds

<sup>7</sup>21 plus beds

Adult family homes were initially developed in Washington State in 1968-1971 through a federally funded research and demonstration project. The adult family home program licenses private individuals and their homes to provide a "foster home" for adults unable to live alone because of age, physical disability, mental illness or developmental disability. Depending on the physical space, a private home may be licensed for up to four adults. Since 1971, the program has lost momentum. The continuing decline in direct service workers in all ESSOs has not allowed sufficient staff time to recruit, develop and license adult family homes.

Congregate care facilities and adult family homes should provide the nucleus of community living for individuals no longer able to live alone. Some individuals need and can accept the close, more intense relationships of a family-type living arrangement. An adult family home provides an appropriate alternative for such individuals. Others need more independence, privacy or cannot tolerate close interpersonal relationships, but must have a supervised, supportive living environment. For the latter, congregate care facilities are more appropriate residences. The elderly vary, as we all do, in disposition and personality. A choice in types of living arrangements should be available to the low-income aged to encourage independence, enhance mental health and provide basic satisfactions during later years.

#### Recommendations

- *Programs and organizational lines of responsibility should be designed around the persons to be served, rather than around the facilities in which they are housed. We therefore recommend that a Division of Services to the Elderly be established within DSHS to be responsible for comprehensive planning and service delivery to the elderly. This division should bring together the Office on Aging, the Office of*

*Nursing Home Affairs and certain supportive living arrangements for the elderly. (See pages II-107 ff., for discussion of supportive living arrangements for the nonelderly.) Other appropriate DSHS components should be included, or at least structured for strong coordination, which provide home health care, Title XX chore and homemaker services, and mental health services.*

- *Mental health services should be made available to the growing elderly population in the state. The Department should explore the possibility of including mental health services as part of the restorative care component covered by cost reimbursement for nursing homes. Programs should be organized in and through community mental health centers to serve the elderly in adult day care centers, adult family homes and CCFs as well as those living in their own homes.*
  
- *The Department should engage in comprehensive planning which provides a number of housing options for the elderly. Each option should have a strong link to the community. The options should include the elderly in various stages of ability and limitations including:*
  - *Individuals in their own homes living independently but needing financial assistance (SSI and food stamps) and/or medical coupons.*
  
  - *Individuals in their own homes needing social and health services to remain independent, e.g., visiting nurse services, day care, chore services.*
  
  - *Individuals no longer able to maintain independent living who need the supportive living accommodations of a CCF or adult family home.*

- *Individuals needing the nursing services and medical supervision of a nursing home. Currently, unnecessary and sometimes arbitrary placements are made because of a lack of supportive living arrangements in the community.*
- *The Department should stimulate the development of low cost, supportive living accommodations throughout the state. A plan should be formulated for congregate care facilities which would:*
  - *Develop program guidelines that will encourage a relaxed homelike atmosphere tolerant of a wide range of nonviolent behaviors.*
  - *Establish a CCF rate structure which either is cost-reimbursement in nature or complements the nursing home cost reimbursement rate structure (see pages II-33 ff.)*
  - *Analyze the appropriateness of certificates of need for CCFs. Congregate care facilities are not included in the current certificate of need program. The planned development of a CCF program should consider certificates of need or a similar tool to encourage orderly statewide building. If building developers are included in the Department's planning, the current hostility and animosity that is evident between DSHS and the nursing home industry might be avoided.*
  - *Include incentives for CCF managers and administrators to establish links between the community in which the CCF is located and its residents. These linkages should include families, friends, volunteers and neighbors of the CCF. An adopt-a-grandparent program might be worked out with a nearby school. The planning*

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*for the development and building of new facilities should include the entire neighborhood. It should be an asset to the community to have a good CCF within its boundaries, just as good schools with innovative programs attract new homeowners.*

- *Outreach staff should be placed in the ESSOs to aid the elderly in obtaining benefits to which they are entitled, especially medical coupons and food stamps. The elderly find ESSO treatment to be rude, tiring and confusing when they apply for financial assistance. The elderly do not know the services for which they are eligible. Title XVI (Supplemental Security Income), Title XIX (Medicaid) and Title XX (General Social Services) are major programs of the Social Security Act. Each title has different eligibility requirements; some even automatically include an eligibility for the others.*

b. Nursing Homes

Washington State's nursing home industry is regulated by the Office of Nursing Home Affairs, Health Services Division. The Health Systems Review Section, Office of Health Resources Development, Health Services Division, also monitors some of the activities in nursing homes.

- Facts:
- 26,000 nursing home beds in the state
  - 300 facilities (estimated present value of capital investment \$270 million), 90 percent occupancy rate
  - 10,000 employees

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- Patients: 30 percent private, 70 percent publicly-supported (mostly Medicaid), present average 16,000 Medicaid patients
- Average length of stay three to four years; most are admitted for the rest of their lives
- Of the state's residents 65 and older, 7 percent are in nursing homes
- About 10,000 residents of state hospitals have been released in recent years ("deinstitutionalization"), most of whom have landed in nursing homes.

Nursing homes do not serve only the elderly, but many ages requiring long-term care. Patients range from those recovering from auto accidents to individuals who are terminally ill with cancer. The deinstitutionalization of state mental hospital patients and of the institutionalized mentally retarded without the creation of proper support facilities in the community has also contributed to the increasing nursing home population. (See Institutionalization, Deinstitutionalization and Supportive Living Service, pages II-107 ff.) The current lack of specialization in nursing homes means that individual patient needs are more difficult to meet, particularly to the degree that individualized care or treatment is required. In the absence of nursing home specialization (e.g., facilities specifically for the developmentally disabled) and of other more appropriate community-based placement facilities and programs for deinstitutionalized mental health and developmental disability patients, nursing home functioning is likely to be less than optimal.

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Tremendous distrust and an adversary relationship exists among nursing home consumers, providers, and DSHS staff. Yet each group affirms similar aims. Among the reasons for consumer-provider-Department distrust are:

- o The industry views its position as a monopsony: many providers of a particular commodity or service but only one major purchaser, the state, which makes the fixing of prices and terms of operation by the state possible. The state views the industry as a monopoly: exclusive control of a service which makes the fixing of prices and the virtual elimination of free competition possible.
- o The nursing home audit program in the Office of Operations Review, Management and Budget Division, has been criticized as inadequate by consumers, providers and other DSHS staff. On the one hand, tips to nursing homes of unannounced on-site reviews limit the effectiveness of audits in monitoring quality of care. On the other hand, quotas for audit findings of substandard conditions and regulation violations have been established by DSHS; the Internal Revenue Service was recently chastised for a similar quota system.

#### Cost Reimbursement

Compensation for nursing homes has taken the form of cost reimbursement. Cost reimbursement was substituted for the flat-rate fee method to take the profit incentive out of substandard care. It purports to work by reimbursing the nursing home facility for its actual expenses of rendering service. These expenses are related to nine cost categories ("centers") developed by the Cost Reimbursement Section of the Office of Nursing Home Affairs. Cost reimbursement has gone through a number of modifications and now works on a prospective rate system, i.e., the rate for a nursing

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home facility is set in advance for one year. At the end of the year an audit is conducted. The nursing home operator must pay monies back to the state if actual costs are lower than the prospective rate, but the state does not pay the operator more if costs were higher than anticipated.

The purpose of cost reimbursement is being frustrated by:

- o Delayed determinations of client eligibility
- o Confusion over the difference between medical need and financial eligibility
- o Ceilings on nursing home cost categories (e.g., salaries) for which reimbursement is allowed
- o Delayed payment to nursing homes
- o Freezes on funds.

These practices have united the industry in a lawsuit against the Department to test the issue of whether DSHS can enforce standards for which its reimbursement scheme does not meet the costs. The consensus is that the state does not provide adequate funding to nursing homes to meet federal requirements, pay adequate salaries, or provide restorative care and mental health services. (A significant source of disagreement is the individual who heads the DSHS Cost Reimbursement Section.) If the court adopts the industry's position, the resulting cost to the state could be very great. It should be noted that just a \$1 per day increase for 16,000 patients x 365 days would cost \$5.84 million per year. Present Medicaid payments to nursing homes are estimated to be \$84 million per year. At the same time, any cost increase should be viewed against the background of severe underfunding of care for the dependent elderly for many years.

Washington is now locked into a cost reimbursement system because cost reimbursement will become a condition of federal Medicaid



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(Title XIX) participation commencing with fiscal year 1978. The state, therefore, must look toward improving the mechanism, rather than seeking a new methodology.

Nurses aide positions are the front line of long-term care service. The cost reimbursement factor for nurses aides, kitchen employees, laundry, janitorial and comparable positions is the federal minimum wage of \$2.30 per hour. Nurses aides have no employment-related benefits such as health insurance, retirement programs, or life insurance and can hardly afford to pay for these out of their salary. Nurses aides in state institutions are paid \$3.75 per hour by the state. The result of underpaying these crucial nursing home employees is high turnover: The nursing home facility is used for on-the-job training before the aide moves on to better pay in hospitals, institutions, clinics and physician's offices. The consequent interruption in service severely and adversely affects the quality of care in Washington's nursing home industry. The low salary scale discourages top quality prospects from entering this service. There is no allowance in the present cost reimbursement system for in-service training programs for staff.

The Department's method for reimbursing nursing home owners for their financial investment in nursing home facilities has created another dispute involving paperwork, complicated report forms and endless analysis to determine the owner's reimbursable equity. Direct negotiations between industry representatives and the Cost Reimbursement Section have been unproductive.

#### Recommendations

- *Reimbursement for nurses aides and similar positions should be increased by 50 percent, from \$2.30 per hour to \$3.45 per hour. The Legislature's appropriation of additional funds*

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*intended to reimburse nursing home operators for staff salaries at a rate of \$2.70 per hour in the first year of the biennium and \$2.91 per hour in the second year is a modest move in the right direction.*

- *A modest allowance should be incorporated into the cost reimbursement system for in-service training.*
  
- *Real property should be reimbursed at its fair rental value, i. e., at a set percentage of the depreciated replacement cost of the facility plus the land value. The Panel urges the Department to consider the fairness of using county assessors' values as the basis for real property reimbursement. If these values are fair to the county for tax purposes they should be fair to the operator for reimbursement purposes. The expense of appraising each facility would be avoided. The administrative and clerical cost analysis of the "equity" factor would be avoided. Assessed evaluations are generally low but the nursing home industry is a low risk industry. Assessors use the market value or comparison approach to valuating land and the replacement cost depreciation approach to valuation of improvements. These approaches are consistent with the fair rental approach to reimbursing real property. Use of assessed valuations would take the incentive out of nursing home operators' attempts to have their assessed valuations lowered through appeal procedures to county equalization boards or the State Tax Commission.*
  
- *Escalator clauses for actual changes in the cost of any reimbursable items should be built into the cost reimbursement system.*

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- *The Department should be required to cover the cost for care of patients it places in a nursing home during the period Medicaid eligibility is being determined.*
- *A financial incentive to move patients from skilled nursing (SNF) to intermediate (ICF) level care should be incorporated in the cost reimbursement system. At present, a higher rate is allowed for sicker patients. The lower reimbursement rates for intermediate care assume that restorative care and rehabilitative services are less expensive to deliver, when the contrary is often true due to the equipment and staff time required. The Department might experiment with the use of a modest allowance or lump sum grant to nursing homes to promote restorative care and rehabilitation to maximize the patient's level of independence.*
- *Financial incentives should be provided to nursing homes to move patients back into the community again when it benefits the client. At present, nursing homes have no incentive to do so unless they have a waiting list. Patient placement in a nursing home should reflect patient needs rather than nursing home economics.*

#### Assuring the Quality of Care

A proper and realistic cost reimbursement system creates the capacity for a nursing home to provide adequate care. It does not guarantee it. We thus turn our attention to the state's major responsibility of assuring the quality of care.

The huge and burdensome volume of paperwork, attributable in major degree to the federal Medicaid reporting system and in part to state requirements, is an obstacle to the real purpose of the work of the Patient Review Section, the Nursing Home Survey Section and the Health Systems Review Section. Federal and state

audit reports, eligibility applications and other forms have become so long, complicated, and meaningless at the operational level that they actually obstruct enforcement of the quality of patient care. An overemphasis tends to be placed on drugs (which are subject to detailed regulations) and physician actions in audit reports and reviews of patient care, while relatively little attention is paid to actions of the primary caretaker, i.e., the nurse and nurses aide, observable patient care, and patient status. Tips to nursing home operators of imminent on-site reviews, investigations and audits have impaired the ability of the Office of Nursing Home Affairs to monitor care adequately.

Improvement in patient care may be attained through simple educational efforts and alterations in attitudes in the nursing and nurses aide staff without major new expenditures. Indicators of quality used in evaluating nursing homes tend to be overly complex and too frequently seen as irrelevant to actual patient care. Simpler indicators of quality may be more valuable, such as:

- o Pleasant or inoffensive smell
- o Sense of activity and movement
- o Residents helping each other
- o Core staff available to monitor patient activity on the floors
- o Appearance of food on tray.

Recommendations

- *The financial audit should be separated from on-site reviews. Financial audits should be made with notice, as there is no value to financial audits conducted without notice. By contrast, evaluation of care should continue to be made without notice, using one team for random spot checks and*

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*investigation of complaints and a second team for systematic coverage. By reducing the number of people involved in on-site inspections conducted without notice, the tip-offs should be reduced correspondingly.*

- *The U.S. Department of Health, Education and Welfare (DHEW) has recently shown increasing interest in finding ways to reduce the volume and complexity of its report forms. Some experiments at the state level are certainly possible. Both DHEW and DSHS should be strongly encouraged in their efforts at cutting red tape and simplifying forms and reporting requirements for nursing homes.*

#### Nursing Home Administrators

Patient care in nursing homes is directly related to the competence of nursing home administrators. The skills and judgment the nursing home administrator brings to decisions about the use of resources and personnel have a direct effect on patients and the programs available to them. At present, state requirements for the licensing of nursing home administrators can be satisfied by two years of work experience in an institutional setting, without formal training or instruction. This on-the-job experience is not, for the most part, monitored or evaluated for quality. Recently enacted House Bill 316, which calls for the phased introduction of minimum general educational requirements for nursing home administrators, is a first step toward upgrading standards.

#### Recommendation

*The State Board of Examiners for Licensing of Nursing Home Administrators should be asked to accept academic training for careers in nursing home administration in alternative paths. The*

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*present route is based almost entirely upon on-the-job training, essentially unmonitored for quality. The University of Washington offers a two-year graduate program in long-term care; after a maximum three-month internship, these individuals should be considered eligible for licensing as nursing home administrators.*

#### Decertification/Recertification Procedures

The possibility of an involuntary move to another nursing home is a highly traumatic experience for many patients. Decertification procedures brought against nursing home operators not meeting standards of care can result in patient deaths due to transfer trauma. At the same time, the Department should not be deterred from proceeding with decertification where substandard care persists.

#### Recommendation

*The Department should consider creating an administrative team to operate a nursing home on an interim basis pending resolution of a decertification procedure. The Secretary might appoint departmental staff or a team from the nursing home industry as interim caretakers. Patient transfers should be effected humanely and be used only as a last resort following decertification. Submission of operations of a nursing home to the team when decertification proceedings are pending should be made a condition for receipt of Medicaid funds. This matter could be handled as one provision of a master form contract for nursing homes which accept patients whose expenses are reimbursed by the Office of Nursing Home Affairs. The legal implications of this proposal should be studied prior to its implementation.*

### 3. Community Health Services

#### a. Medical Assistance

The Medicaid program, medical assistance to the poor and medically indigent, was established in 1965 as Title XIX of the Social Security Amendments of 1965 (Public Law 89-97). Title XVIII of the same Act is the Medicare program. By fiscal year 1977, the programs had grown nationally to aggregate costs of \$16 billion for Medicare and \$14 billion for Medicaid, serving 17 percent and about 10 percent of the population, respectively. The purpose of Title XIX is to enable states to provide a comprehensive medical assistance program for recipients of income maintenance grants and to extend such assistance to persons with low incomes who are ineligible for cash grants. In the state of Washington, DSHS is the single state agency administering the Title XIX program.

Mandatory services under Title XIX are:

- o Inpatient hospital services (not including TB or mental institutions)
- o Outpatient hospital services
- o Laboratory and x-ray services
- o Skilled nursing home services (adults)
- o Physicians' services
- o Home health services
- o Family planning
- o Early and Periodic Screening, Diagnosis and Treatment for children up to age 21 (EPSDT)
- o Transportation to receive these services.

In addition to these mandatory services, the state of Washington has elected to offer essentially all named optional services:

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- o Chiropractic care
- o Dental care
- o Eye examinations and glasses
- o Physical and speech therapy, when approved
- o Prescription drugs
- o Special duty nursing services, when approved
- o Crutches, wheel chairs, braces, artificial limbs, etc., when approved
- o Oxygen in home or nursing home
- o Social services
- o Mental health services
- o Kidney machine treatment.

- Eligibility:
- o All beneficiaries of Supplemental Security Income (SSI) and Aid to Families with Dependent Children (AFDC);
  - o Others with medical needs which cannot be met with personal financial resources: total value of cash and marketable assets may not exceed \$1,500 for a single person; \$2,250 for a family of two; or \$2,350 for a family of four. Adjusted monthly incomes must be less than \$202, \$288, or \$385 for families of 1, 2, or 4 persons, respectively.

The extent of the Medicaid program in this state is tabulated in the accompanying Table 4 showing the contribution of Title XIX funds to the state portion of the budgets of the various program areas of the Department. More than 85 percent of the funds are committed to the medical assistance program, but sizable amounts of money serve certain other programs as well.

The recent National Governors' Conference (February 1977) adopted a policy statement on Medicaid. While affirming that the purpose



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Table 4

CONTRIBUTION OF TITLE XIX REVENUES  
TO THE  
PROGRAMS OF DSHS\*

|   | Medicaid Components (Title<br>XIX) in Governor's Revised<br>Budget |                  | Total Budget for Biennium |                   |
|---|--|------------------|---------------------------|-------------------|
|   | <u>FY 1978</u>   | <u>FY 1979</u>   | <u>State</u>              | <u>Total</u>      |
| Adult Corrections                       | 0  | 0                | \$ 80,093,098             | \$ 80,093,098     |
| Juvenile Rehabilitation                 | 0  | 0                | 42,020,384                | 43,173,014        |
| Mental Hospitals                        | \$ 903,504   | \$ 903,504       | 74,256,948                | 88,363,188        |
| Community Mental Health                 | 2,567,959  | 2,620,434        |                           |                   |
| DD Institutions & SRTCs                 | 4,760,000  | 5,160,000        | 91,783,544                | 125,122,550       |
| ICF/MR                                  | 3,500,000  | 3,500,000        |                           |                   |
| Income Maintenance                      | 0  | 0                | 228,104,950               | 412,057,472       |
| Community Social Services               | 1,098,620  | 1,165,953        | 64,775,201                | 151,939,627       |
| Medical Assistance                      | 106,424,108  | 114,412,014      | 251,634,768               | 472,470,890       |
| Family Planning<br>(Public Health)      | 1,916,497  | 2,084,815        | 17,171,798                | 60,579,513        |
| Administration<br>(Inspection)          | 1,038,368  | 1,057,783        |                           |                   |
| Vocational Rehabilitation               | 0  | 0                | 6,836,320                 | 43,317,028        |
| Administration &<br>Supporting Services | <u>997,934</u>   | <u>1,031,839</u> | <u>42,940,779</u>         | <u>77,936,221</u> |
|   | \$123,197,990  | \$131,936,342    |                           |                   |
| BIENNIUM                                | \$255,134,332  |                  |                           |                   |

\*Data provided March 18, 1977 by Office of Budget, DSHS.

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of Medicaid in providing medical assistance for the poor is sound, the statement claimed that the design and administration of the system are bankrupting the states and certain localities. In some states, the amount of money spent through Medicaid for personal health care is greater than the individual's welfare benefits. As seen in Table 4, the aggregate budgets for medical assistance and for income maintenance in Washington are nearly equal, though the expenditures per person served are not known. Certain of the National Governors' Conference recommendations on the organization and administration of Medicaid have already been implemented nationally or in this state. DHEW has been reorganized by Secretary Califano to have a large Health Care Financing Administration. In Washington adequate surveillance and hotline efforts against fraud and abuse appear to be in place, and the Medicaid Management Information System (MMIS) has been implemented to facilitate processing of bills, though it has been little used thus far for analysis of the medical care system. Financing recommendations generally seek greater flexibility in payment schemes, which is sorely needed in this state. Several recommendations in the area of delivery of services raise important questions about the protection of patients and their families from undue harassment.

#### Services Covered

The social intent of the Medicaid legislation was to replace the old "two-class" medical care system with equal access for all Americans to quality personal health services. In the old system, the poor waited without appointments in city and county hospitals and were considered "charity cases." They were not "entitled" to services, but were given services in the charity sense. In the 1960s, the political climate rejected this social distinction. Medicaid was based upon the premise that financial considerations should not determine the manner in which poor

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persons were provided care. The reservoir of neglected health care needs in this segment of the population was not analyzed in advance and was grossly underestimated. The broadening of the definition of health care over the past few years for all people has also expanded the demand for covered services. Finally, the escalation of hospital and out-of-hospital rates has generated a very large public bill in the aggregate.

This state has chosen to provide remarkably comprehensive coverage, at least on paper and in the first part of the biennium. Providers and recipients alike have complained about what they view as capricious and arbitrary decisions on authorization and reimbursement in the later months of the biennium. The optional services constitute in the aggregate some 25 percent of the Medicaid bill for the state (according to figures provided by Region X, DHEW, for fiscal year 1976).

#### Recommendation

*A careful review, with citizen input, is required to analyze just which categories of services or which types of services within the categories merit the highest priority. Since costs can be projected into the next biennium, difficult decisions should be made after an analysis of which services are simply not affordable, rather than ranking them as low priorities.*

#### Eligibility

Automatic Medicaid eligibility for SSI and AFDC recipients is determined nationally. Income levels for the medically needy (whether under Medicaid or under 100 percent state-funded programs) are determined at the state level and already are none too generous.

Procedures for determining eligibility: In general, the working relationships between local ESSOs and the Olympia data file are

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inefficient and lead to unfortunate revisions of local decisions about eligibility, often long after services have been authorized and/or provided. Such difficulties within the system embarrass recipients, deprive providers of payments for services fairly rendered, and make the Department appear a "poor credit risk." Finally, the importance of staff sensitivity in the application of means tests for eligibility cannot be overemphasized, especially because a great many of the recipients of Medicaid services are infirm, disabled, elderly, or just plain confused by the system.

Recommendations

- *More restrictive Medicaid eligibility criteria do NOT appear to be indicated.*
- *A high priority should be placed on developing a computerized common data bank for financial eligibility for all DSHS programs. Remote access computer terminals should be installed in every ESSO (see also page II-7). The Department should pay for services authorized by DSHS personnel. Special training of financial officers and caseworkers is required to sensitize these important staff people to the impact on clients of callous inquisition about financial and personal resources.*

Relations with Providers and Reimbursement Mechanisms

There are many sources of misunderstanding and ill will in Medicaid reimbursement. Providers who previously cared for "charity cases" without compensation now expect to be paid at customary rates for treating Medicaid patients as they do other patients. At least they expect to be paid at 75 percent of customary rates, which is the maximum the state permits. There

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is a widespread notion that auditors in the Health Services Division harbor strong feelings that doctors are making too much money from Medicaid, and that "they should be pleased to be getting paid at all." The same feeling is extended to the multi-physician clinics, represented by the Medical Group Management Association of Washington. The University Hospital and Harborview Medical Center, publicly funded institutions in King County, have been under particular challenge for some years, presumably because they are teaching institutions, even though they serve a very significant and growing percentage of the Medicaid population. The widespread complaints about the reimbursement system fall mostly in two areas:

- o Amount of paperwork: The amount of paperwork is a significant deterrent to caring for Medicaid recipients, especially for the individual provider. Recipients noted that they, as a result, try to conceal their Medicaid eligibility until services are rendered, to avoid being shunted to other physicians or institutions.
  
- o Onus of financial investigation: One of the most degrading aspects of the Medicaid program is the requirement that providers gain financial information from the recipient in order to bill third-party insurers, if any, before DSHS will pay the residual amount of the charges allowed. The irony of this process lies in the fact that ESSO financial workers have already carried out the distasteful means test and gathered the appropriate information. DSHS does not want its own caseworkers to be involved in such financial inquiries, yet somehow expects physicians and other providers to do so. Many providers feel both inexpert and resentful.

An effort has been made within the Health Services Division, in cooperation with the Medical Group Management Association

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and the Washington State Medical Association, to meet monthly and discuss problems in the Medicaid system. However, it is symptomatic of the window-dressing nature of these meetings and the lack of coordination of effort within DSHS that representatives of the Community Services Division and of the Administrative Services Division are not included, even though most of the complaints deal with eligibility or with payments. The fact that the providers did not know to request participation by these other segments of the Department does not lessen the need for the departmental participants to bring in those who might respond to urgent criticisms.

Recommendation

- *The Department should undertake billing of third-party insurers for Medicaid-eligible clients. At the Panel's request, the head of the Administrative Services Division has analyzed the procedural, statutory, and staffing requirements for DSHS to undertake billing of third parties (e.g., insurance companies). Under such a plan, the provider would submit the bill to DSHS. If the eligibility certification includes information about third-party coverage, DSHS will already know whom to bill. When collection is made, DSHS will add the balance, as usual, and forward the full amount due to the provider. Since relatively few third parties are involved in this state, the process should be fairly efficient from the point of view of the single biller (DSHS). Staffing required to implement this plan should be measured against savings in staff time now spent in sending back bills that must have third-party payments and dealing with inquiries and complaints from providers. The head of the Administrative Services Division has reported that the Department does not now have the statutory authority to*

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*collect third-party health insurance proceeds that are available to medical assistance clients but that DSHS is prepared to seek the needed change in statute. He has also indicated that insurance companies in most cases will not remit proceeds directly to the Department unless there is a signed assignment from the provider who in turn has received an assignment from the recipient. This requirement can apparently be handled through modification of the billing form.*

- *At least one staff person has been hired in the Department to serve as a sort of ombudsman between the Department and the providers. Such a person or even an outside auditor should be requested to examine the gross discrepancy in reports to the Panel from a number of providers that up to 60 days or more is still the period required to receive payment on bills on which no errors are found, while the DSHS division heads involved insist that the average (not minimal) time for payment is now 15 to 18 days.*

### Financing

The overall budget impact of Medicaid is huge. Over \$250 million of state monies will be invested in this program for the next biennium. To the extent that essential health services are provided to needy citizens, the dollars spent under Medicaid represent a good deal for the state, since 51 cents of each dollar is federal money. However, the priorities in care must be reviewed and the mechanisms for reimbursing providers must be made far more cost-effective.

One of the most important elements of the use of Medicaid funds for state programs is the substitution of Medicaid

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dollars (51 percent federal) for 100 percent state funding. Examples include mental health for the elderly, home health services that could enable individuals to stay out of nursing homes, various levels of care for developmentally and physically disabled persons, and payments for services by publicly supported hospitals whose deficits otherwise will have to be covered by state funds. Considerable imagination and integration of planning and services across existing bureaus and divisions are essential to this fiscal objective.

Recommendation

*Alternative cost-effective schemes for payment to providers should be explored. Capitation-based contracts with geographically-defined groups of providers (e.g., Clallam County) or with major providers such as the University of Washington and Harborview Medical Center or the Wenatchee Valley Clinic should be investigated. Any reimbursement scheme should be equitable with regard to the likely rates of reimbursement to different providers. However, capitation schemes may offer significant savings in administrative costs, both in authorization of procedures and in reimbursement. Auditing of utilization and quality of services will be necessary and should be explored with the Professional Standards Review Organizations (PSROs) and Health Systems Agencies (HSAs) as part of the total health planning and quality of care audit in DSHS.*

In closing this section on Medicaid, let us be clear that the Medicaid program in this state compares favorably with those in most other states. Fraud and abuse appear to be relatively low. Services appear to be generally of adequate quality. No major institutions publicly refuse to take patients. There is a base from which to improve the program substantially,



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primarily with administrative changes, sensitization of front line staff, integration of program objectives, and alternative reimbursement schemes that do not require major new expenditures.

b. Public Health

The primary goal of the public health program is to improve and maintain the life and health of all people in the state. The program encompasses activities directed at all aspects of personal and environmental health. The Department's Health Services Division provides leadership in identifying and assessing health problems in the population and in coordinating health efforts in the state; administers a broad range of personal, community, and environmental health services; regulates health facilities; and promotes and provides health education and training.

State public health services are provided directly by state personnel; indirectly through services to the 31 local health departments which, in turn, provide public health services to individuals in their communities; and by contract with other community nonprofit health agencies. When the Health Services Division was incorporated in DSHS, little change was made in the delivery of services. For many years, local and district health departments have been operated by local administrators.

Several problem areas have been identified in public health. There is no uniform agreement between the state and the local health departments on priorities, mandated services and funding responsibilities. Next year this problem will become even more acute because there is no longer a mandatory local millage (dedicated taxation) requirement, which has been a major source of funds for local public health programs. At present, the State Health Officer (head of the Health Services Division)

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communicates directly with the local health officers, without sharing information, let alone decision-making, with the local boards which are legally responsible for the local health departments. The State Board of Health is primarily concerned about rules and regulations rather than the development of health policies and the direction of the public health system. The need for the board as it now exists is questionable. In addition, the State Board has no relationship with local boards of health other than promulgating the rules and regulations under which local boards operate. The Health Service Division's environmental health section also functions independently and has little or no relationship to other programs within DSHS and is therefore ignored to a large extent.

Recommendations

- *Public health should remain at the bureau level in the proposed Division of Health. Essential environmental health measures should remain in the Bureau of Public Health.*
  
- *Maternal and child health, including Early and Periodic Screening, Diagnosis and Treatment (EPSDT), family planning services, and genetic screening and counseling, should be transferred from the Health Services Division to the new Division of Services to Families, Children and Adults (see pages II-15 ff.). Most maternal and child health recipients are also clients of services in this division, and most are healthy, receiving normal prenatal and well-baby services from providers. EPSDT and family planning services are already mandated for children covered by AFDC programs. Genetic counseling services, long under negotiation between the Department and the University of*

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*Washington, have not yet been supported, though an expensive laboratory at Fircrest is maintained on a cost-ineffective basis. PKU screening tests have finally been taken under the full responsibility of the State Laboratory, which the Panel supports, but no program for follow-up of PKU infants and treatment in a specialized metabolic clinic has been funded. Support for care of these children would prevent mental retardation and would be highly cost-effective. Analogous screening for hyperthyroidism in infancy should be undertaken to prevent mental retardation, but only when the state is committed to follow-up and treatment of these children. The Panel recommends that these preventive programs be funded immediately. (For further discussion of these issues (see page II-97.) For children found to have major medical problems, lines of referral to Crippled Children's Services in the Division of Health should be in place.*

- *The present narrow concept of "health" should be expanded to include the many community activities that enhance health, including home services to elderly, housing measures, and health education. The proposed Division of Health and the statewide association of local health officials might examine the degree to which health needs of communities are or can be met through flexible interpretation of the determinants of health and the permissible uses of state and federal monies.*
  
- *The State Health Officer (at present, head of the Health Services Division) should be required to send copies of all policy-related communications to and from county public health officers to the county boards of health.*

- *The present situation in which a single individual serves as both head of the Health Services Division and State Health Officer should be reviewed (see page II-59).*

c. Health Planning

Health planning functions are becoming increasingly important in this state and throughout the nation. The Carter Administration is determined to rationalize the use of facilities, contain the escalation of costs, and build a base upon which to phase in a national health insurance scheme. The critical federal legislation is Public Law 93-641, passed in 1974, which brings together the Hill-Burton health facilities construction act, the Comprehensive Health Planning (CHP) programs, and Regional Medical Programs (RMP) into Health Systems Agencies (HSAs). The act is intended to:

- o Reduce the present fragmentation among health planning bodies.
- o Increase the authority and clarify the legislative mandates of state and local planning agencies.
- o Encourage health resources planning and policy development which will contain total health care costs while assuring the availability of quality care to all sectors of the population.

The required structure for health planning includes four regional Health Systems Agencies (HSAs) in this state, with four HSA boards; a State Health Planning and Development Agency (SHPDA); and a Statewide Health Coordinating Council (SHCC). The designation of four HSAs for this state followed considerable negotiation with DHEW, with the state initially

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preferring the creation of a single state HSA. The state agency (SHPDA) was designated to be the Office of Community Development (OCD) under the former Governor. Governor Ray has transferred this duty from OCD to DSHS, effective June 30, 1977. Both the former Acting Director of OCD and the head of the health planning group in the Health Services Division supported this transfer in discussions with the Panel. We support this transfer as well.

The state agency (SHPDA) has a very large mandate, including preparation and implementation of a state plan for medical facilities and health services, based upon information and recommendations from the four HSAs. The specific functions of the state agency are listed here:

- o Conduct the health planning activities of the state and implement those parts of state and HSA plans which relate to the government of the state.
- o Prepare and revise (at least annually) a preliminary state health plan incorporating the plans of the HSAs into one state plan. The final state health plan must be approved by the State Health Coordinating Council (SHCC).
- o Develop the state medical facilities plan and assist the SHCC in the review of the state medical facilities plan. (Hill-Burton or other "resource development" monies are to be allocated in accordance with this plan.) The SHCC has authority to approve this plan as being consistent with the state health plan. The Secretary of DHEW has final approval.
- o Administer the federal and state certificate of need programs.

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- o Review on a periodic basis (not less often than every five years) all institutional health services being offered in the state and evaluate the need for new institutional services proposed within the state.
- o Establish and operate a state administrative program which details how the state agency proposes to carry out its functions.

The implementation of the plans from the SHPDA requires functioning of the Statewide Health Coordinating Council (SHCC), which has yet to be named by the Governor. The functions of the SHCC also are defined in the law, as follows:

- o Review annually and coordinate development of the regional health plans of the HSA and the annual implementation plan of the HSAs.
- o Prepare and review the final state health plan incorporating the four HSA plans to address statewide health needs.
- o Review, at least annually, HSA budgets and report to the Secretary of DHEW.
- o Review HSA applications for planning grants and resource development grants and report to the Secretary of DHEW.
- o Review and approve or disapprove any state plan or application made to the Secretary of DHEW as provided in PL 93-641, the Community Mental Health Centers Act, and the Comprehensive Alcohol Abuse Act of 1970. No money may be provided under these authorities without SHCC approval.

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- The head of the planning group and the head of the Health Services Division have distinguished themselves and brought attention to this state with their recent decisions about guidelines for issuance of certificates of need for computerized brain scanning. The apparatus involves an investment of \$400,000 to \$600,000 by the applicant hospital, plus several hundred thousand dollars per annum in operating expenses. Yet the machines are profitmaking for the hospitals, as large numbers of patients are examined and high fees are charged. In addition to requiring that new applicants demonstrate that existing capacity will be fully utilized by the time the requested equipment is obtained, the DSHS guidelines require that applicants demonstrate that the utilization is "appropriate," a reasonable but wholly novel criterion. "Appropriate" is defined as either replacing a more invasive or more dangerous diagnostic technique or improving the outcomes of care for the patients examined. In establishing such guidelines, the Department staff made very good use of recent research at the University of Washington on the economic and medical impact of this new technology. However, pressures on the certificate-of-need process have been intense, as hospitals have pleaded special needs and doctors have ordered the apparatus for nonhospital sites. Support for rational health planning in the face of professional self-interest is needed from the Secretary of the Department.

It is essential to recognize that such decisions on brain scanners and the public hearings to debate those decisions represent only the tip of an iceberg of actions needed in health planning. Public Law 93-641 for Health Planning and Resource Development provides an ambitious mandate. Its implementation will be crucial to any potential success in containing health care costs and improving the quality of care for patients.

Recommendations

- *The proposed Division of Health should be designated as the state agency for planning and development in health. This function should NOT be placed in the Planning and Research Division of DSHS.*
- *The Statewide Health Coordinating Council (SHCC) should be appointed after full consultation with the four Health Systems Agencies and various other interested professional and public parties.*
- *The actions of DSHS health planners on computerized brain scanning and their favorable implications for rational assessment of the health care needs of our people and the cost-effective provision of services should be publicized and supported.*
- *Public discussion and understanding of the national health priorities stated under Public Law 93-641 should be encouraged as a means of greater public involvement in decision-making (as expected in the HSAs).*
- *The relationships among the Department, the HSAs, and the departments and boards of health in all the communities and counties around the state should be reviewed by the Secretary. The proposed Division of Health and the statewide association of local health officials might examine the degree to which health needs of communities are or can be met through flexible interpretation of the determinants of health and the permissible uses of state and federal monies. Such a review would be consistent with the emphasis on primary care and out-of-hospital services in Public Law 93-641 and would complement the*



*early efforts of the HSAs to define the health care and medical facilities needs of the population and to identify those aspects of medical services which actually can improve the health status of our people. The relationships among the Department, the SHCC, and the local boards and departments of health offer fertile ground for imaginative and effective public leadership. Such opportunities should not be neglected.*

- *The present situation in which a single individual serves as both head of the Health Services Division and State Health Officer should be reviewed. As HSAs and other nongovernmental planning groups grow in importance and as the state and local boards of health take on broader responsibilities for maintaining health in our communities, the dual role may become inappropriate.*

## B. CORRECTIONAL PROGRAMS

### 1. Adult Corrections

Services of the Adult Corrections Division are provided through institutional, work/training release, and probation-parole systems. Approximately 1,700 employees serve 21,000 individuals per year in these institutional and community programs at a cost of about \$80 million per biennium (100 percent state funds, 1977-79 appropriation). The institutional system provides security, basic maintenance and rehabilitative services at the Walla Walla Penitentiary, Monroe Reformatory, Shelton Corrections Center, Purdy Center for Women, Firland Correctional Center, and three honor camps. Superintendents are wholly responsible for programs within their institutions; they report directly to the director of the Adult Corrections Division.

Work/training release facilities are located in 17 communities around the state. Programs are administered by the division

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directly through city, county or nonprofit private corporation contracts. Housing and basic maintenance, supervision, and limited counseling services are provided by each facility. Education and training services are arranged with appropriate state and community institutions and agencies.

Probation and parole services are delivered through six regional offices located at Spokane, Yakima, Everett, Seattle, Tacoma, and Vancouver. Supervision and counseling services are provided. Presentence investigations are prepared for superior courts throughout the state.

Organizational Structure

Panel members have visited all the state's correctional facilities. In each area we have discussed with staff, residents, and parole and probation officers the positives and negatives regarding the creation of a separate Department of Corrections. In these discussions we have found an interesting division of opinion: The majority of the people who work within the institutions (approximately 1,200 staff) favor remaining within DSHS while the majority of the people working in the community (approximately 440 staff) favor the creation of a separate Department of Corrections outside DSHS. Many complaints leveled against DSHS by legislators, corrections staff and members of the public are not attributable to the DSHS structure; rather, these are philosophical, interpersonal and policy problems that would probably exist in a Department of Corrections.

Majority Recommendation

*The present organizational structure of the Adult Corrections Division is sound; the division should remain within DSHS. The division's program performance is related to the caliber of the*

*program administrators and the quality of line staff available to carry out the programs. Being a part of DSHS or being a separate department will not change the division's performance.*

*This recommendation is based first on the judgment that rehabilitative services and community-based programs can be coordinated more easily with other DSHS programs, such as alcoholism, drug abuse and mental health, if Adult Corrections remains within the Department. It is based secondly on the reality that the amount of state dollars available for services is limited. If a separate Department of Corrections were created, dollars would be taken from services to people to build yet another administrative entity. Administrative services and support operations would have to be duplicated, and costs would rise accordingly.*

Minority Recommendation (A. D. Roseilini)

*All services relating to mental health and corrections, both juvenile and adult, should be placed in a separate department of state government, the Department of Corrections and Mental Health, whose head would report directly to the Governor. If there is not a strong interest in the Governor's Office in these fields, the programs and quality of service suffer. Likewise, corrections and mental health come out on the short end of the tax dollar unless there is a strong voice supporting them. That voice should be the Governor, supported by information and recommendations from the Department's director. The sole responsibility of the new director would be to see that proper mental health and corrections services are provided. New funds should not be necessary for the creation of the new Department of Corrections and Mental Health; monies for facilities construction and maintenance would be required wherever these programs are located. (See also page II-88.)*

Objectives of Imprisonment

Adult corrections institutional programs have always had two distinct and sometimes conflicting tasks: punishment of the offender through the denial of freedom, and rehabilitation for the day most will be released and will return to society. Punishment is primarily a maintenance function. The obligation of DSHS is to maintain the physical and mental health and wholeness of the offender in its custody. Basic subsistence, health and safety must be assured. Rehabilitation can involve considerably more, including educational offerings, work experience, vocational training, and counseling programs for alcohol and drug abuse. Rehabilitation aims to change behavior and habits of offenders and provide opportunities for offenders to develop skills which will enable them to reenter society, become economically self-supporting and avoid becoming a threat to the public safety once more.

Throughout the current penal system there is a blurring of the distinction between punishment and the provision of rehabilitation services. Punishment is sometimes meted out in the name of "treatment" and offenders sometimes feel they must attempt to demonstrate their "rehabilitation" to earn release from punishment. As a result, notions of deserved punishment and deterrence are obscured and punishment loses its relationship to the crime committed. Offenders sentenced to state institutions receive indeterminate sentences. The term served is based on the parole board's prediction of the offender's rehabilitation and his or her dangerousness rather than on the crime committed. Factors such as whether the offender is married sometimes determine when "rehabilitation" and release occur. Probation and parole workers must assume the dual role of police officer monitoring the actions of offenders and social worker attempting to assist offenders to deal with their problems. Deferred and suspended sentences are given on the condition that the offender participate in various self-improvement

programs such as job training, drug therapy, marital counseling and education. Failure to comply with these conditions can mean revocation, though such a failure need not be related to the underlying charge. To the extent that courts use the criminal sanction as a lever to change behavior or social habits, the criminal sanction becomes distorted by a rehabilitative ethic.

#### Recommendation

*A clear statement of philosophy as well as changes in statute are needed to sever the link between punishment and rehabilitation. Rehabilitative programs should be offered in prisons and for offenders on probation and parole, but successful participation in such programs should not be a prerequisite for the termination of punishment. All such programs should be voluntary. Punishment should flow from the nature of the crime committed and the criminal history of the offender and not his or her "needs" as perceived by the court or probation workers.*

#### Maintenance Issues

Although punishment and rehabilitation should remain separate and distinct, they occur in the same institutional setting and the relationship between punishment-linked maintenance functions and rehabilitation is complex. Maintenance functions must always take priority over rehabilitation. But maintenance alone is only a holding action; maintenance functions are unlikely to effect the behavior and attitude changes which will keep the ex-offender out of trouble once released. While maintenance is a precondition for rehabilitation, corrections policy must attempt to carry out both tasks.

Overcrowding. The primary maintenance problem today is overcrowding in the state's correctional institutions. The tensions that

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normally exist in correctional institutions increase dangerously as resident populations press against the physical space available. Maintenance functions are difficult in this situation, and the incidence of injury and death among inmates and the high level of drug traffic within state institutions are deplorable. Inmates who are supposed to be confined safely and securely are afraid for their lives and have "voluntarily" agreed to go into protective custody ("lockup") for self-protection. Rehabilitative programs receive scant attention when concerns for providing reasonable protection and safety and maintaining order are so pressing. Dissension among residents and low staff morale have become major problems. Still, the correctional system has only limited control over the flow of people into its institutions, and proposed mandatory minimum sentences and current court sentencing practices will increase pressures on the adult corrections system.

To relieve some of the overcrowding in existing institutions, the 1976 Legislature directed the Adult Corrections Division "to locate sites for four new correctional facilities"--two secure and two moderately secure. Of the new secure facilities, one was planned for mentally ill offenders and the other for the "aggressive/predatory" offender. The division has used the term "mini-prisons" to describe these proposed facilities. However, the words have "terrorized" the public whenever the proposed facilities have been discussed. The division could not have done a poorer job of public relations if it had deliberately planned to alienate the public regarding the new facilities. The cost of the proposed facilities (estimated at \$70,000 per bed) and their "extravagance" in the eyes of many local taxpayers have also made the mini-prisons difficult to justify.

#### Recommendations

*The Department must relieve the overcrowding at existing state correctional institutions. Fuller use of existing facilities,*

*segregation of certain groups of offenders, greater use of residential probation and pre-release work training programs are short-range solutions. For the medium- and long-term, new and replacement facilities must be planned and built.*

- *A comprehensive plan for corrections should be developed to assure a coordinated and consistent system of correctional services and programs, legislation and funding. A comprehensive set of objectives, priorities, funding methods and legislative action should be included and should be updated annually. Maintenance functions should be addressed first, and then rehabilitative programs. Long-term planning for the phased construction of new facilities to replace Walla Walla and Monroe should begin immediately. Planning should cover the coordinated use of existing facilities, programs for the young offender (see page II-80), need for specialized facilities for certain segregated groups of offenders, adult probation and parole, community-based programs and community diversion programs.*
  
- *The Department should evaluate all existing facilities which can be used to house medium or minimum security residents immediately, including Northern State Hospital, Spruce Canyon Forestry Camp, Yacolt Forestry Camp and abandoned federal facilities (e.g., McNeil Island, which is to be phased out of the federal system).*
  
- *The mini-prison concept as currently presented should be abandoned. The cost per bed, their limited capacity (50 beds), the length of time before the facilities would be available, and the lack of community acceptance all argue for a different approach to new facilities development.*

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- *The Department should build or designate a secure facility for mentally ill offenders, who are now housed in existing correctional institutions, often as part of the general inmate population. We estimate a need for 200 beds with supervisory and treatment programs. Mentally ill offenders receive treatment in their present circumstances only when placed in the mental health units at the Reformatory or Penitentiary. Due to the limited capacity of these units, the mentally ill are caught in a revolving door phenomenon involving time in the unit with treatment, return to the general population without treatment, which results in increased mental and behavior problems and subsequent return to the mental health unit.*
  
- *The Department should begin segregation of certain groups of offenders in existing institutions, specifically:*
  - *Residents who are assaultive or severe management problems, though not necessarily mentally ill. These individuals tend to be a very disruptive force in institutions and interfere with both general operations and special programs for other residents.*
  
  - *Sexual offenders. An ongoing therapy program should be provided.*
  
  - *Mentally ill residents (see above).*
  
- *The Department should make greater use of pre-release and supervised residential probation and work/training release programs as an alternative to incarceration and a transitional program for offenders moving back into the community from correctional institutions (see page II-70).*



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Personnel. As we observed earlier, the performance of the Adult Corrections Division is directly related to the quality of the staff who carry out the programs. The emphasis on quality becomes even more important when conditions of overcrowding are present. Inadequate numbers of staff are available to provide ongoing supervision, counseling and program supervision for residents.

Overworked and underqualified staff sometimes ignore potentially dangerous situations and may unconsciously or consciously play residents against each other. Counselors are limited in numbers and in the hours which they are available. Quality in-service training is lacking. As corrections staff observed, training is often provided by the "ivory towers" of an educational institution or the "marble towers" of Olympia and is not practical for line staff. Staff has to double shift in order for others to attend appropriate training sessions.

Finally, the numbers of minority staff in appropriate institutional positions are insufficient. Minorities tend to be overrepresented in the institutional population but the few minorities employed as staff are found principally in support positions.

Recommendations

- *New staff should receive adequate orientation for their positions; old and new staff should receive ongoing in-service training. A limited number of staff should be available in the evenings and on weekends to provide counseling and program supervision for residents. Double shifting of custodial staff to cover vacations, sick leave and training leave should be eliminated.*
- *The Washington State Criminal Justice Training Commission should provide appropriate trainers for training sessions. Temporary*

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*staff or overtime pay for regular staff should be available to cover training sessions.*

- *Minority staff should be hired, trained and promoted in institutions so there are more representatives in supervisory, administrative and especially counseling positions.*

Mental Health, Medical and Dental Care. There is a lack of adequate mental health, medical and dental care in institutions. The lack of staff training in basic first aid procedures and lack of facilities for handling emergency medical needs are among the major deficiencies. Minimum services are available, but no one seems concerned about prevention in areas of mental health, medical or dental care.

"Prison Health Care: A Blueprint for the Future" by the Washington State Council on Crime and Delinquency details concerns about lack of medical treatment; conditions have not changed since the report was issued in 1975.

Recommendation

*The Department should move quickly to correct deficiencies in mental health, medical and dental care services in institutions by assigning health paraprofessionals to the institutions on a regular or rotating basis.*

Rehabilitative Services

Most persons who are convicted of a crime and are incarcerated will ultimately return to society. However, there are few meaningful rehabilitative opportunities within prisons. Prison industries, once a major activity for inmates, provide part-time employment for limited numbers of residents. Although a number of residents are engaged in part-time educational or vocational training programs, most are idle for large parts of the day, causing inevitable

discipline problems. Destructive inmate social structures are strong and uncontrolled. Work release opportunities and minimum security facilities are available to very few prisoners. Family, business and job contacts are discouraged by limiting visitations and contact with the outside for all inmates in maximum security. Many residents are not prepared to reenter society when they are released on parole, and parolees experience great difficulty in the community if they are unable to find employment or continue their education.

#### Recommendations

- *Prison industries should be expanded to provide the residents with purposeful activity through which work habits and a sense of responsibility can be developed. Ideally, the skills learned in work should be transferable to jobs available in the community after release, but transferability should not be a precondition for prison industries. The past requirement that prison industries pay for themselves by producing goods which can compete in the marketplace should be eliminated. Institutions with their security procedures do not lend themselves to modern, mechanized production, and the profitability criterion ignores the real purposes of work in prisons.*
- *Appropriate vocational and educational training should be made available to every resident in institutions. Training should be purposeful and aid the resident in returning to the community.*

#### Community Programs, Probation and Parole

Probation services are grossly inadequate in Washington State, with caseloads two to three times the recommended national standard. Insufficient resources have been devoted to fostering the development of community-based residential alternatives to incarceration,

such as supervised residential probation and work/training release, although the Legislature's 1977-79 budget appropriation adds significantly to existing facilities.

Residential probation is a sentencing alternative for nondangerous offenders who need more intensive supervision than is the case with regular probation, but who do not require confinement in secure prison settings. Under this program, offenders reside in existing facilities owned or leased by the state. They can contribute to the cost of their supervision, fulfill financial obligations including restitution where appropriate, and maintain 24-hour accountability while pursuing employment, education and/or rehabilitative programs. Residential probation serves as an effective half-way program which can be used by local courts and state probation officers as an alternative to incarceration.

Pre-release work/training programs can provide a controlled opportunity for the offender to reenter the community during the last six months of his or her sentence and can be used by the releasing authority to determine an offender's risk to the community. The community focus of such a program provides a better opportunity to utilize local resources for employment, social contacts, development of specific goals, and establishment of treatment services for an individual offender. Both residential probation and pre-release work/training programs have their limitations. To be most productive, they require strong field supervision for follow-up and an extensive institutional system for backup.

The employment standards for adult probation and parole officers have been reduced. Social service staff from noncorrections programs in DSHS have been forced upon adult probation and parole officers without adequate reorientation and retraining when DSHS ordered caseworkers "riffed" from other positions.

A considerable disparity exists between services being provided to municipal, district, and superior courts for probationers and parolees. Services vary from region to region and sometimes from county to county. There is a lack of a coordinated effort statewide to provide adequate services for adult probationers and parolees.

Funds do not follow residents when they are released from the institutions into the community. Programs are available to residents as long as they remain in the institutions but not when they are on parole. While the Corrections Clearinghouse of the Washington State Employment Security Department does provide correctional clients with vocational training in community-based training institutions, both financial support and training opportunities are limited.

There are no staff persons responsible for developing jobs and finding employment opportunities for probationers and parolees. Adult probation and parole officers do not have the time necessary to locate such employment because of their other responsibilities. Other community agencies are not always interested or do not put forth the necessary effort to develop and find employment opportunities for probationers and parolees.

#### Recommendations

- *The Department should make greater use of pre-release and supervised residential probation and work/training release programs as an alternative to incarceration and a transitional program for offenders moving back into the community from correctional institutions.*
- *Minimum qualifications should be revised and employment standards upgraded for adult probation and parole officers. Examinations should be required for all positions. Interagency*

*transfers should be permitted only if requirements are met. Persons employed, including those transferred from other DSHS divisions, should be able to perform the required duties and responsibilities of the positions.*

- *A comprehensive plan should be developed and implemented by the courts and the Adult Corrections Division to ensure that clients of the adult probation and parole system receive equal and appropriate services across the state.*
- *Once residents become involved in a program, they should be able to continue in a community program with the same amount of funds as allocated for the institutional program. The funds should follow the parolee.*
- *The Department should contract with the State Department of Employment Security to develop jobs for probationers and parolees or should hire "job-developers" (at least one per region) similar to the position funded by Law Enforcement Assistance Administration (LEAA) funds in Yakima. The job-developer could interview, test, screen and place individuals into full-time jobs, vocational training or adult education, monitor their progress, keep in constant contact with employers or instructors, and keep supervising officers informed.*

#### Corrections Advisory Body

DSHS does not now have an advisory group on corrections among its many advisory bodies. In light of the many problems in the correctional field which affect local communities, community input to and wide citizen understanding and support for the Department's institutional and community-based correctional programs are essential.

Recommendation

*The Governor's Committee on Law and Justice is a statutory body appointed by the Governor and comprised of judges, prosecutors, law enforcement officials, private citizens and others in the correctional field. It is currently charged with advising the Governor on matters relating to law and justice and specifically with approving the expenditure of federal LEAA (Law Enforcement Assistance Administration) funds. We recommend that, in addition, this group should undertake the long- and short-term planning needed to strengthen the corrections programs and to give visibility to the corrections field. The committee would be advisory to the Secretary, the head of Adult Corrections Division and other divisions as appropriate. Members from the Governor's Committee on Law and Justice should be appointed to the DSHS State Advisory Committee.*

2. Juvenile Rehabilitation

The service delivery structures of the Bureau of Juvenile Rehabilitation (BJR) are institutions, parole services, group homes, and probation subsidy. Institutions are Cascadia, Echo Glen, Maple Lane, Green Hill, and three honor camps: Cedar Creek, Mission Creek, and Naselle. Cascadia provides diagnostic and short-term treatment services. Each of the other institutions provides supervision, basic maintenance, and rehabilitative services. The bureau also operates six group homes which provide basic maintenance and counseling.

Juvenile parole services (JPS) are delivered through six regional offices and provide a combination of supervision, counseling and residential programming services designed to help with the transition from institutionalization to community living. Juvenile probation subsidy programs operate in 31 counties on grants from the bureau and provide supervision and rehabilitative services.

The underlying concept of probation subsidy programs is that by subsidizing the cost of county juvenile court probation, the state can reduce the number of youths committed to state institutions. Participating counties must develop special supervision programs. Reimbursement is based on the number of commitments reduced below the expected level. Finally, the bureau has provided some funds to continue a small number of community-operated diversion programs. Funded by federal Law Enforcement Assistance Administration (LEAA) project grants, nonprofit organizations such as Youth Service Bureaus and Youth Accountability Boards work toward diverting youths from the county as well as the state juvenile justice system.

Approximately 1,040 employees serve about 5,300 youths per year in institutional and community programs at a cost of \$47 million per biennium (1977-79 appropriation).

The juvenile rehabilitation program, like adult corrections, has two primary goals--punishment of youthful offenders, by denial of freedom, and rehabilitation. With limited funds, many difficult decisions must be made about how resources are to be allocated between institutional and community programs and between maintenance functions (subsistence, health and safety) and rehabilitation programs in institutions.

#### Organizational Issues

There are some serious organizational deficiencies which work against effective planning, program development and service delivery. There are two juvenile rehabilitation systems--the state-operated Bureau of Juvenile Rehabilitation (BJR) and county-operated (superior court) juvenile probation. BJR does not control intake to its institutions. The 28 judicial districts and 32 offices of Juvenile Court Services determine who is committed. BJR does determine length of stay and release/discharge policy for its institutional



and community parole programs. With this structure and split functions, there are frequent differences of opinion between BJR staff and local communities about length of stay and appropriate placement for individual youths. This fragmented system has, in our judgment, contributed greatly to unequal patterns of service delivery and a lack of coordinated services at both the state and local levels.

The Bureau of Juvenile Rehabilitation is responsible for adjudicated delinquents only. The enactment of Engrossed Senate Bill 3116 (effective July 1, 1977) mandates that dependent incorrigible youths cannot be incarcerated for longer than 30 days (for diagnostic assessment only). This law, together with increased pressure from the public to deal more stringently with both incorrigible and delinquent youths, has and will continue to affect county-operated juvenile probation programs. With limited local funds, more counties are looking to state programs for relief.

Recent trends toward lengthy sentences, reflecting a public concern for protection, have caused BJR institutions, camps and group homes to be filled to staffed capacity. With fixed staffing ratios and limited funds, the only alternative has been to shorten the length of stay in overcrowded institutional programs and in parole. The practice of releasing some youth from state programs in a shorter time causes additional concern in local communities. Substitute House Bill 371, which takes effect July 1, 1978, will significantly affect all BJR programs. The Juvenile Justice Act of 1977 (part of House Bill 371) calls for both the development of standards for confinement and diversion programs. The law mandates minimum-maximum ranges for confinement, based on the youth's age, the offense, and the history and seriousness of previous offenses. State funds are also made available to counties to operate diversion programs. It is not possible at this time to predict whether pressure on BJR's institutional and parole programs will increase

due to sentencing practice or decrease due to newly developed diversion programs.

Recommendations

- *The Bureau of Juvenile Rehabilitation should be located in the proposed Division of Services to Families, Children and Adults (see pages II-15 ff.). Community diversion programs as well as juvenile parole and institutional services should be included among the bureau's responsibilities. The grouping of juvenile rehabilitation programs with other programs providing services to children, youth and their families should allow the development of programs aimed at early identification of emergent problems and early intervention to prevent juvenile delinquency and divert youths from the juvenile justice system. The proximity of BJR to programs with responsibility for community-based services to families and children should facilitate better coordination between juvenile institutional programs and community-based rehabilitation programs and alternative living arrangements for youths.*
  
- *For the long-term improvement of the juvenile corrections system, the Legislature, the Department, the courts and citizens should jointly give consideration to:*
  - *Changing existing statutes to consolidate all juvenile corrections services, including county probation, in the Bureau of Juvenile Rehabilitation within the Department;*  
*or*
  
  - *Changing existing statutes to transfer juvenile parole services to the counties. DSHS could contract with the counties for these services and budget allocations for parole staff and other associated costs could be converted*

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*to contract funds. With the transfer of responsibility for all noninstitutional community services to counties, JPS staff could be placed under the direct supervision of the superior courts.*

#### Institutional Programs

State juvenile institutions are overcrowded, and the lack of segregation of youths with certain behaviors (violent, retarded, mentally ill) is a serious problem. Overcrowding has meant that every staffed cottage in the system has youths sleeping on the floor, in the recreation rooms and elsewhere. When the number of line workers is insufficient, cottages (the basic unit of the system) must be closed. Youths must be moved into staffed cottages which are already near capacity. The resultant overcrowding places extra burdens on both the staff and the resident youths. Adequate staffing levels and appropriate in-service training opportunities are essential to the successful operation of juvenile institutional services.

Medical and dental care, mental health services, and drug treatment programs are inadequate. Little attention is given to either preventive or curative services.

BJR institutions lack sufficient vocational training programs for residents. Most institutional programs are designed to upgrade educational achievement levels rather than to prepare youths for a job. Pre-release programs for institutionalized youths are inadequate in terms of both quality and quantity. Youths are often released from the institutions directly back into the communities from which they came without any transitional period and without support programs to help them readjust. Very few job opportunities exist, and many of these youths do not have good work habits or job skills.

Recommendations

- *Youths should be classified and segregated by the seriousness of the crime and/or their behavior, and programs should be developed accordingly. DSHS has an obligation to maintain the physical health of institutional residents. Hiring qualified personnel and reopening the hospital at Green Hill School would be steps in the right direction. Drug programs should also be developed in cooperation with community-based drug abuse programs. Although most new residents of the juvenile institutions have some drug-related problems, there are virtually no drug treatment programs at present (one cottage at Cascadia Diagnostic Center).*
  
- *Limits should be placed on the maximum number of youths housed at each institution so staff can handle the population. This maximum should never exceed 10 percent of staffed bed capacity. Cottages now exist which are not in use because of staff shortages, so new facilities are not required. Staff should be increased for assignment to vacant BJR cottages to relieve pressure on cottages now in service.*
  
- *The Department should provide staff with time to attend training sessions. The Criminal Justice Training Commission should be used to provide a full-time staff training officer for each institution.*
  
- *The Department should hire, train and promote minority staff to increase minority representation in supervisory, administrative and counseling positions in the institutions and in juvenile parole services. Ethnic and racial minorities tend to be over-represented in the juvenile institution and parole populations. Few minorities, however, are employed as staff, and most of them occupy support positions.*

- *More vocational training programs should be established as part of BJR's rehabilitative program. Additional pre-release cottages should be established for residents about to be released to the communities so skills in finding a job, writing a resume, balancing a budget and the like could be taught.*

### Community Programs

Juvenile parole services (JPS) and BJR's probation subsidy program are the major community service providers in the juvenile system. In addition to the problems that each of these programs face, including the lack of coordination between BJR institutional staff and parole services staff, there is an insufficient number of community-based programs for delinquent youths. Because BJR's six group homes are used as an extension of the institutional program (as pre-release cottages), these facilities are not available for juvenile parolees. Parolees who cannot return home must therefore compete with juvenile probationers from the county probation system for the limited foster home or group home beds available through the Community Services Division's Bureau of Social Services.

Juvenile parole counselors without much legal knowledge and training are finding themselves and their services increasingly tied to the legal process. The ill-defined and arbitrarily applied statutes of juvenile law aggravate an already confusing operation.

The effectiveness of county-run probation subsidy programs has become a major issue as counties hold youths in communities without providing effective treatment plans and services. Eventually, many of these youths find their way to state facilities. Community juvenile corrections and diversion programs have not been available in sufficient numbers. Although additional funds will be available to counties through the Juvenile Justice Act of 1977 (HB 371), it

is not clear that funds will be sufficient to improve program effectiveness.

Recommendations

- *Additional living arrangements, such as specialized foster homes and group homes, should be developed for juvenile parolees.*
- *More DSHS resources should be allocated to the development of community-based programs which demonstrate success in retaining juvenile delinquents in the community while reducing their criminal behavior. The need for probation subsidy programs should be reevaluated in light of passage of the Juvenile Justice Act of 1977 (House Bill 371). Rather than subsidizing county-delivered probation services, the bureau may choose to expand services contracted through community diversion units.*
- *The Department should provide time and relief staff so that parole counselors may attend the Criminal Justice Training Center for continuing legal and professional training.*

Youthful Offenders

Since the Supreme Court's In re Carson decision in 1975, 18-year-old youths are transferred to adult correctional systems. Many community leaders and professional adult and juvenile corrections staff question the appropriateness of placing immature young adults in the adult system. Neither the adult nor the juvenile system has appropriate programming for these youths. Under the Juvenile Justice Act of 1977 (effective July 1, 1978), 16-year-olds who have committed felonies may be remanded to the adult system as well, thereby increasing the problem.

Recommendation

*The Legislature, the Department, the courts and citizens should evaluate the adequacy of the current either-or choice in placing youthful offenders in the juvenile or adult system. Among the alternatives, a "youth authority" could be established to provide correctional services to youths between the ages of 16 and 23.*

## C. CATEGORICAL PROGRAMS

Categorical programs provide services to a wide range of persons who are either physically or mentally handicapped or temporarily incapacitated. Some programs have income eligibility criteria (means test) for receiving services and others do not. None of these programs currently deliver social or rehabilitative services through the Economic and Social Services Office (ESSO) system. Some have their own direct delivery system, but most purchase services through contracts with public or private vendors.

1. Mental Health

Institutional services: Eastern and Western State Hospitals provide psychiatric treatment for the acutely ill who are unable to be treated in the community and seek to facilitate their return to the community once their condition stabilizes. Extended care is provided for persons who are chronically ill and unable to return to the community. Geriatric services are offered for the elderly with irreversible psychiatric and/or neurological disorders. Specialized treatment programs are provided for mentally ill offenders, a small population of drug abuse offenders, and sexual psychopaths.

Community services: The Bureau of Mental Health administers the Involuntary Treatment Act and supports through the counties a statewide network of about 80 community mental health centers which provide the major share of psychiatric outpatient and consultation

services for clients of all ages. The centers also provide inpatient services, using hospitals and other local treatment facilities.

The Bureau of Mental Health has about 1,250 staff and serves approximately 6,000 patients in hospitals and 77,000 patients through community mental health centers per year at a cost of \$90 million for the biennium (1977-79 appropriation).

#### Inadequate Mental Health Services

The Department's mental health program highlights the fundamental dilemma of who should be served, given limited resources. The Department has recently focused its resources on chronic or severely mentally ill adults because of the trend toward deinstitutionalization and the state's Involuntary Treatment Act. Very few preventive services are provided and several major groups have been underserved.

Children. The state has limited services and only one facility for emotionally disturbed children, the Child Study and Treatment Center (CSTC) at Western State Hospital. CSTC has a 32-bed residential treatment program for children ages 8 to 18 years. Between 1974 and 1975, requests for admission increased from an estimated 800 to 1,200 per year; 1976 admissions totaled 90. No inpatient acute care facility is available for children in Eastern Washington. No inpatient treatment facility exists anywhere in Washington for mentally ill delinquents.

A March 1977 report of a State Mental Health Advisory Council Task Force confirms that children are significantly underserved. Thirty percent of Washington's population, 1.1 million, are children under age 18. Only 10 percent of community mental health center clients, or 7,900, are children. It has been estimated that the children served represent about six percent of the children in need. Few



communities have 24-hour emergency crisis services for children and many do not have access to a child mental health specialist at all.

This year, and for the immediate future, significant new strains are being placed on the system. As the juvenile justice system moves closer to excluding status offenders from probation services, the demand for services from community mental health centers is likely to increase. Status offenders are youths who have committed certain acts which are unacceptable to the community but which would not be classified as crimes if committed by adults, i.e., running away, curfew violation and being ungovernable. They are offenders only by virtue of their status as minors. In 1975 the juvenile justice system had contact with 54,336 youngsters; of these 16,200 were identified as status offenders.

Growing public concern over child neglect and child abuse and subsequent requests for treatment of both the child and the parents are placing increasing demands on the community mental health system. In 1975, 22,120 new cases of child abuse and neglect were opened by DSHS child protective services units statewide.

The Elderly. As with children, the elderly are greatly underserved. About 10 percent of Washington's population is over 65 years of age. Only four percent of those served by community mental health centers are elderly. Many elderly are chronically confused and others have severe access problems as they are confined to nursing homes (see page II-25).

Deinstitutionalized Mentally Ill. There is a severe lack of community facilities for the deinstitutionalized mentally ill. One of the biggest problems has arisen from the discharge from mental hospitals of chronic psychotic patients whose behavior is marked by "acting-out tendencies." Many of these patients are being turned away by nursing homes, yet they are frequently unable to find or remain in

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apartments or homes. Most require considerable supervision and nursing attention. Few are served by community mental health centers.

Mentally Ill Offenders. The Department has not developed facilities to meet the needs of mentally ill offenders. Neither corrections institutions nor state mental hospitals have adequate resources or trained staff to deal with this group. While there is a small program for adult sexual psychopaths at Western State Hospital, no programs exist for the very dangerous and criminally insane. Current mental health programs inside correctional institutions are small and ineffective and result in a revolving door syndrome for inmates who move from the general population to the mental health unit and back to the general population again. (See page II-66.)

#### Deinstitutionalization

Deinstitutionalization is a major issue in the mental health field. DSHS has consulted only infrequently with the local county governments to evaluate how major decisions on deinstitutionalization policy and funding at the state level would affect the local service delivery system. There is no state plan for deinstitutionalization. The community-based support services which were envisioned in various reports and policy papers have never been fully developed or funded by DSHS. Responsibility for the discharged hospital patient has shifted to the local county without the state funding following the patient. This issue cuts across many programs and is discussed further on pages II-107 ff.

#### State Funding Issues

There is substantial conflict between the Department's stated policy and its funding patterns. The Involuntary Treatment Act

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(RCW 71.05) mandates the use of less restrictive alternatives to hospitalization whenever possible. The Bureau of Mental Health has further encouraged this policy by sponsoring legislation for out-patient treatment for "frequently repeating patients" and by certifying agencies to provide this less restrictive care. However, the bureau has contradicted this policy in its funding decisions. During the 1975-77 biennium community mental health centers were reimbursed at only 53 percent of their billed costs for Title XIX (Medicaid) patients. The other 47 percent had to come from centers' existing grant-in-aid funds which are used up in the first few months of each calendar year if the agency serves a large number of Title XIX patients. For non-Title XIX patients, centers must simply absorb the loss; the bureau will not pay. To many providers this seems unfair and perhaps illegal since the law states that DSHS must reimburse the counties for any extra expense incurred to implement the Involuntary Treatment Act. Since these patients would not receive service unless committed, extra expense is incurred.

The state does not pay for voluntary admissions to state hospitals under the Involuntary Treatment Act. Community mental health providers argue that patients who seek treatment voluntarily have a greater chance for success. Economic realities encourage the use of the involuntary commitment process instead of the more clinically sound and less expensive procedure of encouraging clients to hospitalize themselves and accept treatment voluntarily.

Recommendations

- *The Department should develop programs for acute inpatient care of emotionally disturbed children, especially in Eastern Washington. The Mental Health Advisory Task Force recommendations for 35 beds now and a state total of 105 beds by 1982 appear to be appropriate; 30 of the 105 beds should be in Eastern Washington.*

- *The Department should encourage county mental health programs to provide 24-hour crisis emergency services for children. Child mental health specialists should be available to each county to provide follow-up services to children discharged from acute care inpatient facilities. Finally, the Department should provide seed money to counties for the development of day treatment programs for children and adolescents as a reasonable alternative to hospitalization.*
  
- *To improve services to the mentally ill elderly, a nursing home unit and a congregate care facility (CCF) should be opened on the grounds of Western State Hospital. Transfers could be made from the Geriatric Unit to the nursing home and from the Psychiatric Unit to the CCF without spending the many months of waiting for a proper placement in the community. The need for similar facilities in other areas of the state should be explored. The Panel supports the Department's recently announced plans to reopen a portion of Northern State Hospital by mid-1978 to house a care and treatment program for 150 Western State Hospital geriatric patients who, in addition to emotional problems, have physical problems which require extensive medical care.*
  
- *The Department should develop facilities for mentally ill offenders, separate from existing institutions but under correctional authority, which would be staffed by mental health professionals as well as security staff. The new facilities would provide security and intensive treatment. The possibility of housing both the sexual psychopath and criminally insane (perhaps in separate wings) in the same facility should be explored. It has been estimated by Adult Corrections Division staff that one 200-bed facility would be sufficient. We do not have an estimate on the number of beds required by the mentally ill in the juvenile correctional system.*

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- *Mental health services should be coordinated more effectively with other DSHS programs. One or more mental health specialists should be assigned to the Division of Services to Families, Children and Adults, the Division of Services to the Elderly, and the Division of Adult Corrections.*
  
- *A state plan for deinstitutionalization should be developed with communities. Overall funding (from federal, state and local governments and from family contributions) should reflect adequately the cost of delivering services in the community. State funds should follow the patient upon discharge from the institution. (See also pages II-107 ff.)*
  
- *The Department should provide funds to treat Medicaid-eligible patients who voluntarily request hospitalization on referral after professional assessment. A standard of need and rate of payment should be set prior to admission.*
  
- *The Department should encourage mental health centers to hire more bilingual/bicultural service and administrative workers. Asians, Chicanos, Indians, and Blacks need to have persons of similar backgrounds as therapists. The need is even greater where language as well as cultural differences exist. The Department should increase the number of contracts with minority staffed community agencies.*

Majority Recommendation

*The Panel recommends that the Bureau of Mental Health be transferred from the Community Services Division to an expanded Division of Health which contains a broader array of health-related programs. This organisational location appears to be appropriate in light of the replacement of the Community Services Division by two new program divisions: the Division of Services to Families, Children and Adults and the Division of Services to the Elderly.*

Minority Recommendation (A. D. Rosellini)

*All services relating to mental health and corrections, both juvenile and adult, should be placed in a separate department of state government, the Department of Corrections and Mental Health, whose head would report directly to the Governor. If there is not a strong interest in the Governor's Office in these fields, the programs and quality of service suffer. Likewise, corrections and mental health come out on the short end of the tax dollar unless there is a strong voice supporting them. That voice should be the Governor, supported by information and recommendations from the Department's director. The sole responsibility of the director would be to see that proper mental health and corrections services are provided. New funds should not be necessary for the creation of the new Department of Corrections and Mental Health; monies for facilities construction and maintenance would be required wherever these programs are located. (See also page II-61.)*

2. Drug Abuse

The Bureau of Mental Health administers state drug abuse treatment services. The bureau allocates approximately \$2 million per year to counties which, in turn, contract through local boards with local providers. Approximately 4,300 persons receive drug abuse services each year. A Drug Abuse Prevention Office (DAPO), which does planning and distributes about \$500,000 of federal funds directly to service providers (not through county boards), has until recently been a part of the state's Office of Community Development. Consequently, planning and administration of treatment funds have been characterized by duplication and lack of coordination. DAPO has been transferred to DSHS, effective July 1, 1977.

Many of the concerns expressed about mental health programs also apply to the drug treatment program, i.e., delayed payments, burdensome budgetary and reporting systems, insensitivity to urban-rural

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differences, lack of coordination with other service programs and insufficient emphasis on preventive services. Drug abusers who also are alcoholic, have physical or mental disabilities, or health problems, have difficulty obtaining needed services. In addition, drug treatment providers feel that their programs have not received adequate attention within the Bureau of Mental Health. The two largest drug treatment programs are located in Spokane and King counties; outside of those two programs there are virtually no drug abuse prevention or treatment programs for youths or for prescription drug abusers.

Recommendations

- *The Department should establish an Office on Drug Abuse outside the Bureau of Mental Health to administer all federal and state treatment funds. The new office would be responsible for statewide planning, research, evaluation, coordination, and training. The DSHS Office on Drug Abuse would become the designated single state agency and would assume functions performed by the Drug Abuse Prevention Office and the Bureau of Mental Health.*
  
- *The state should undertake a major examination of the statewide need for drug treatment programming, inventory the distribution of community-based resources and administer funds accordingly. Specifically, the proposed Office on Drug Abuse should allow flexibility in services, funds and regulations so that the locally determined needs and priorities of rural counties and smaller cities can be addressed as well as those of large metropolitan communities. Smaller counties need to be assured the delivery of the more costly services, e.g., methadone, residential care. Consideration should also be given to stabilizing funds for drug treatment programs in order to assure continuity of planning and operations.*

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- *Drug abuse prevention and treatment programs need to be developed for youths and for prescription drug abusers.*
- *Drug abuse services should be coordinated more effectively with other DSHS programs. One or more drug abuse specialists should be assigned to the Division of Services to Families, Children and Adults, the Division of Services to the Elderly, and the Division of Adult Corrections.*

### 3. Alcoholism

The Panel has been very favorably impressed by the almost unanimous praise the Office on Alcoholism has received from the community, consumers and other departmental staff. It is a well-managed program which is sensitive to the needs of its clients and attempts to deliver high quality service.

Under the Uniform Alcoholism and Intoxication Treatment Act of 1972 the Department has the option of providing services directly or contracting for services with public and private agencies. The Department contracts all services. Approximately \$6 million in state funds and National Institute of Alcoholism and Alcohol Abuse (NIAAA) formula grant monies are distributed for services according to the state alcoholism plan. State funds are made available to county alcoholism programs on a per capita basis, with no county receiving less than \$15,000 per year. A total of 41,201 individuals (unduplicated count) was served in calendar year 1976.

County alcoholism programs support detoxification centers, recovery houses and community alcoholism centers. The services of community alcoholism centers include education and prevention, client evaluation and referral, outpatient treatment, follow-up counseling, and alcoholism information schools. Services which cannot be effectively provided in each individual county are provided on a statewide basis,



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including six intensive inpatient alcoholism treatment facilities, three long-term residential care facilities, the state's Public Employee Alcoholism Program, alcoholism services at the state's corrections centers, and coordination of Native American alcoholism programs.

The revolving door aspect of detoxification programs is a problem without an agreed solution. Currently, a person can be held involuntarily for 48 hours. Some critics say it is impossible to sober up and motivate a person into treatment in that short a time span, and many persons repeat the process--one man came through 41 times in King County. A 90-day involuntary treatment program has been suggested as an alternative. Others would like to see more dollars shifted from detox to after-care services and cite the lack of community support services for patients immediately after their release from inpatient treatment programs as a serious obstacle. However, professionals report that neither inpatient treatment programs (21 to 28 days) nor long-term treatment programs have proven very successful with late-stage alcoholics. Treatment is expensive and most regress a short time after release. Consequently, the state has mandated that expenditure of funds for short-term detox treatment receive priority at the county level.

Recommendations

- *More supportive care should be given to those alcoholism treatment clients discharged from treatment programs who do not have the survival skills necessary to cope with life outside the hospital. Individual needs vary and include structured living situations, day care programs, and night care programs (see pages II- 107 ff.).*
- *Alcoholism services should be coordinated more effectively with other DSHS programs. One or more alcoholism specialists*

*should be assigned to the Division of Services to Families, Children and Adults, the Division of Services to the Elderly, and the Division of Adult Corrections.*

*Bureau of Alcoholism and Drug Abuse*

*The panel recommends the creation of a Bureau of Alcoholism and Drug Abuse within the proposed Division of Health. The bureau would consist of two distinct offices--the Office on Alcoholism and the Office on Drug Abuse. This recommendation is made for the following reasons:*

- *Although there are significant differences in treatment philosophies between alcoholism and drug abuse programs, the similarity of approach and major import of prevention and public education strategies argue in favor of merging these programs.*
- *Treatment staff report that many persons, young and old, abuse both alcohol and drugs. For example, alcohol treatment staff report that 80 percent of the 18 to 30-year-olds who come into alcoholism programs have mixed-substance abuse problems, including hard drugs. Treatment would be most effective if both abuse problems were addressed simultaneously.*
- *Most rural areas of the state have combined these two program with generally good results. Walla Walla is one example. Integration of local programs has permitted a pooling of costs for facilities and support services, a simplification of program monitoring and reporting, and a reduction of service duplication.*
- *These programs are administered jointly within the federal Department of Health, Education and Welfare. Thirty states have moved toward combining these programs.*

#### 4. Vocational Rehabilitation

Vocational rehabilitation services provide vocational counseling and testing, physical examinations, training and job placement. These services are delivered through 50 local offices in six districts, whose boundaries correspond to those of the six DSHS regions. Seventeen of the local Division of Vocational Rehabilitation (DVR) offices, including most of those in urban areas, are co-located with other DSHS offices. In addition, DVR plans, organizes and supervises both public and private contractual programs such as sheltered workshops and cooperative schools. Approximately 390 staff serve about 28,000 clients per year with a biennium budget of \$21 million.

The vocational rehabilitation program is largely supported by federal funds and requires federal approval of a state plan developed in conformity with the Federal Rehabilitation Act of 1973. The actions of the Department have raised several serious issues of compliance with the federal law:

- o DVR case service funds have been used to support General Assistance Unemployed (GAU) clients as the GAU budget (100 percent state dollars) has run short. Although the provision of VR services to these individuals has been appropriate, the basic maintenance and medical services required by GAU clients have meant that costs are substantially higher for GAU than for non-GAU vocational rehabilitation clients. This use of DVR funds does not technically constitute noncompliance, but federal authorities argue that DSHS' actions were outside the intent of federal law. The Department has ceased this practice, effective July 1, 1977.
- o The Department counts state monies expended on programs it designates as "vocational rehabilitation" in state correctional

institutions and in schools as part of the state's in-kind match requirement for federal VR funds. However, these monies are not under the control of DVR, as required by federal law.

Historically, the clients of DVR have been individuals whose disabilities were such that an early or mid-term return to employment was likely. The program's focus on job training and placement reflected the actual potential for rehabilitation of its clients. Clients received services, returned to work and became taxpayers once more. Today, however, most DVR clients cannot be characterized as candidates for early employability because of the new federal emphasis on priority services for the most severely disabled and the wide spectrum of both disability and potential for rehabilitation. The spectrum ranges from those who can be helped to work to those who will require sheltered environments for many years. Rehabilitation plans for many DVR clients will require long-term services.

Discussion of services for vocational rehabilitation and handicapped clients should recognize the dependence of these categorical programs upon other DSHS programs, especially the foundation programs discussed earlier in this chapter. Before clients can benefit from the specialized services offered through DVR, their basic needs for income support and medical care must be met. The links between DVR and other DSHS programs have been reinforced by congressional legislation in the last few years that broadens the scope of DVR training and rehabilitation to include the mentally ill, alcoholics, drug abusers, and adult and juvenile parolees. Well over half of DVR's clients are referrals from other DSHS divisions. Overlap between DVR and the Bureau of Developmental Disabilities (BDD) should also be noted. First, dual licensing of facilities which serve both DVR and BDD clients occurs in a number of instances, but the guidelines for licensing are quite different. Bringing DVR and BDD closer together should facilitate the planning of rational

joint licensing procedures. Second, as BDD clients age and younger DVR clients are assisted, the age distinction blurs. Third, federal guidelines require that priority be given to the most severely disabled. Since the expectation of early reemployability is slight for the severely disabled DVR client, long-term supportive services as well as rehabilitative services must be provided for these persons, as for BDD clients.

Another problem confronting DVR, which has been aggravated as more severely handicapped persons seek services, involves the physical and communications barriers which prevent many eligible people from receiving services. Many state offices are not designed so as to be accessible to the handicapped, and many others are not located on public transportation routes. Non-English speaking minorities are underserved by vocational rehabilitation programs, partly because of an insufficient number of minority counselors and lack of Spanish-language brochures. The deaf are also underserved because most DVR counselors lack signing skills and therefore cannot communicate with deaf people.

The quality of DVR services is dependent on the vocational rehabilitation counselors. Vocational rehabilitation counselors either carry several hundred active cases or cover wide geographical areas. To the degree the numbers of direct service staff are inadequate, quality of service suffers. The skills of the direct service workers vary greatly. More training in the areas of communications and sensitivity to handicapped people is needed for DSHS personnel providing services to the disabled. The DSHS training unit has not fulfilled the need for specialized training related to disability.

DVR's rehabilitation services to relatively less disabled clients appear to overlap with services provided in the Department of Employment Security and the Department of Labor and Industries. In

the past, contractual relationships between DVR and Labor and Industries have existed.

Recommendations

- *The organizational location of vocational rehabilitation services is the subject of majority and minority recommendations, see pages II-104 ff.*
- *Serious efforts must be made to recruit additional personnel to work with clients from among minority groups, non-English speaking people, and the disabled. Appropriate sensitivity training for new staff as well as for current staff should also be provided.*
- *Contracts should be negotiated between DVR and the State Departments of Employment Security and Labor and Industries in order to provide comprehensive vocational rehabilitation services and avoid service duplication.*

5. Developmental Disabilities

Developmental disabilities is a relatively new program providing a wide variety of services for individuals with disabilities attributable to mental retardation, cerebral palsy, autism, epilepsy or other neurological handicaps closely associated with mental retardation. Programs include medical, social, educational, recreational, residential and custodial services. The Bureau of Developmental Disabilities (BDD) administers nine institutions: five for the retarded, one for autistic children, the Cerebral Palsy Center, and the State Schools for the Blind and for the Deaf. Case services staff arrange contract services for clients, such as home aid resources, through six regional offices and sixteen substations. BDD oversees more than \$15 million worth of service contracts with

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50 group homes and 85 county-administered programs each biennium. Approximately 3,100 staff serve about 10,000 clients per year with a biennium budget of \$125 million.

#### Policy and Program Issues

The developmentally disabled (DD) have a privileged status within DSHS. Families with a child who is developmentally disabled are eligible for services without regard to income and are not expected to contribute to the costs of those services, regardless of income. This situation reflects two readily separable issues. First, DD families are granted group eligibility for services. The decision to grant group eligibility for Title XX (General Social Services) was an administrative decision within DSHS. Second, DD families bear no financial responsibility for the services available to their children. Few other groups have such favored status, not the families of emotionally disturbed children or crippled children or children in foster care.

It is ironic that programs for the prevention of mental retardation are not included in the Bureau of Developmental Disabilities. The state requires screening of all newborns for phenylketonuria (PKU), a cause of severe mental retardation. Without treatment, these children will soon qualify for BDD support. With treatment on a special expensive diet and with periodic monitoring at the specialized metabolic diseases clinic at the University of Washington, these children can be expected to grow up with an IQ in the normal range and with good prospects for a normal life. The number of children requiring such treatment and clinic monitoring for the first five years of life is about five new cases per year, with 25 children under treatment at any one time. The estimated annual cost for the PKU program is \$70,000. At present, no funds are provided either for the families' costs or for the support of the clinic. Co-payment by families under a formula reflecting family

income would be possible, although the administrative costs to DSHS might easily surpass the direct cost of the treatment program. If a co-payment plan is instituted for BDD clients, it should apply to PKU cases as well. Whatever the funding arrangements, the basic services should be guaranteed by the state. The costs of failure to provide such treatment are altogether too clear in both human and financial terms.

Follow-up of girls with PKU is also essential, since they must be monitored carefully years later when they become pregnant so as not to damage their fetuses in utero.

Congenital hypothyroidism (cretinism) is another condition for which newborn screening and early therapy can prevent mental retardation. Several states already have screening and treatment programs, but this state has postponed initiating such a program since no follow-up treatment plan (with simple administration of thyroid hormone) has been adopted. The estimated cost of the diagnosis and treatment of all cases of congenital hypothyroidism in the state is \$28,000 per year. The number of children requiring such treatment is about seven new cases per year (one in 6,000 births); monitoring and therapy are necessary on a lifetime basis to assure normal growth and development.

In general, genetic counseling and screening services to prevent the conditions that put children into the DD category are poorly supported in this state. The section on child health in the Health Services Division has for the most part failed to support the regionalized genetic counseling services already provided at the University of Washington and at outreach clinics in Tacoma and in Spokane. (Beginning in 1976 Spokane has received \$10,000 per year from DSHS.) Negotiations for such support and for extension of such services to other communities have been underway for many months.



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An increase in the state's developmentally disabled population has been projected for the coming decade. The increase is attributable to higher survival rates in births affected by oxygen deficiency and other problems; the growing number of fetal alcohol and drug syndrome children; and environmental hazards that cause congenital malformations and/or mental retardation. Larger DD appropriations in the future will be required unless preventive measures are instituted, including genetic counseling, public education about the prenatal hazards of alcohol, tobacco, and other drugs, and good prenatal care for lower-income women.

Developmentally disabled persons have suffered, together with many other clients of DSHS, in the Department's deinstitutionalization scheme. Some DD persons are so severely affected that a good institutional setting is necessary. For others, release from institutions, though appropriate, has not been accompanied by community-based alternatives of sufficient quantity or quality. Community alternatives to institutional care are of varying quality and not all are under the jurisdiction of the Bureau of Developmental Disabilities: Congregate care facilities, which house over 700 DD clients, are under the Bureau of Social Services; nursing homes, which house over 1,200 DD clients, are under the Office of Nursing Home Affairs; and over 500 DD clients live with foster families supervised by the Office of Family, Children and Adult Services. Group homes are under BDD. (See pages II-107 ff., for more extended discussion of the deinstitutionalization issue.)

The institutions also face problems. Capital improvement plans are costly and, because of the age of the buildings, plans may not be cost-beneficial. While some institutions serve specialized populations (i.e., autistic children, multi-handicapped), others serve a wide variety of needs. Although these general institutions allow residents to be geographically closer to their families and

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home communities than do the numerically fewer specialized institutions, it is difficult to serve adequately mixed populations, including persons with behavior problems and the medically frail retarded, in the same institutional programs.

Administrative Issues

The county-state relationship in planning and delivering DD services is complex and does not always work well. The issues involved are treated in a separate section of this chapter (see pages II-112 ff.).

Recommendations

- *The Panel supports the group eligibility determination for the developmentally disabled, based on the notion that the medical and supportive needs of DD persons are sufficiently distinctive and that services should be made available to all families with such children. At the same time, the Department should extend the use of group eligibility to other groups of clients in other DSHS programs.*
- *The funding of developmental disabilities programs should be revised to include a partial co-payment formula for families based upon family income. If any DSHS clients pay for services, then all should pay. Guarantees should be sought that the additional funds generated would be earmarked for services to the developmentally disabled.*
- *The importance of preventing developmental disabilities must be given high priority. The state should support the specialized clinic for the treatment of children with PKU, hypothyroidism and other treatable conditions that would otherwise cause mental retardation (see page II-53). Maternal and child*

*health programs, including genetic counseling, screening services, and the necessary treatment programs, should be moved from the Health Services Division to the new Division of Services to Families, Children and Adults (see page II-15).*

- *Both institutional and supportive living environments for the developmentally disabled should be upgraded. The Department should encourage the development of specialized CCFs and nursing homes which would cater for the needs of DD clients.*
- *The State School for the Blind and the State School for the Deaf should remain under BDD until additional study has been carried out to determine the best overall plan for educational services for the blind and the deaf. It is imperative that both blind and deaf children have quality education either at state schools or in local districts.*
- *The organizational location of the developmental disabilities program is the subject of majority and minority recommendations (see pages II-104 ff.).*

#### 6. Services for the Blind

Services for the blind are provided by the Office of Services for the Blind (OSB) and by private local organizations. The federal and local levels of government do not provide direct services; however, the federal government provides funding for certain special programs, such as the Northwest Regional Center for the Deaf-Blind. OSB certifies requests and pays for medical services related to the prevention of blindness. Counseling and home teaching services are also provided. Approximately 54 staff serve about 3,000 clients with a biennium budget of \$4.3 million.

The state blind program has had several problems. Although the program had improved in the last two years following the hiring of

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the current director, the program still has a poor reputation among blind persons because of poor service in the past. Also until recently, there has been a lack of services outside of Seattle. The program is required to have a federally approved state plan which conforms to the Federal Rehabilitation Act. As of this date, the state plan for vocational rehabilitation funding for services for the blind has not yet been approved by the federal government because of the placement of the program in the Community Services Division. Federal law specifies that the blind program be either an independent program or at the same organizational level as the vocational rehabilitation program. Recently enacted legislation creating an independent Commission for the Blind should resolve this issue.

The Office of Services for the Blind acts as a pass-through agency for funds to the state library for library services for the blind and physically handicapped. Because the pass-through is a paper transfer only, the director of blind services has no control over the library program.

The State School for the Blind is currently under BDD rather than Services for the Blind, and the future and goals of the school are unclear. There is no agreement on which population should be served by this school. Concern has been expressed that the programs at the school and in local school districts are insufficient to meet the educational and social needs of blind children (both normal blind and multi-handicapped blind).

Recommendation

*Services for the blind are the subject of majority and minority recommendations (see pages II-104 ff.).*

## 7. Services for the Deaf

Services for the deaf are currently provided by two separate divisions. The Division of Vocational Rehabilitation serves about 1,000 deaf and hard-of-hearing (severely disabled) persons per year in sheltered workshops and vocational training programs. In the Community Services Division, the Bureau of Developmental Disabilities (BDD) serves about 340 deaf persons per year in institutional care and community case services, of whom 244 are enrolled in the School for the Deaf.

The deaf experience unique communications and educational problems which call for highly specialized services. Conceptualization and language learning processes are quite different for deaf persons than for other sensory handicapped individuals. Although some services for the deaf are included under BDD, the needs of this population are generally ignored by the bureau and other DSHS programs. Deaf offenders are very poorly served by correctional programs; a special program is badly needed to serve this population.

### Recommendations

- *A unit to coordinate services for the deaf should be established within DSHS (see majority recommendation, page II-104 ff.).*
- *At least one person with signing skills in each DSHS region should be designated as a coordinator of services for the deaf to ensure that this population has access to the full range of DSHS services.*

Majority Recommendation on Organizational Placement of Vocational Rehabilitation, Developmental Disabilities, Services for the Blind and Services for the Deaf

- *Vocational Rehabilitation, Developmental Disabilities, Services for the Blind, and Services for the Deaf should be combined in an expanded Division of Vocational Rehabilitation and Services to Disabled.\* Despite great optimism that vocational rehabilitation clients will soon become employable, the testimony provided to the Panel and the federal requirement that the most severely disabled be given priority point to long-term maintenance needs. Licensing of facilities for vocational rehabilitation has considerable overlap with developmental disabilities, and some clients are covered by both developmental disabilities and vocational rehabilitation. Finally, for physically and mentally disabled persons the interface between vocational rehabilitation and medical care providers is broad and important.*

*The majority recognizes the desires of some to achieve independent status for vocational rehabilitation and for services for the blind. However, when the requests of vocational rehabilitation and the blind are compared with the equally strong claims for advocacy and visibility for children's programs, for elderly, for alcoholism, for mental health, for corrections, and for developmentally disabled, it becomes apparent to the majority that an unworkable array of new*

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\*The language of the Federal Rehabilitation Act of 1973 specifies that the state agency designated to administer or supervise the administration of the state plan "shall include a vocational rehabilitation bureau, division, or other organizational unit which (i) is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of handicapped individuals, and is responsible for the vocational rehabilitation program of such state agency..."

*departments would result from this philosophy. Furthermore, the majority recognizes that someone other than the Governor would prove to be the point of reporting for such small departments as vocational rehabilitation and services for the blind.*

*During the period that this Panel has been meeting, the Legislature has passed and the Governor has signed a bill creating a Commission for the Blind. The mechanism by which that Commission will assure quality services for the blind has not yet been established. The relationships between the Commission and the School for the Blind and various service agencies providing services to both blind and other individuals within DSHS must also be clarified.*

- *We recommend reconsideration of the separation of services for the blind from DSHS. In many ways, the blind and the deaf share needs and share the potential to be highly productive members of society, given the special services now available. The Commission for the Blind creates a striking asymmetry in the way the blind and deaf are treated in this state. We propose that the Commission for the Blind be encouraged to define its role in relation to DSHS and that the actual service functions be organized within the Division of Vocational Rehabilitation and Services to the Disabled.*

*Admittedly, diversion of funds and other past problems have antagonized staff in VR, DD, and Services for the Blind. The majority believes that the recommendations in this report, especially those providing for program integrity, will overcome these poor practices of the past. It is hoped that the powers for advocacy developed on behalf of the vocational rehabilitation program, blind, deaf, and developmentally disabled can be combined in this division to the benefit of all.*

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Minority Recommendations (S. Ammeter, P. Jaynes, A. W. Munro)

- *The Division of Vocational Rehabilitation should be separated from DSHS and incorporated as a separate program under the Governor, as part of a manpower program (such as Employment Security), or as part of a major educational program, as operated in many states.*
- *Services for the Blind should be removed from DSHS and incorporated as a separate program under the Governor or under a Commission for the Blind as operated in Iowa and Idaho. The library program for the blind should be moved to the new Commission.*

*The removal from DSHS and the incorporation as separate programs for Vocational Rehabilitation and Services for the Blind would allow both programs to take full advantage of their budgeted funds, restore close relationships with federal funding agencies, and bring the programs into compliance with federal regulations. As separate entities, VR and blind programs would be more effective advocates for their physically disabled and blind clients. Program managers would have control of their programs and would be responsible and accountable for their actions. Staff morale would also be improved, decision-making facilitated and services expanded.*

- *The Governor's Office of Financial Management and the staff of the House Appropriations and Senate Ways and Means Committees should make a cost-effectiveness study before any independent agencies are created to assure there would be no increase in cost as a result of the recommended changes.*



- *The Bureau of Developmental Disabilities should be removed from the Community Services Division and should have division status on its own. Increased autonomy will improve employee morale.*

D. INSTITUTIONALIZATION, DEINSTITUTIONALIZATION  
AND SUPPORTIVE LIVING SERVICE

Deinstitutionalization cuts across several programs within DSHS, including mental health, developmental disabilities, juvenile rehabilitation, adult corrections, alcoholism and services to the elderly. In the institutional setting, treatment and rehabilitation services are accompanied by basic services providing food, housing, medical care and socialization. Since the late 1960s, Washington, as well as other states, has been in the process of returning institutional residents to their home communities and to community-based treatment programs. Under the impetus of deinstitutionalization, individuals have been moved from institutions into communities with little supervision, few services and no familial supports. Although reliable assessment tools are needed to verify client readiness to return to the community and to facilitate appropriate placement and follow-up for the individual, there have been few longitudinal studies and little experimentation within DSHS about the effects of moving individuals out of institutions.\* Lack of planning has sent those least able to cope out onto the streets of today's society to survive on the meager financial support that is available through Supplemental Security Income (SSI)--approximately \$200 a month. For lack of other alternatives, many of these individuals have been placed in nursing homes where they are subject to more drugs, less monitoring and fewer programs than in the specialized state institutions.

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\*Since August 1976 a data collection project has been underway within the DSHS Office of Research whose objective is to investigate the effects of deinstitutionalization on the individuals discharged from state institutions and on the communities into which they move. Data are being gathered as to the kinds of information about community services that are available to individuals leaving institutions and the kinds of services they actually receive.

It is at least as difficult to develop effective services in the community as in an institution. The average community has an unorganized mosaic of agencies with different services and divergent value assumptions concerning program goals and treatments; there are many cracks through which individuals can fall. There is also a lack of alternative supportive living arrangements and services in most communities for use by those returning from institutions or those requiring support but not institutionalization. In the absence of options, satisfying and appropriate placements are less likely.

The Department's current procedures for placing individuals from institutions or from their own homes in alternative community-based arrangements are neither coordinated nor consistent across programs.\* The process of making placement decisions is fragmented among social service staff at the state hospitals and other state institutions and various ESSO staff in the different counties. Individuals who could most benefit from a unified, comprehensive approach to their needs frequently find themselves referred to a multiplicity of programs and service providers. For instance, an individual currently residing in Western State Hospital, but no longer needing institutional care, could be referred by the hospital social service staff to a community mental health center for outpatient psychiatric care, the Social Security Administration for a determination of degree of disability and need for Supplemental Security Income (SSI), and an ESSO for interim assistance until SSI eligibility is determined (financial service) and for help in

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\*A federally funded DSHS experimental project has been underway since 1975 that is designed to develop a network of community-based services to meet the social and health care needs of high-risk aged and disabled. Clients must be at risk of placement in a nursing home, at the point of discharge from an acute care facility (e.g., hospital) and in need of supportive services to return to the community, or in a nursing home but able to return to the community if supportive services are available. The two experimental sites are employing multi-disciplinary teams which assess client need, establish linkages between the client and community service providers, and monitor service provision. Patterns of service utilization, quality of service, services provided and cost per client are the items being measured.

finding a supportive living arrangement such as an adult family home or a congregate care facility (social service).

In January 1974 Charles Morris, Secretary of DSHS, established a project to evaluate the kinds of community programs which needed to be developed in order to deinstitutionalize selected groups of residents. The policy statement given the project staff said:

"The Department of Social and Health Services, working from the assumption that clients whom it services in institutions throughout the state can benefit from a variety of different kinds of treatment and care, is undertaking long-range planning to assess the feasibility of decentralizing some functions currently carried out in institutional settings."

The issues to be addressed in considering institutionalization and deinstitutionalization were and still are:

- o Is the goal of placing an individual in a contained setting to protect society or, whenever possible, to resocialize the individual for return to the community?
- o Can institutional clients benefit more from other types of treatment and care?
- o What is the ability of the Department to assist in the development of community-based care and treatment programs which meet both geographic (urban and rural) and client needs?
- o Will the benefits of decentralized institutional programs be sufficient to warrant development of new facilities and methods of treatment?

Three years later our Panel has confirmed and extended the findings of this report on institutionalization and deinstitutionalization:

- o The assumption that community programs produce better results and are cheaper is not always true. Few longitudinal and follow-up studies have been conducted to determine the effectiveness of institutionalization and deinstitutionalization.\* Some assert that deinstitutionalization creates "back wards" in the community. Others maintain that long-time institutional clients progress far beyond expectations when returned to the community. Claims of success and failure tend to be subjective and without clear meaning. Total direct and indirect costs of community programs are not always included in cost estimates.
- o Residents of institutions have been placed in the community without sufficient funding for necessary community services. Once an individual is returned to the community, well-qualified trained staff are needed for follow-up evaluation and ongoing treatment. Nursing homes are now filling the gap in community services by default, but rates do not allow for special care or activity programs needed by the mentally ill and developmentally disabled.
- o DSHS state and regional offices, county boards and courts are not working together either in planning or service delivery for deinstitutionalization. There is a lack of firm program goals and operational standards in all types of programs, whether services are directly provided by DSHS staff or purchased through contracts.

Recommendations

- *A state plan for deinstitutionalization should be developed by the Secretary of DSHS. The Secretary should take responsibility*

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\*See footnote, page II-107.

*because deinstitutionalization cuts across many disparate programs and affects people with very different needs. The plan should: coordinate local, state and federal funding sources so that funding will follow the individual who is returned to the community and allow for adequate service development; ensure that necessary community services are in place before more people are discharged en masse from institutional care; and be developed with communities so that the cost of delivering adequate community services will be known and taken into account in state and local decision-making. DSHS state and regional offices, county boards and courts should work together in planning for deinstitutionalization and in developing adequate community-based programs and services. Institutionalization will continue to be appropriate for some individuals and not for others. People should not be forced into certain programs simply because the programs are less costly unless their individual needs can be met.*

- *A coordinated plan of supportive living services should be developed to meet the needs of those at risk of institutionalization or those being moved out of an institution. A group of program managers, whose programs utilize supportive living arrangements or are affected by deinstitutionalization, should be assembled to work out the monitoring requirements, explicit program standards, and a vendor rate schedule based on program components which recognize the specialized needs of various groups of clients. The Department should also encourage the development of supportive living facilities such as CCFs and adult family homes which would serve groups of clients with specialized needs, e.g., the mentally ill, the developmentally disabled. Supportive living services should be administered at the regional level to assure community input and responsiveness to local needs for supportive housing.*
  
- *Planning and follow-up of the placement of individuals in institutions and alternative living arrangements should be the responsibility*

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*of a single DSHS unit at the regional level. The development of skilled generalists for all placement decisions would assure coordination and consistent service to individuals across programs. Placement should focus on the needs of the individuals, not the diagnostic label of funding availability.*

#### E. COUNTY-STATE RELATIONS

In recent years, counties have assumed increased responsibilities in the planning and delivery of mental health, drug abuse, alcoholism and developmental disabilities services in Washington State. The relationship between the state and the counties has been less effective than is desirable or possible. The state is often perceived as unresponsive by counties, and state officials complain that county officials and community boards are not always knowledgeable or cooperative. The provider agencies are frequently caught in the middle between the state and the county, and service to persons in need suffers as a result.

Three separate DSHS offices (the Bureau of Mental Health, the Office on Alcoholism, and the Bureau of Developmental Disabilities) independently establish program and administrative guidelines and procedures for county governments for mental health, drug abuse, alcoholism and developmental disabilities programs. This administrative fragmentation within DSHS complicates county efforts, especially when a separate annual plan and program budget must be prepared for each program area on a categorical basis. There is little opportunity for acknowledging the interrelationship of services from one program area to the next. Further, the plan guidelines vary greatly among the three state offices in their attempts to administer provisions of the plans. Although DSHS has attempted to provide a common time schedule for annual plans, the submission of program budgets and the development of contracts, the altered time schedules do not coincide with the statutorily prescribed budget cycle for counties.

Major variations also continue among the three state offices as to the form and content of required monthly financial and program reports. For example, the Office on Alcoholism and the Bureau of Mental Health each have their own computerized client data reporting systems. The written instructions pertaining to monthly financial reporting for each program area also tend to be vague. When clarification is requested, there are usually variations in interpretation between the program office and state accounting personnel.

Preparation of annual program budget proposals for submission to the state consumes a great deal of time at the county level, including public hearings conducted by the board of county commissioners. Yet on occasion, the state offices have made modifications in the funding level or type of funding included in the plan without prior formal notification to the county.

Under the terms of mental health, drug abuse, alcoholism and developmental disabilities legislation, county boards are to be created whose primary functions are planning and budgeting for these programs. Boards are to be broadly representative of local citizens, clients, professionals and government officials. The proliferation of boards is not always matched by adequate local citizen resources to undertake the planning and budgeting tasks assigned, and some county staffs have been charged with co-opting the authority of local boards. While multiple boards have been appointed in many counties, these boards may be combined. Several counties have created unified human services or human resources boards to optimize local planning abilities.

Each county board's plan covers a year, with some projections for the future. Plans and funding levels must be approved in Olympia. In accordance with the county plan for each program, public and private agencies contract with the county to deliver services within the limits of available funding. State monies are presently funneled through the

counties to service providers. While this arrangement works well in a few counties (e.g., King, Pierce), in others the county is a frustrating level of bureaucracy which serves to delay payments for services rendered by providers. The delay causes severe problems for many smaller providers who must raise local monies to cover expenses until the county forwards the funds.

#### Recommendations

- *Olympia-based administrators and program staff in DSHS mental health, drug abuse, alcoholism and developmental disabilities programs should bring their information systems, reporting requirements and time schedules for counties into harmony, to the degree possible.*
- *Counties should be encouraged by the Department to create unified county human resources or human services boards in place of separate boards for mental health, drug abuse, alcoholism and developmental disabilities.*
- *State funding for these county-based programs should flow directly from the state to the provider agencies rather than through the county. State contracts with these providers would follow the county plans.*
- *The Department, the Legislature and the DSHS State Advisory Committee should reevaluate the county role in mental health, drug abuse, alcoholism, and developmental disabilities programs in light of the Panel's proposed service integration and regionalization projects (see Chapter VI). Under the proposal, planning and budgeting for these four programs and for other DSHS direct and contract services would become important regional functions, though they would be based on local and county input.*



## F. COLLECTION OF SUPPORT AND SERVICE PAYMENTS

The Office of Support Enforcement (OSE) in the Administrative Services Division exists primarily to collect support payments from the absent parents (predominantly fathers) of children receiving AFDC and to collect payment for DSHS services from clients with resources to pay for services received. The 1975-77 budget for this office was \$6.6 million with a current staff of 300 people. It is one of the most rapidly increasing programs within DSHS; the 1977-79 budget will provide approximately \$11 million and a staff of 400 by the end of the biennium. The rapid growth is brought about by OSE's claims of heavy return for its collection activities.

The Panel requested and obtained from OSE a cost analysis of their collection activities. The appeal of this office to the Legislature, which thus far has been extremely responsive, is that for each dollar spent on OSE staff, four dollars will be returned in collected revenues. However, the analysis supplied by OSE and input from the community raise serious concerns over the timeliness, appropriateness and humaneness of OSE's collection techniques.

No one takes issue with the basic premise on which the Office of Support Enforcement is posited: Parents are responsible for their children. A substantial proportion of OSE's collection income is paid by willing, responsible parents for whom OSE can claim no credit, even though the requirement that parents absent from the home of children receiving AFDC care forward their support payments directly to the Department and not to the family may give the appearance of OSE success. Although this procedure helps the family receive a consistent amount of money on a regular basis (e.g., a monthly AFDC check from the state), it does not maintain the role of the absent parent as provider to his/her child and ex-spouse. Families on AFDC have no way of knowing if the absent parent is actually contributing by way of DSHS or just what part of their

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monthly check comes from the absent parent. Some AFDC mothers told the Panel that OSE refused to tell them whether the absent father was making support payments.

Other causes for serious concern about OSE are allegations from legal assistance attorneys that OSE uses collection techniques considered unethical in private collection agencies (e.g., contacting employers without the knowledge of the absent parent). There have been numerous complaints to the Office of Citizen Participation, as well as frequent letters sent to the Governor and Secretary of DSHS detailing harsh collection practices. Many of the individuals from whom OSE seeks to make collections are the working poor. They are individuals with limited financial means to legal recourse against punitive practices of a state agency. In its zeal to collect money, OSE has apparently caused some absent parents to lose their jobs, others to file bankruptcy, and still others to run from their responsibilities altogether. Such efforts obviously are incongruous for a human service agency and more costly in human and familial terms than the amount of dollars collected.

#### Issues

The procedures used by OSE are inhumane. Support rates are computed through two different mechanisms--court orders and the Department's debt assessment procedure. There is no fair hearing or judicial review for individuals aggrieved by DSHS' procedure for collecting a court-ordered amount of support; DSHS claims it is only seeking to obtain payment of a debt which has been determined by the court. However, the Department's calculation of the actual amount owed under the order is not always infallible and the amount DSHS assesses may be incorrect. Regardless, the individual has no retrospective or prospective recourse against the Department's procedures. There is an opportunity for fair hearing and judicial review in DSHS' debt assessment procedure. An individual has 20 days to request a fair hearing--10 days less than the comparable period in other DSHS proceedings--and there is no authority to extend the time for good cause.

Whether court-ordered or departmentally-assessed, OSE frequently collects the debt in a procedure similar to garnishment of wages. An order to withhold and deliver is served on the absent parent's employer. The withholding rate exceeds that allowed by state and federal law in any other type of debt. The Department's assessment rate considers only the responsible parent's monthly net income and the number of children being supported by the Department. It makes no provision for considering the additional dependents the absent parent may be supporting.

The lack of timeliness of current procedures causes hardships on parents. Some OSE offices are nearly current in notifying parents shortly after welfare payments begin; others do not get around to doing so for months. Occasionally OSE makes errors in calculating the amount to be collected from the absent parent and discovers the underpayment after months have passed. There are cases where OSE has demanded the full amount of underpayment at once, without regard to the absent parent's ability to pay. Many of the letters sent the Governor or the Secretary complain about the OSE procedure of going directly to an individual's employer for information on earnings or with an order to withhold and deliver prior to contacting the individual involved. Many parents are willing to cooperate and support their child in foster care or group care from the first day of placement but are not contacted in a timely, courteous, manner by OSE.

#### Recommendations

- *The philosophy of OSE should emphasize an attitude of collecting support to benefit the child rather than DSHS seeking to reimburse itself.*
- *The Office of Support Enforcement should be moved to the Division of Families, Children and Adult Services. This placement is necessary for both coordination with field programs and to ensure appropriate, humane collection techniques. The operations of OSE*

*should be regionalized and coordinated with field programs providing services to individuals and families with whom OSE also has contact.*

- *The garnishment rate established by statute should be modified to ensure that the responsible parent and other dependents being supported by him or her, rather than by the Department, are not reduced to an income level less than the state's income maintenance grant standard. OSE collection techniques should consider the responsible parent as first source of information on wages, resources, and ability to pay. The employer should be served an order to withhold and deliver only as a last resort rather than standard operating procedure.*

## III. CITIZEN AFFAIRS

## A. INDIAN AFFAIRS

The Panel recognizes the unique cultural and legal status of American Indians among other minority groups. Indians retain the right to tribal self-government (Indian Self-Determination Act of 1964) and hold dual status as citizens of the state and citizens of tribal governments. Although this report will not address the issue of tribal sovereignty and the retrocession of state jurisdiction to tribal governments, recommendations are included regarding improved delivery of services to Indian citizens.

Program and Service Issues

Foster care services. The Department's regular adoption program for Indian children gives priority to Indian adoptive resources. Some very difficult situations have arisen when non-Indian foster parents have sought to adopt Indian children in their care. If such situations are to be avoided, initial placement with an Indian foster family is critical. We trust that the Indian Child Welfare Committees that are now being established in each of the six DSHS regions to coordinate services for Indian children will actively recruit sufficient numbers of Indian foster homes for Indian children in need of foster care.

Alcoholism affects 60 percent of the adult Indian population. The Panel was told that on any given day 25 to 50 percent of those present in King County's detoxification unit are Indians or Native Alaskans. Alcoholism problems are not being adequately dealt with by the Department--especially on reservations and with Indian youth.

The need for mental health services for Indians is great. Among adolescents, Indian suicide rates are the highest in the nation. The depression and family conflict created or exacerbated by alcoholism are overwhelming.

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Indians do not use community mental health centers. Yet, the small program established by the Seattle Indian Health Board with Indian counselors has been swamped.

There are very few Indian caseworkers and financial workers, even in ESSOs near reservations. ESSO staff attitudes and staff insensitivity to cultural differences have been noted, especially in the area of child protective services. Services are virtually inaccessible for many Indians, given the long distances and lack of transportation between reservations and ESSOs. Many eligible and needy persons are not even aware of available services. Except for some child care for five tribes, the Department has to date distributed no Title XX funds to Indian organizations for information and referral, child welfare or most other services requested by Indian people.

Recommendations

- *To the greatest extent possible, the Department should contract with tribal governments and urban Indian organizations to deliver certain services, such as mental health, drug abuse, alcoholism, child welfare services, pre- and post-trial diversion, accelerated release and other community-based rehabilitation services. Many Indian groups have developed programs which are being used extensively by Indians. These programs are limited primarily by a lack of financial support. A partnership policy for service delivery would greatly improve state - Indian relations and improve service delivery to Indians.*
- *More social and financial stations should be opened, or mobile units purchased, to increase awareness among Indians of available services, to increase accessibility to services, and to provide assistance to clients, especially the elderly and handicapped, in completing applications. The Department should make a concerted effort to recruit and train Indian staff, especially at the ESSO level. Non-Indian service workers should receive special training to familiarize themselves with the customs and culture of local Indian tribes.*

Authority and Organizational Location of the Indian Desk

The DSHS Indian Desk was created within the Office of Minority Affairs in 1972. Its staff were selected by representatives of tribal governments and urban Indian organizations (by agreement with the Governor and the Secretary) and were given a mandate to serve as advocates and to monitor DSHS programs and services. The Indian Desk was to take direction from and be evaluated by tribal governments. Gradually, the Department moved away from its original agreement. In October 1975, thirty-six tribal and urban Indian representatives met with the previous Governor to resolve compliance issues, to document problems within the Office of Minority Affairs, and to restore the commitment to the original agreement. The commitment was then reaffirmed, and in December 1975 the Indian Desk was separated from the Office of Minority Affairs and placed in the Office of Family, Children and Adult Services, Bureau of Social Services, Community Services Division. However, Minority Affairs retained control over Indian affirmative action employment and Indian civil rights.

Indians believe the Department has still not lived up to its agreement. The level of support given to the DSHS Indian Affairs Policy and to the Indian Desk's advocacy, monitoring and program development roles is inadequate. It is not appropriate for the Indian Desk to be supervised by the very division it is supposed to monitor. Finally, the Department's affirmative action plan for Indian employment has been virtually ignored.

Recommendation

- *To confirm the Department's commitment to improving services to Indians, the Panel recommends the creation of an Office of Indian Affairs which would report directly to the Deputy Secretary. In our proposed organization (see Chapter VII), the Deputy Secretary would be responsible for assuring that policies are carried out by regional administrators. The major program divisions, which Office of Indian Affairs staff would monitor, would also report to the Deputy Secretary.*

*Responsibility for policy coordination would be assigned to one person, the Deputy, who reports directly to the Secretary.*

#### B. MINORITY AFFAIRS

The Department of Social and Health Services, as a recipient of federal funds, is obligated to ensure that discrimination on the basis of race, color, national origin, age, sex and handicap does not occur in any of its programs. Within DSHS it is the function of the Office of Minority Affairs to ensure nondiscrimination and to develop, implement and monitor affirmative action programs.

#### Program and Service Issues

Minorities are heavily represented among the Department's clientele, but they are underserved by DSHS programs.

- o There is an acute shortage of foster care and group care placement opportunities for minority youths.
- o In Washington State there are hundreds of licensed nursing homes and alternative care facilities. These care facilities have little or no orientation for staff to the cultural background and bilingual needs of minorities, and few operators of nursing homes or other care facilities are minorities.
- o Minorities are substantially underserved by mental health services. The King County Mental Health Board needs assessment study of 1976 showed a 57 percent unmet need for the Spanish-speaking, 43 percent for Asian, 33 percent for Indians, 32 percent for Blacks and 32 percent for Whites. (Need was estimated by assuming that mental health needs of minority groups are at least equal to the needs of Whites or that a minimum of 12 percent of the general population has mental health problems.)



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- o Minority communities receive a disproportionately low rate of benefits from vocational rehabilitation services.

Minorities are underrepresented among the Department's employees, especially among service staff who work directly with clients, and on the Department's advisory committees. While DSHS has established affirmative action goals for hiring from outside the Department and for career development within, progress has been uneven and disappointing. Minorities tend to occupy lower echelon jobs, and there is little evidence of achievement with regard to career development or promotional advancement for minorities. (See Table 5.)

Table 5

DSHS Minority Employment  
as of  
February 1977

|                          |                |      |
|--------------------------|----------------|------|
| Total DSHS Employees     | 14,470.        |      |
| Total Minority Employees | 1,541 or 10.6% |      |
| Blacks                   | 668            | 4.6% |
| Asian Americans          | 299            | 2.0% |
| Indians                  | 262            | 1.8% |
| Spanish-Speaking         | 229            | 1.6% |
| Other                    | 83             | .6%  |

Approximately two-thirds of the Department's minority employees are women.

DSHS has not made adequate provisions to serve applicants who speak languages other than English. Because easy access to information about programs and the ability to communicate are essential to obtaining services, the existence of brochures and posters in other languages and the availability of staff with bilingual capabilities and signing ability are crucial if non-English-speaking and deaf clients are to be served.

Recommendations

- *The Department should make an aggressive effort to solicit service contract bids from minority community agencies and organizations for the delivery of mental health services, nursing home care, supportive living services, foster care, youth group homes and the like. The Department should develop financial incentives to encourage all service providers to expand services to minority groups and employ more minority staff.*
- *Informational brochures and posters should be prominently displayed in local offices and be made available in languages other than English to reflect local minority populations.*
- *In-service training of non-minority staff should include sessions designed to create an awareness of the cultural differences and particular problems of minorities. Representatives from the various minority communities should be involved in these sessions.*
- *To reaffirm the Department's commitment to improving services to minorities, the Panel recommends that the Office of Minority Affairs report directly to the Deputy Secretary. In our proposed organization (see Chapter VII), the Deputy Secretary would be responsible for seeing that policies are carried out by regional administrators. The major program divisions, which Office of Minority Affairs staff would monitor, would also report to the Deputy Secretary. Responsibility for policy coordination would be assigned to one person, the Deputy, who reports directly to the Secretary. The Office of Minority Affairs and its constituent desks should function as an ombudsman to assure that DSHS is providing needed services to all minority groups.*
- *The Department should make a strong commitment to its affirmative action goals in hiring and promoting minorities. Recent progress in hiring should be accelerated. The Department should launch an*

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outreach effort to be coordinated with minority organizations for the recruitment of minority and bilingual persons for policy-making jobs in the Department and for client contact positions in service delivery. The Department should establish a policy making it mandatory that each ESSO located in an area where substantial minority populations exist recruit minority clerks, interviewers, caseworkers and supervisors. The burden of recruitment should be placed on regional and ESSO administrators to ensure compliance. They would have the assistance of the Office of Minority Affairs and local minority organizations. The "three plus three" system, a statewide program which permits three minority candidates to be considered in addition to the top three merit system candidates, should be employed. Title XX training monies should also be used in minority recruitment. Under the terms of Title XX, unlimited federal monies are available for education and training and could be used to train minorities in preparation to their being hired by the Department. A condition for receiving DSHS/Title XX-paid training is that a certain amount of time must be served with DSHS upon completion of the course of study. Title XX covers the costs of the training and a stipend. Affirmative action goals for internal promotion and advancement of minorities should be tied systematically to career development plans through close relationships between the Office of Minority Affairs, the central Personnel Unit, and the Office of Training and Staff Development (see pages V-1 ff.).

- DSHS should make a concerted effort to appoint minorities to membership on the Department's advisory boards and committees. The Department should maintain liaison with the State Commissions on Asian-American Affairs and Mexican-American Affairs and seek the assistance of these bodies and other minority organizations in the state in its efforts to recruit minorities to DSHS staff and advisory committee membership. The administration of DSHS should especially seek inputs from the various minority communities as to the effectiveness of services from DSHS.

- *The Secretary should conduct an annual review of all programs to determine where there are significant gaps in services to minority populations.*

### C. CITIZEN INVOLVEMENT

Citizens' interests are involved in three distinct ways with the Department of Social and Health Services: (1) as clients or consumers of services provided, regulated or funded by the Department; (2) as citizens (taxpayers, vendors, clients and special interest groups) seeking to affect the policy of the agency; and (3) as citizen advisors and volunteers devoting their time and energy to DSHS. The representation of citizen interests in departmental affairs leaves much to be desired.

#### Advisory Bodies

In a desire to assure "citizen participation" in government, many DSHS advisory committees have been formed to provide citizen input. Some of these committees are mandated in state and federal law while others have been formed on the initiative of the Department. The Panel's brief survey of existing committees indicates that they may be too numerous, that their goals often overlap, and that some underrepresent clients and consumers of DSHS services.

Members of these boards, testifying before the Panel, expressed extreme disenchantment with the advisory role they have been asked to play because:

- o Advisory bodies often have poorly defined roles which do not effectively spell out their functions.
- o Some advisory committees have not been used on a regular basis, exist only on paper, are denied timely or accurate information, and/or are not provided with adequate staff support. They are then put in the position of rubber stamping departmental policies or opposing them from a weak factual position.

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- o Some administrators feel the advisory groups with which they must work have been "imposed" on them and therefore resent these groups. Other administrators have few skills in working with advisory groups, with the consequence that these groups are not used effectively as resources.
- o Little feedback is received by committees concerning their recommendations on departmental policies.
- o Finally, the lack of coordination among advisory committees causes citizen recommendations to be diffused in their potential impact on departmental policy-making.

Volunteers

Citizens serve as volunteers in many of the Department's programs. Eighteen percent of registered volunteers are also service recipients. Person-power equivalent to 410 FTEs (full-time equivalents) was donated to DSHS on a voluntary basis from February 1975 to January 1976. During this same period \$105,357 was donated to the agency in cash, while \$882,070 was donated in in-kind services. The Department's volunteer coordinators have done an excellent job not only in recruiting and managing voluntary effort, but in developing additional community resources for DSHS clients. These efforts should be encouraged and supported by the agency; encouragement and support have not always been forthcoming, however.

Citizen, Consumer and Vendor Rights

## The Hearings Process

The DSHS hearings process has been the major avenue for appeal by clients and vendors alleging departmental violation or unfair application of its own rules. Recent case decisions, e.g., Kelly vs. Goldberg (1970), and the advent of the Support Enforcement Program (see pages II-115 ff.) have

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caused the Hearings Unit's caseload to skyrocket from a few hundred cases to over 1,700 cases per year. In addition, the courts have handed down a series of rulings that call for a general tightening of administrative hearings procedures to protect the due process rights of clients seeking redress before administrative agencies. Taken together, these factors have created great pressures on the Department's Hearings Unit. Finally, DSHS hearings decisions are not now precedent-setting; previous decisions do not serve as the basis for current and future case resolutions. There is consequently no uniformity across the state in hearings decisions.

The DSHS Hearings Unit is located in the Office of Operations Review, Management and Budget Division. This placement has been unfortunate in several regards:

- o Location of the Hearings Unit in the Management and Budget Division gives the appearance that the major question involved in a hearing from the Department's standpoint is the potential cost to the agency. There is good reason to believe that this administrative arrangement is subject to question under the prevailing "appearance of fairness" doctrine of administrative law. Two class action suits are now pending which challenge the entire DSHS hearings process.
  
- o There is evidence that the process used to review hearings examiners' decisions is occasionally subject to pressures from the management of the Department. If a hearings examiner's decision is favorable to the appellant and costly to DSHS, it may be overturned (that is, rewritten) by a hearings reviewer in the Hearings Unit in Olympia. A number of hearings examiners charged that facts in many such cases were deleted or overlooked in the process of rewriting. It should be carefully noted here, however, that the vast majority of cases are not rewritten by the hearings reviewers. Moreover, many rewritten cases represent an honest attempt on the part of the reviewer to correct errors in

judgment. Nonetheless, the allegation that examiners' decisions are sometimes reversed for fiscal reasons in key cases calls the whole DSHS hearings process into serious question.

As a body, the examiners are a valuable and underused resource. They are in a unique position to evaluate the quality of rules written by the program divisions and to predict the impact of court decisions on their own caseload. There is little evidence that past Secretaries or other departmental managers have used them in this fashion.

Finally, in recent months the Hearings Unit has been scrutinized using industrial engineering (time/motion study) techniques to establish workload standards and improve unit management. This study has been conducted by the Office of Management. The use of "stop watch" techniques to establish the time that should be devoted to a hearing or to writing a decision is a serious misuse of this management method. It betrays little understanding or application of the process of administrative jurisprudence. Justice cannot be dispensed with a stop watch. We strongly urge that no management action be taken within the Hearings Unit on the basis of this study by the Office of Management.

#### Citizen, Client and Consumer Complaints

Citizen, client and consumer complaints often go unnoticed or unacted upon outside of the formal and lengthy hearings process or random individual cases that are championed by concerned employees. In addition, too many complaints find their way into the hearings process that could be dealt with more appropriately and effectively at a lower level and on a less formal basis if staff were made available. In recent years the small Office of Citizen Participation has become a center for dealing with some serious citizen, client and consumer complaints. This role has been assumed more by default than by plan, however, and the office is understaffed to meet the need.

### Vendor Complaints

The complaints of vendors, no less than those of citizens, clients and consumers, often go unattended in DSHS. Yet many of these grievances can be dealt with quickly and effectively if staff are assigned the task. Recent hiring of a few vendor consultants in the Department's vendor payments units has brought considerable benefits (see page V-13), and the concept deserves wider use.

### Recommendations

- *A coherent system of citizen advisory committees should be developed which would include the DSHS State Advisory Committee, existing regional advisory committees and community advisory committees in the major population centers. The State Advisory Committee, as now, would be appointed by the Governor and should meet at least six times a year with the Secretary of DSHS in an advisory capacity. The major functions of the Department's advisory committees would be to participate in Title XX planning, consult with the Secretary on the Department's programs and achievements, and produce information and recommendations for inclusion in the State Advisory Committee's biennial report on human services (see page IV-5). The above tasks would not preclude these committees from performing other tasks.*

*All existing legally mandated committees and specialized program advisory groups should be reviewed and, where possible, these should be reduced in number or combined. Where necessary, legislative action should be proposed to accomplish the desired changes in the advisory committee structure. Alternative approaches to soliciting citizen participation, such as greater use of short-term and task-oriented ad hoc advisory groups, should also be explored.*

- *An Office of Community Relations reporting directly to the Secretary should be created. This office would bring together some existing units and add some others:*



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Service Advocate Unit - This unit would have a small staff in Olympia and a service advocate in each of the regions. The regional service advocate would report directly to the Office of Community Relations. The service advocate's major function would be to hear complaints concerning services delivered by DSHS employees. The service advocate would be charged with speedy investigation of these cases and would have the authority to work at any level of the organization to resolve clients' or consumers' problems. The Service Advocate Unit would also work with Olympia and regional operations review units and divisional program heads to call attention to programs that receive a pattern of similar complaints. Another responsibility of the Service Advocate Unit should be the issuance of an annual report to the public detailing departmental achievement and continuing problem areas.

Vendor Relations Unit - A small staff in Olympia and a vendor relations representative in the regions would have as their major function troubleshooting and investigating complaints concerning the relations between the Department and service vendors (including agency, county and individual vendors). Staff would have the authority to work at any level of the organization to resolve the problem. The regional vendor relations representatives would report directly to the Office of Community Relations and for informational purposes to the regional administrator.

Citizen Participation Unit - This unit would be responsible for two functions now performed by the Office of Citizen Participation:

- Volunteer Coordination. The unit would monitor the quality of divisional volunteer programs, offer technical assistance to departmental volunteer coordinators at local levels, and

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*develop volunteer statistics. The volunteer coordination staff would continue to report to their present divisional, institutional or local office supervisors.*

- State Advisory Committee Support. The unit would provide staff support for the DSHS State Advisory Committee. Staff would be available to aid the regional offices in providing assistance to the regional advisory committees. They would serve as part of the regional staff but would maintain a close liaison with the Citizen Participation Unit in Olympia.*

*Fair Hearings Unit - The Hearings Unit should be moved from the Management and Budget Division and be placed in the Office of Community Relations. This unit should have two functions: adjudicating administrative rules providing for full appellate due process and making recommendations to departmental managers concerning the quality of departmental rule drafting. A regular procedure for consulting the Hearings Unit on such matters should be set up and fully utilized. Any pressure on the unit by top DSHS management should be prohibited. To assure greater uniformity in hearings decisions, decisions should be precedent-setting. To facilitate fair hearings, a complete study of the Department's review process should be undertaken, possibly by a group appointed by the Governor or Secretary from the Washington State Bar Association's Administrative Law Section, the Washington State Chapter of the American Society for Public Administration, the Washington Association for Social Welfare and the Washington State Chapter of the National Association of Social Workers.*

*Public Information Unit - The Public Information Unit should assume the functions now performed by the Office of Information and Adjustment, which is responsible for managing the*

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*correspondence the Department receives from the public; and the Office of Public Affairs, which is responsible for DSHS publications, press releases, contact with the media and public education about DSHS in general.*

*See Chapter VII for the organizational chart of the proposed Office of Community Relations.*

## IV. STATE POLICY AND PRIORITIES IN HUMAN SERVICES

Washington State lacks a well-defined philosophy for meeting the needs of its citizens for social and health services. The formulation of this philosophy, expressed in terms of goals, policy objectives and priorities, should be the joint responsibility of the Governor and the Legislature, as the elected representatives of the people. DSHS, as the major vehicle for human services delivery, should bear the primary responsibility for finding more efficient and effective means of implementing programs and achieving human service goals.

It appeared to the Panel that the previous Governor did not provide visible policy leadership and guidance to DSHS in carrying out the state's responsibilities in human services. Although the Legislature participated in a de facto priority-setting process through its budget legislation, policy and priorities have been determined in a more haphazard and less representative way, with a number of important consequences.

- o The previous DSHS Secretary, Charles Morris, assumed a particularly dominant role, and the existing philosophy of the state appears to be his, when he described DSHS as an "agency of last resort" during his tenure as Secretary from November 1973 to August 1976. The negative administrative style of the Department, the frustrating and excessively long forms, and personnel shifts away from caseworkers to budgetary, administrative and planning staff in Olympia all seem to reflect that philosophy. (See Chapter V.)
- o A variety of forceful interest groups has worked effectively through the Legislature to produce rapid change in human service priorities. These groups often work at cross purposes with one another, putting contradictory pressures on the Legislature and the Department. While one segment of the population demands an increase in services to special groups, cutbacks in social services and income maintenance costs are demanded by another. The result has been a relative

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increase in budget allocations for certain categorical programs at the expense of programs without effective citizen advocates, such as income maintenance. (See Chart 1, page II-6.)

- o Under the "agency of last resort" approach to human services of the former DSHS Secretary, program needs have been subordinated to fiscal considerations, especially the maximization of federal dollars. In the effort to garner the most federal funds possible for DSHS programs, the Department has shuffled program priorities and transferred funds among programs (e.g., the support of 100 percent state-funded GAU clients with 80 percent federal vocational rehabilitation monies, see page II-93), leading to vacillating and sometimes conflicting policies and priorities which confuse clients and service providers in the community.
  
- o Management and fiscal control have been centralized in Olympia, and field discretion, services and personnel have been reduced. Decisions concerning policy, resource allocation and program implementation have been centralized, and the influence and size of the DSHS staff support divisions (Administrative Services, Management and Budget, Planning and Research, and Personnel and Training) in decision-making has increased greatly, along with an emphasis on budgetary control, accountability and other cost-cutting management practices. The support divisions have experienced an increase of approximately 500 positions since 1971, of which 300 have been added since 1973. During the same period, social service staff have been cut by 450 positions; most of this 58 percent loss has occurred since 1973. Some applications of centralized management have been desirable and should be preserved, including the ability to provide accurate and responsive information to the Legislature, to obtain accurate management information for budget decisions, and to increase the use of federal and state funds in a flexible manner. However, the Department's centralized management capacity in budgeting, planning and administrative services does not appear to have been directed at

servicing the program divisions and their respective field operations. The increased research capacity of DSHS has often been used to garner federal funds for projects whose results have little significance for field operations. Budget flexibility has been used in decision-making at the Secretary's level without any apparent grasp of potential adverse effects on field operations. Sophisticated management information capability has never really been employed to assist front-line staff in the field, where it could improve service delivery, although the Panel found a great deal of field staff time is spent generating data. Large amounts of performance data are required of field personnel, but it is not clear how this information is used to evaluate the success of programs or to make policy decisions in Olympia. (See Chapter V.)

- o The goal of most DSHS service divisions and bureaus has become professional or unit survival and the garnering and maintenance of personnel levels. Individual units of the Department spend much time and effort protecting their organizational "turf." Olympia-level policy-making is often an inconsistent process of negotiation and buck-passing among managers, which leaves field units directionless for long periods of time. In this situation, problems which could have been anticipated easily and dealt with beforehand through a combined and unified effort are allowed to become crises which require immense amounts of staff time to resolve. "Crisis management" lowers the effectiveness of DSHS and its service delivery capacity. Management, with some notable exceptions, is often unwilling to take the risks necessary to implement programs or to formulate needed policy. Risk taking and organizational survival are seen as being at odds with one another. Risk decisions are pushed downward to the field level where they are less visible. Program managers and staff charged with policy interpretation do not provide adequate guidance for the line staff in the field. At the field level, local office administrators, supervisors and line workers are allowed to take risks necessary to make programs work, but are rarely given the management support to do so from superiors.

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- o Citizen participation, a tradition in this state, has been seen as a means of giving the Department visibility and credibility. A wide range of citizen advisory committees has been developed to this end. To the degree that these groups are task-oriented, they tend to be successful. Few, however, appear to be task-oriented or time-limited. In addition, the great variety and numbers of such groups have led to the duplication of citizen efforts. Program advisory committees often review issues similar to those reviewed by the geographically-defined committees. Increasing numbers of citizens also sense that their efforts have little impact on Department policy decisions, especially in the Title XX planning process as it evolves year by year. (See pages III-8 ff.)

Recommendation

*Washington should develop a coherent policy-making and priority-setting process in human services for the state government. The Governor, the Legislature, departmental staff, including the Secretary, and citizens all have important roles to play in the policy-making process. However, the Governor and the Legislature should take a central position: first, because a state policy for human services will affect the lives of many citizens and should be stated openly and clearly by the state's highest elected officials; second, because the policy and program guidelines set forth by the Governor and the Legislature should be reflected in the funding priorities of the DSHS budget.*

*The major objectives of a process of policy formulation for human services should be:*

- *To reaffirm that the responsibility for setting Washington State's human services policy and priorities rests squarely in the hands of the Governor and the Legislature;*

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- *To ensure that the DSHS budget clearly reflects the service priorities determined by the state's elected representatives;*
- *To ensure that the Governor and Legislature have coherent, well-articulated information from citizens, clients and DSHS administrators in developing the state human services policy and priorities; and*
- *To ensure that the Department's progress toward achieving human services policy priorities is reported regularly and in an accurate manner to the elected officials and citizens of the state by the Department.*

*We recommend that a process of policy formulation should include the following steps:*

*Departmental and Citizen Input*

*In formulating a human services policy and priorities, the Governor should have the benefit of recommendations from both the Department and the citizen advisors to the Secretary, the DSHS State Advisory Committee. We therefore recommend that two parallel reports to the Governor should begin the human services policy-making process, one from the Secretary and the other from the State Advisory Committee (see page III-12). Both reports should outline a suggested set of major human service priorities for each DSHS program division and a brief rationale for them. The State Advisory Committee's report should be sent to the Secretary in advance of its submission to the Governor for consideration and possible incorporation in the Secretary's report. Although consultation would take place at all levels between citizens and departmental personnel, their reports should be submitted separately to the Governor.*

- *The Department's Report. As at present, the Secretary of the Department should develop a set of human service priorities for*



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*DSHS and a departmental budget proposal based on the recommendations and budgets developed by each division and each regional office. (The regions should develop budgets for the use of discretionary funds to be allotted to each region for particular regional needs, see page VI-5).*

- *State Advisory Committee Report. The biennial preparation of a set of recommended human service priorities and ongoing consultation with the Secretary on DSHS programs and achievements should become the major tasks of the DSHS State Advisory Committee. The Advisory Committee's biennial report should include recommendations from other departmental advisory committees at divisional, regional and community levels. The Advisory Committee should serve as an independent source of information and opinion for the Secretary of DSHS and for the Governor. The Advisory Committee should work in close collaboration with the Secretary and should receive adequate staff support in its work from a unit set up within the proposed Office of Community Relations (the successor to the Office of Citizen Participation, see pages III-12 ff.).*

*The Governor's Formulation of Policy and Priorities*

*Using program and budgetary information from the DSHS Secretary and the State Advisory Committee, the Governor would formulate her human services policy and legislative priorities. The Governor's formulation of policy and priorities should be communicated to the citizens as well as the Legislature. The Governor might give consideration to setting forth her human services policy and priorities in a message to the people or to the Legislature. Such a message could outline goals, objectives and priorities for human services in the state and how the Department's programs relate to these goals and objectives. It could also explain the interrelationships between the programs and objectives of DSHS and such other state*

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*agencies as Employment Security, Labor and Industries, Veterans Affairs, Superintendent of Public Instruction, Commission for the Blind and the State Board of Health, in providing educational, rehabilitative and health services and preparing citizens for work.*

*Legislative Action and Departmental Policy*

*Once the Legislature has enacted human services legislation and a DSHS budget, the Secretary of DSHS should be responsible, as at present, for analyzing the impact of the Legislature's actions on the Governor's original priorities and budget request. In this task the Secretary would have the assistance of departmental budget and program personnel, the Office of Financial Management and the Assistant for Human Resources in the Governor's Office. The Secretary should also solicit the views and advice of the DSHS State Advisory Committee. After receiving the Secretary's report, the Governor would modify the original program priorities and related budget as necessary. The revised statement of program priorities should be communicated to all departmental staff, the DSHS State Advisory Committee and the Department's other advisory bodies so the priorities will be known and understood by citizens, clients and departmental staff.*

*The Secretary's Annual Progress Report*

*Each year the Secretary should submit to the Governor a brief report outlining the progress the Department has made in achieving DSHS program priorities. This report should be based on reports coming from the program divisions and regional offices. The Secretary's report should outline any shifts in these priorities along with the reasons for the shifts and should be accompanied by a fiscal analysis that would show the degree to which actual departmental expenditures corresponded to stated priorities. Copies of the Secretary's report should go to the Governor, the DSHS State Advisory Committee and all divisional and regional administrators.*

Other Recommendations

- *The Department's administrative support capacity should be redirected to serve the program divisions and their respective field operations. The program divisions' capacity to plan, budget and manage personnel and training matters should be established or, where it already exists, strengthened. Personnel necessary to provide these support functions should be obtained primarily by transfer of staff from the current support divisions to the program divisions. All current administrative support divisions should be redesignated "offices" to reflect and facilitate the role of the support services remaining with the Secretary in Olympia. (See Chapters V and VII.)*
  
- *The Secretary should retain the staff capability for:*
  - *Liaison with the Governor, Legislature, congressional delegation, federal agencies, other state agencies and local governmental units.*
  
  - *Integration of conflicting programs on divisional and regional level.*
  
  - *Monitoring and evaluation of divisional achievement of program and policy priorities as articulated by the Governor.*
  
  - *Administrative support to program divisions where it is not cost-effective to provide that support within the divisions themselves.*
  
- *To ensure that the Secretary has the personnel support to implement the policy directions and priorities established by the Governor and the Legislature, the Panel recommends that the Secretary have greater flexibility in filling certain personnel positions in the Department. Specifically, the Panel proposes that a position should qualify for "exempt" status if it meets any of the following criteria:*

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- *It is "policy-determining," that is, it is similar to elective and appointive officials who head departments; or,*
- *It is "administrative," in that the incumbent has important duties and responsibilities of an administrative nature, such as director of a division, a region, a bureau or an office; or,*
- *The position carries the responsibility of "principal assistant" to a policy-determining or an administrative position where trust and confidentiality are required.*

*It is the Panel's expectation that these criteria would be applied by the State Department of Personnel on a case-by-case, position-by-position basis, pursuant to a request from the Secretary or the Governor.*

- *Stronger regional offices should be established to assist the Secretary in carrying out all programs with extensive service delivery systems, whether direct services or purchased services, at the community level. The regional administrators should report to the Deputy Secretary. Placement at this level would reflect their responsibility and authority as the Secretary's major administrative agents in diverse geographic regions of the state and would assure close coordination of service delivery at divisional and regional levels. (See Chapter VI.)*
- *The Panel recommends that the Governor appoint a group of five, whose membership should be drawn from those persons who have served with the Panel, to advise her on the Department's progress in implementing those changes in departmental organization and operation she decides to pursue. No written report, however logically and eloquently presented, can "speak for itself" once discussion commences on its contents. The Report of the Governor's Select Panel on DSHS is no exception. The more complex and broad the subject matter and the more far-reaching the recommendations, the greater the need for the report*

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*to have interpreters and advocates--in short, a "voice." Once the Governor decides what actions to take on the report and its recommendations, it is essential that an independent monitoring system be created to provide her with information on the Department's progress toward implementation. Because implementation will not be accomplished in a few days, weeks or even months, the Governor will require an ongoing capability for monitoring changes in policy, planning, organizational structure and service delivery over time. This group should be able to call on other Panel participants for assistance as different topics come up for discussion, decision and implementation on an ad hoc basis. In this way, the resources of the entire Panel would be available to the Governor in an advisory capacity. The life of the group should extend to December 1978. The group should meet quarterly with the Governor and should be staffed by the Governor's Special Assistant for Human Resources.*

*The Panel also recommends that the Governor appoint at least three Panel members to the DSHS State Advisory Committee. Because the State Advisory Committee is a statutory body, the participation of Panel members would assure continuity beyond the submission of the Panel report to the Governor and would also make full use of the perspectives and knowledge those individuals have gained in serving on the Panel.*

## V. REVIEW OF ADMINISTRATIVE SUPPORT SERVICES

## A. PERSONNEL AND TRAINING DIVISION

The Personnel and Training Division is charged with the responsibility for formulating, developing and maintaining various personnel, labor relations and training functions for DSHS throughout the state. The division employs approximately 80 staff and has an annual budget of \$4.8 million. While other Olympia administrative divisions have gained new staff slots ("full-time equivalents" or FTEs) in the last several bienniums, the Personnel and Training Division has lost staff, notably through a 30 percent reduction in the 1973-75 biennium alone. Given the volume of personnel actions in the Department and the nature of the personnel-related problems the Panel encountered, the priorities of administrative staffing appear inappropriate.

Personnel needs a stronger field presence. Although there are personnel officers in all regions, some program divisions and some institutions, the number of personnel officers in the field is insufficient for handling field requirements. Approximately 80 percent of the Department's employees are stationed elsewhere than Olympia, so the need for personnel consultation by DSHS managers is more decentralized than is the personnel staff. It should be noted that State Department of Personnel (DOP) staff have identified this weakness themselves in the past year and are taking action to overcome it. They need and should have support in this effort.

Personnel Policies and Procedures

Turnaround time on personnel or position action is too long. At present, an average of 19.4 working days is required to fill a vacant position, from initial request to appointment, if the centralized Department of Personnel (DOP) referral system is used. While some of the responsibility for this delay rests with the Personnel and Training Division in DSHS, a large part of the difficulty lies with the cumbersome personnel practices of the State

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Department of Personnel. The DOP currently attempts to service more than 20,000 positions per year with a 15-year-old nonautomated system designed to serve a much smaller number of positions. On the average, eight out of twelve names on a register are "no good," because the applicants have obtained other jobs, moved on to other areas, died, or have otherwise become unavailable for work. Recently DOP has allowed DSHS to establish "local lists" developed by DSHS for certain types of positions. This action should speed up the personnel process considerably.

Personnel policies set down by the State Personnel Board, the State Department of Personnel and union contract are poorly communicated to field personnel officers and to DSHS managers. Many field personnel officers learn of state personnel policy changes or a union contract amendment at union meetings or in labor/management conferences.

#### Labor-Management Relations

Personnel officers and departmental managers have limited background in dealing with labor-management relations. The unusual contracts DSHS has signed with its various collective bargaining units further complicate the situation. The agreements provide for labor/management conferences over a wide variety of issues dealing with working conditions and management practices. The conferences take place at local, regional and divisional level, and produce de facto local amendments to the various union contracts signed by the Department. Such conferences could provide a highly creative means for management and employees to hammer out disagreements and jointly deal with organizational problems. Unfortunately, the lack of labor relations background on the part of most DSHS managers has often meant that the union has used the managers' lack of knowledge or experience to their own advantage. Lack of skill has also led to DSHS management losing a disproportionate number of union grievance hearings.

### Affirmative Action and Minority Hiring

Minorities are heavily represented among the Department's clientele; they are underrepresented among the Department's employees, especially among service staff who work directly with clients. Although women are well represented on the DSHS employee roster, they tend to occupy lower-paying, lower status positions; few women are found in management positions. While DSHS has established affirmative action goals for hiring from outside DSHS and for career development and promotion within, progress has been uneven and disappointing. (See also "Minority Affairs," pages III-4 ff.)

### Training and Staff Development

The Office of Personnel Development and Training (OPDT) is responsible for providing training and educational programs to all DSHS employees. A staff of about 26 serves a Department of 14,000 employees. Most trainers are stationed in training centers in Tacoma, Seattle, Yakima and Spokane. The Assistant Director of OPDT doubles as the Training Officer for staff in Olympia. Two other trainers, stationed in the Bureau of Juvenile Rehabilitation and the Adult Corrections Division, are functionally under the control of BJR and Adult Corrections, respectively. Some institutions, e.g., Eastern State Hospital, have their own training officers who do not report to OPDT. Two staff are assigned to manage the Title XX training contracts with the state colleges and universities.

There is widespread dissatisfaction with training among line employees of DSHS. They either do not receive training at all or receive inadequate or inappropriate training that does not relate to job needs. The OPDT has an insufficient number of trainers to serve the numbers of employees involved. Beyond paying OPDT staff salaries, the state invests little of its own money in DSHS training. Most training funds are provided under federal Title XX or LEAA (Law Enforcement Assistance Administration) funds. Many departmental personnel simply are not eligible to participate in training organized with these funds.



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A DSHS training plan exists and there are training committees in each of the regions. With the small staff available, however, it has been difficult in many instances to follow-up even those division training plans that are well-developed. Moreover, due to Title XX's broad scope and sheer volume, managing and planning Title XX training absorbs much of the staff's time both in Olympia and at the regional level.

Top management's policy on training has been unrealistic. OPDT has been urged to do more direct training, using DSHS training staff. The limits on the size and capability of staff makes this demand difficult to fulfill, however. The Northwest (Seattle) Training Center has four trainers including the supervisor to serve Regions 3 and 4, and one of these trainers has responsibility for developing management training for the whole Department. Under workload standards, line worker time devoted to training is counted as "down" or unproductive time.

In recent years, OPDT has put some emphasis on management training. An excellent supervisory training program has been developed and is being tested in the Community Services Division. A good clerical training program is available but badly understaffed. Given staffing problems, much of the OPDT staff time has been directed toward arranging and setting up training from outside sources. Staff act as brokers for training contracts as well as managing the Department's training centers. Much of this training has been provided by the state colleges and universities under Title XX funds. It should be noted that relatively little effort has been made to utilize the Department's own line staff as training personnel.

#### Recommendations

##### *Organizational Structure*

*The current Personnel and Training Division should be divided into a Personnel Unit within the Office of Budget and Executive Services and an Office of Training and Staff Development; both offices would report to the*

*Deputy Secretary (see organizational chart, Chapter VII). There is currently little functional relationship between personnel and training and it is our belief that both offices will perform better apart.*

#### *Personnel*

- *More discretion is needed to set up local employment registers within DSHS. The current negotiations between DSHS and the Department of Personnel (DOP) on this matter should receive the strong support of the Governor and the Secretary. It now takes an average of 43 days to establish and reallocate a position in the Department; of this time, 20 days are necessary for DOP procedures. We recommend that the Governor instruct DOP to follow the lead of the U.S. Civil Service Commission and become a merit system monitoring and evaluating body. With less direct DOP involvement, the day-to-day personnel activities of DSHS will speed up.*
- *Personnel staff in the field should be increased in numbers and given adequate clerical assistance to perform paperwork connected with personnel and position actions. The role of field personnel officers as personnel consultants for a region or institution should be communicated to all program managers and regional staff.*
- *The communication of policy changes from Olympia to the field personnel officers should be more timely.*
- *The Department should provide funds for extensive labor-management training throughout all levels of DSHS, and especially for all field personnel officers.*

#### *Affirmative Action*

- *The Department should make a strong commitment to its affirmative action goals in hiring and promoting women and minorities.*

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*Affirmative action goals for internal promotion and advancement should be tied systematically to career development plans, and training should relate to career development plans in an effective way. (See also affirmative action recommendation, page III-6.)*

### *Training*

- *Training should become an integral part of an employee's career advancement within the Department. The Department should develop strong and comprehensive training programs for all of its employees, including an extensive induction-orientation program for new employees. Adequate staffing levels would be required to permit employees the time to attend training sessions. Each employee should have a training file which documents knowledge and skill attainment, courses attended and a career development plan. The Department should recognize that a serious commitment to training and staff development will require a significant financial investment in programs for those employees who are not eligible for training under federal Title XX or LEAA monies.*
- *The major function of the new Office of Training and Staff Development should be to assist divisional and regional training officers in developing plans and, in cooperation with the state budget unit, to assess the fiscal impact of those plans. The office should develop core training packages for new employees, monitor and evaluate regional and divisional training for quality and relevancy to employee needs, manage Title XX training funds, and prepare statistical reports for the Secretary and for DOP concerning training.*
- *Each program division, major institution and region should have a training officer with a small support staff. (Training officers could be shared by more than one region or institution.) The divisional and regional training officers should take the lead in developing and implementing training plans at their respective levels. Short of a*

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*large staff expansion, the training units will not be able to provide extensive direct training. Therefore, central office, divisional, institutional and regional training staffs should function as training managers and brokers.*

- *The resources of the state's institutions of higher education and private consultants remain important to departmental training. These resources should be channeled more effectively by DSHS personnel staff to meet the objectives of divisional and regional training plans.*
- *Meritorious front-line service workers should be recruited on a part-time basis to provide training for their colleagues in preference to outside or supervisory consultative training specialists. Once those individuals are identified, training units should be supported by management in obtaining the released time of these individuals to perform training.*

#### B. PERFORMANCE APPRAISAL AND WORKLOAD STANDARDS

One of the major thrusts of the Department in recent years has been to develop workload standards for ESSO clerical, financial services and social services staff. Workload standards are being developed for other units in DSHS as well. The stated purpose of these standards is to enable administrators to allocate field service personnel on a rational basis. Such standards also allow appraisal of an individual worker's performance compared to the standard time it takes to perform various aspects of the job.

Unfortunately, the Workload Planning and Control Program (WLPC) system currently used for clerical and financial services staff has had undesirable side effects on service delivery. While the workload standard for a face-to-face eligibility interview varies, the range is from 14 to 20 minutes. In this time the financial assistance worker has little opportunity and no incentive to ascertain the client's need for services

beyond income maintenance; under WLPC, the time allotted is sufficient only for verifying the eligibility information contained in the client's completed forms.

In the Panel's opinion, the industrial engineering philosophy that underlies the Department's development of workload standards is highly appropriate for an assembly line technology producing material goods such as ball bearings, autos or airplanes. It is less appropriate in the provision of human services where the quality of the interaction between the professional and the client is central. Regardless of how sophisticated an evaluation system becomes, it must be tied to a set of service delivery outcomes. The field of social work administration is currently developing viable ways to measure the performance of social workers in terms of outcomes. This approach should be more useful than stop watch measurement of the caseworker.

#### Recommendation

*The Department should develop standards for adequate staffing of services which reflect values such as the effectiveness and humaneness of treatment in addition to measurements of time and efficiency. The industrial engineering model of workload standards and performance evaluation cannot measure human service outcomes. The allocation of staff resources based on workload standards alone is both undesirable and impractical. Alternative ways of measuring worker performance and service outcomes have been developed and should be adapted for DSHS use with professional and service staff participation (e.g., single subject designs and goal attainment scaling techniques). In some instances the techniques for designing and delivering rehabilitative and preventive services are not sufficiently effective or do not even exist. More experimentation and exploration by DSHS, nongovernmental social service agencies and professional schools will be necessary.*

## C. BUDGET, MANAGEMENT AND ADMINISTRATIVE SERVICES

Management and Budget Division

One of the most important tools used to maintain close control over policy in operations by departmental top management has been the Management and Budget Division, with 225 employees and a budget of \$4.8 million. As the information available to top management has become more sophisticated over the last six years, a substantial effort has been made to control division expenditures. However, the increased ability to shift funds and to indicate to legislators how monies have been spent has not necessarily led to the improvement of the Department's ability to deliver services. The Office of Budget Services, crucial in most major departmental policy decisions, has become insulated from effective program division or field level recommendations regarding major program and contracting decisions. The Panel repeatedly found that these recommendations have been regularly ignored when crucial decisions were being made. The same administrative pattern emerged during the allocations process. Shifts in funding were made without consulting program division managers adequately or making much attempt to assess the impact of the decision on service delivery. The lack of regional influence is specifically reflected in the allocation of Title XX resources as outlined in the recently circulated Proposed Plan for Fiscal Year 78. The proposed distribution of the Title XX funds appears to be based on priorities other than those recommended by citizen groups and regional offices.

The Panel relates this pattern of administration to the fact that the Department has operated in a tight money situation without a clearcut set of service priorities for individual programs. Under these circumstances, it is difficult to defend funding shifts or manipulation on other than narrowly pragmatic grounds. The budget staff's lack of communication with program personnel during crucial periods in the budget-making process is therefore understandable. Yet, even if dialogue between the program divisions and central budget staff had been established, most program

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divisions would have been unprepared. The program divisions have not had the budget expertise available to translate program priorities into effective budget requests or to negotiate changes in budget or allotments. It is highly significant that when the Department's former head of Management and Budget took over the Community Services Division, he developed his own in-house budget capacity.

The Office of Management may be duplicating work already going on in other parts of DSHS. One respondent who had conducted an analysis of this unit's current projects indicated that most of the projects duplicated work being carried out by other DSHS units. If this is the case, it represents a serious waste of resources.

#### Administrative Services Division

The Administrative Services Division employs 850 persons and has operated on a fiscal 1977 budget of \$14.3 million. Most dissatisfaction with the current Administrative Services Division lies in the areas of contracting, vendor payments and management information systems. However, it should be pointed out that other units within the Department and other state government and community agencies contribute materially to these problems.

#### Contracting

No single office in DSHS is charged with all contract administration, including ongoing monitoring of compliance, performance and quality of service. Operations Review in the Administrative Services Division monitors compliance for vendor contracts only through infrequent performance audits. Presumably program personnel in the different program divisions monitor progress on contracts. The Contract Management Section of the Administrative Services Division assists program personnel who write personal services contracts and does some pre-performance work on some project grants; but it does not monitor compliance, performance or quality of service. Federal grants and contracts are coordinated by the Office of

Administrative Regulations in the Planning and Research Division. This office serves as a liaison between program personnel and federal authorities and maintains a file on the status of federally-funded projects; however, it does not monitor these contracts.

Contracts do not have clear work expectations written into them. Rather than develop a clear scope of work with individual vendors, program personnel refer to their service manuals. The manuals are meant as regulatory guides for social service staff and do not explicitly detail contract deliverables. As a result, vendors or contractors are continually confused and seek clarification from program managers. The clarifications received are often arbitrary and shift from day to day or from contract to contract. In other instances contractors use the vagueness of the manuals to side-step their own contract obligations. Because contracts are not written with sufficient specificity to permit evaluation and control, auditing of contracts is based on reimbursing the vendor for expenses rather than reimbursing for satisfactorily completing a task or delivering an item of value to the Department. Open-ended contracts are written and no effective management of the contract takes place to ensure compliance during the actual performance period. Post-audits occur too late to prevent the Department from being damaged financially.

The Budget Office regularly intervenes in the contract process, excluding or overriding the program manager, despite its own minimal information concerning the effects of the budget decision on the program in question. Such intervention causes serious difficulties in negotiating contracts and maintaining equitable contractor relationships. Communications between program contract officers and budget officers are not good.

Vendor rates are set in the Planning and Research Division, while those with most knowledge of the factors inherent in those rates are in the program divisions and the Administrative Services Division's contract section.



### Vendor Payments

Each of the Panel's working groups collected its own set of "horror" stories concerning vendor payments, particularly in the medical payments area. The concern focused on nonpayment or less than timely payment which caused such serious cash flow problems for the vendor that continued operation of an agency or business was sometimes threatened.

Two units currently account for DSHS vendor payments: the Office of Accounting Services, Administrative Services Division, and the Medicaid Management Information System (MMIS), operated by a private contractor (EDS, Federal Corporation), in the Office of Medical Assistance, Division of Health Services. The latter unit accounts for all Medicaid payments made through DSHS. Both systems should have the same capacity to make routine payments within the acceptable industrial standard of two weeks (10 working days) from receipt of invoice, and to deal in a timely fashion with special problems, such as vouchers which have been inaccurately completed, coded or processed, by tracing the problem, helping correct it and walking it through the billing process.

Of the two systems now in operation, the most time, effort and money have been spent on MMIS because of the federal subsidy for use of this system for Medicaid. The program's statistical data on MMIS' success are impressive. The statistics do not agree, however, with the admittedly anecdotal data coming from departmental personnel in the field which indicate considerable delays in reimbursements. Nor do they agree with the negative attitude of the medical vendors contacted. The apparent time lag in payment by DSHS may be explained by the period of time needed to debug the new system. EDS personnel's lack of familiarity with departmental and field office operations prevented them initially from handling inaccurate vouchers properly. It could also be speculated that the system was used to control departmental cash flow in order to prevent budget overruns and computer errors.

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Less attention has been paid to the Department's other vendor payments operation until recently. Personnel in the central Disbursements Unit had been reduced in the past year while the volume of its workload went up. The Disbursements Unit suffers from a high turnover rate because of the pressures of the work; operations are largely carried out manually. The unit has, however, shown considerable capacity to deal with vendor payment problems. The recent hiring of a vendor consultant to assist local offices and vendors in submitting correct invoices is a step forward. MMIS also has a small staff of vendor consultants.

Many problems with vendor payments begin at the local level with a vendor invoice error or ESSO error in improper coding. Yet, neither MMIS nor the Office of Accounting Services has much presence on the local scene. Most problems start locally but few are dealt with at that level. Most rise to the top to inundate the staff in Olympia dealing with vendor payments.

#### Management Information Systems and Computer Services

The director of the Administrative Services Division has indicated that at present DSHS has 16 separate management information systems and 56 subsystems. Millions of information bits float about DSHS in any given year; the value of much of this information to departmental managers at any level is dubious, however. Middle management and worker perception of the departmental information systems may be characterized as follows:

- o Immense amounts of information are required, much of it for unclear reasons. In a review of Washington Administrative Code (WAC) rules and regulations by the Community Services Division, one field office was able to reduce data gathering forms from 52 to 36 without violating any federal or state report procedures and indicated that still further reductions could be made.
- o The same data may be requested two and three times of field offices by Olympia--sometimes in the same month. Data apparently

cannot be retrieved from the management information system concerned, or it is not being shared among the program divisions at the Olympia level; field personnel believe that the data originally sent to Olympia must be lost.

- o Data do not flow from Olympia to the field quickly or accurately. A local office administrator needed information, waited in vain for weeks and finally reproduced the needed data by hand, using precious hours of social service staff time. This incident is typical. Many program managers and local managers must maintain duplicative information systems in order to operate. As a consequence, inordinate amounts of staff time are given to records keeping which is not cost-beneficial.
  
- o Forms are designed for computerization without consideration of the staff or clients who will use them. The implementation of the Title XX Social Service reporting system in the fall of 1975 and subsequent retraining in the use of forms in the spring of 1976 provide a classic example of costly redesign and retraining efforts. Many local managers have received little or no training in using computer printouts. When printouts are available, they often prove of little use to the field.

Finally, the Panel expresses its concern over the new UNIVAC system being installed for the Department by Sperry-Rand to replace the IBM 360's now in use. Given the deficiencies in the Department's information system design, increased computer capacity will mean little if the data fed into the system are duplicative, inadequate or unnecessary. As the old saying goes in the electronic data processing field, "Garbage into the system--garbage out of the system."

Recommendations*Budget and Management*

- *The Management and Budget Division should be combined with Administrative Services to become the Budget and Administrative Services Unit within the Office of Budget and Executive Services. In this way budget and management would be clearly designed as staff services to the Secretary and linked to the contracting and accounting processes.*
- *The function of the Budget and Administrative Services Unit should be to assist the Secretary in resolving conflicting demands for program resources and ensuring that resources throughout the Department are clearly tied to the Governor's program priorities. Resource allocation and conflict resolution should be done in the closest cooperation with program divisions and contract officers.*
- *The program divisions should have their own staff capability to develop budgets and negotiate with the Secretary's budget staff. Division budget units should be set up where they do not exist and be strengthened where they do exist. Staff for these new units should come from the present budget unit. Within broad guidelines set down by the Secretary, the budget for each program division should be generated in the division and adhere to the Governor's program priorities.*
- *The budget process should be clearly tied to the policy-making process discussed in Chapter IV. Shifts in budget should be reflective of an open, well-articulated shift in policy priorities. It should be the responsibility of the Deputy Secretary to assure that there is close coordination between program policy formulation in the divisions, budget decisions and the contracting process.*

- *The regional offices should have limited budgetary capacity to generate budgets for ESSOs and possibly other selected local DSHS offices, within departmental guidelines; to control the expenditure of allotments to ESSOs and other selected DSHS offices; to assess in a fiscal note to the Secretary the impact of major shifts in funds on local service delivery programs and on the priorities recommended by the regional advisory committees; and, to budget and use discretionary funds to meet unique regional needs (see Chapter VI).*

#### *Contracting and Vendor Payments*

- *The Secretary of DSHS should assign responsibility for administering all departmental contracts, including vendor contracts, personal services contracts and federal grants and contracts, to a single contract management unit in the proposed Budget and Administrative Services Unit. Close coordination should be instituted between contract officers, the budget office and program personnel, along with the clear delineation of roles in the contracting process.*
- *Contracts should be written with a clear scope of work as well as a time frame within which the tasks are to be accomplished. Manual material should not be used to substitute for individually negotiated tasks. Emphasis should be placed on managing, monitoring and, if necessary, renegotiating contract performance according to the timetable of the work plan. Post-audits are desirable, but they are not sufficient to protect the Department's interests.*
- *The contract unit's Contract and Grant Manual is an excellent guide. It should be made more visible to all program managers, and it should be followed.*
- *The regional office should have the capability to manage local contracts, especially those with local government units and large private agencies providing umbrella services--e.g., community mental health*

centers. The regional office could also assist program managers and the contract unit in negotiations of such contracts. (See Chapter VI.)

- *The setting of vendor payment rates should remain the responsibility of the Office of Planning, Evaluation and Research. However, the program divisions should be closely involved in the rate-setting process and should specify the service components to be included in the rate package.*
- *The vendor payments unit and MMIS should be consolidated in the proposed Budget and Administrative Services Unit. Efforts should be made to give other areas of vendor payment the same computer capacity as MMIS.*
- *All vendor payments in the Department should move to a 10 working day standard of payment for proper invoices received. Under no circumstances should manipulation of vendor payments be used to prevent budgeting overruns in the Department. The vendor should not be made to pay for the inability of state government to project its costs.*
- *The limited vendor consulting services now provided through both MMIS and Central Disbursements should be transferred to the Vendor Relations Unit, Office of Community Relations (see page III-12). Services should be expanded and provided at the local level. Each regional office should have a contracting and vending team whose major role is to assist in the negotiation of contracts, evaluation of contract performance, training of vendors and local offices in proper billing procedures, and troubleshooting billing problems of vendors. The Budget and Administrative Services Unit would retain the responsibility for setting up an effective routine system for all vendor payments while vendor consultants in the region would handle difficult cases and work on vendor error problems.*

*Management Information Systems*

- *The DSHS management information system should be housed in the proposed Budget and Administrative Services Unit.*
- *High priority should be given to current efforts in the Department designed to simplify and "clean up" existing management information systems and subsystems. To accomplish this job a team of electronic data processing specialists should be combined with a group of individuals thoroughly familiar with the operations of service delivery systems, especially at the local level, whose purpose should be:*
  - *To eliminate duplicative management information systems or subsystems.*
  - *To purge management information systems of useless and duplicative data.*
  - *To ensure that new management information systems are cost-beneficial in terms of the time diverted from staff service delivery activities.*
  - *To ensure that data gathering forms are easy to complete for both clients and staff and that the data gathered are needed for DSHS decision-making.*

*A management information systems specialist from this team should be detached to each regional office to evaluate the impact and usefulness of management information systems in the field.*

#### D. PLANNING, EVALUATION AND RESEARCH

Planning, evaluation and research should be combined functions in an administrative agency to be effective. The planning process sets the goals

and objectives whose achievement later will be evaluated by the policy, program and unit operations reviewers. Close, effective cooperation among these units is essential since they are functionally intertwined. Research is also an essential component of both the planning and evaluation processes. The evaluator often produces data crucial not only to the planner but also to the researcher. No matter how these functions are organized, they should be capable of service to three levels of DSHS: the Secretary and his/her immediate staff, the program divisions, and the regional and local units.

The Division of Planning and Research employs approximately 225 persons and operates on a 1977 budget of \$3.6 million. In DSHS, planning and research have been separated from evaluation. Performance and fiscal audits of programs go on in the Office of Operations Review, Management and Budget Division, while central office planning and research proceeds in the Planning and Research Division. Little evidence was encountered in interviews to indicate that the Planning and Research Division serves the program divisions or the regional and local offices. Immense amounts of data are required by the Planning and Research Division, but program divisions and regional and local offices receive little useful feedback. Studies have been undertaken that are useless to administrators because of their lack of timeliness or relevance to real operating needs. Consultants have been hired to undertake or complete jobs that should have been within the capability of the Planning and Research Division.

The Planning and Research Division does have a research plan that is based on division priorities. The evidence the Panel gathered indicates that this plan has not been implemented. Instead, the priorities of the research unit are often set by the availability of federal research funds.

Planning is crucial not only at central office level but also in the field, particularly in areas such as health, children's services, and so on. A serious deficiency exists in that, outside of Title XX, DSHS has no real regional or local planning capacity.



Recommendations

- *At the Secretary level, planning, evaluation and research staff should be combined in an Office of Planning, Evaluation and Research (OPER) under the Deputy Secretary. This office should support the Secretary's role as integrator of conflicting program and resource priorities. It should perform external evaluations of the program divisions, facilitate inter-divisional cooperation, and identify needs for service not falling within any single division's purview. The following units would be smaller in size than at present and would avoid duplicating similar efforts at the division level.*

Planning Unit - *This unit would review data on DSHS' achievement of the Governor's human service priorities. It would also review evaluation information from all sources (divisional, regional, local and federal) in order to advise the Secretary and Deputy Secretary, in consultation with the Department's budget staff, on the means of integrating conflicting program policy priorities and budget requests from the divisions and regions; and to identify and plan for service needs that will take the integrated effort of several divisions.*

Evaluation Unit - *This unit would be capable of both program and fiscal audit and would evaluate the program divisions, assist regional offices in the review of local office operations, and evaluate contractor performance as requested by the region.*

Research Unit - *A staff of experienced researchers would conduct research studies that could not be performed in the program divisions, as needed by the Secretary and regional administrators.*

- *The program divisions should be provided with planning and research staff of their own. The major function of these staffs would be to*

*develop alternative program priorities and plans on both a short- and long-range basis for their division management. Evaluation of the program divisions would remain the responsibility of the Secretary, assisted by the regional administrators. The divisions, however, should remain free to conduct in-house management evaluations of program operation and employee performance as necessary for effective administration.*

*The regional administrators' staff, consistent with their responsibility to assist the DSHS Secretary, would be capable of planning, performing local office operations review and contract monitoring and evaluation. Regional staff would be organized into teams to perform each of these functions. Each team would be headed by a team leader, the major resource person at the regional level in the function to be performed (e.g., planning, operations review). The team approach would allow the maximum integration of closely tied functions and prevent the development of oversized regional staffs.*

*The manner in which the region and the Office of Planning, Evaluation and Research would divide evaluation activities should be carefully noted. OPER would be responsible for the external fiscal and performance evaluation at the program division level and the other administrative support units, including the regional offices themselves. The regional office would be responsible for the fiscal and program audit of all local offices under its coordination and all major local governmental and private agency vendors in its area. OPER and the regions would cooperate with one another in coordinating evaluation activities. The regions could call upon OPER specialists for special audits. Evaluation priorities at both levels would be identification of the degree to which the Governor's designated human service priorities have been achieved; evaluation of management operations supporting program priority achievement; and evaluation of the effectiveness of individual employee performance appraisal systems in terms of their desirable and undesirable impact on service delivery.*

## VI. SERVICE INTEGRATION AND REGIONALIZATION

The concept of integrated regional services, which was a major element in the original plans for DSHS, has not been implemented. The regional administrators are still basically district public assistance managers and exercise little functional control over services offered outside the offices and bureaus of the Community Services Division. Service delivery at the local and regional levels tends to be fragmented, rather than integrated or even well coordinated, and the centralization of decision-making on most matters in Olympia has led to confusion over roles and responsibilities among program staff at all levels.

Services at the local level are fragmented into ESSO and non-ESSO services. Separate administrative lines exist for vocational rehabilitation, developmental disabilities, adult probation and parole, and other categorical programs. There are no real incentives to coordinate these programs. Therefore some services are duplicative (e.g., chore services, homemaker services and home health aid services) while some needs are underserved or go unmet (e.g., services to families). Clients must seek out needed services at different offices, often in separate buildings; the one-stop service center concept which was anticipated in the creation of DSHS does not exist.

Local office operations vary greatly across programs in organization, staffing patterns and quality of service delivered. The Panel noted substantial differences in the quality and quantity of equipment, amount of floor space and location of offices between ESSO and non-ESSO services. Vocational rehabilitation, developmental disabilities and adult probation and parole services have visibly higher status--which further exacerbates the "pecking order" of clients within DSHS. Where ESSO and categorical services are co-located, facilities allocated to ESSO operations tend to be less desirable and less spacious. Some ESSO facilities have inadequate work space for staff and too few interview booths to allow clients to speak privately with social service as well as financial service staff; within

## VI-2

the ESSO, financial staff have first priority. Both clients and social service workers see a lack of sensitivity to stressful situations in this environment. A substantial discrepancy between the salaries of parole officers and vocational rehabilitation counselors, on the one hand, and social service caseworkers, on the other, contributes further to status differences in DSHS service delivery systems. (See also page II-5.) Salary differentials, caseload and paperwork pressures, the several layers of bureaucracy and the lack of career advancement opportunities all combine to cause extremely low morale among ESSO staff.

The generation of a complex set of constantly changing programs, policies and delivery systems by the federal government, the state Legislature and DSHS in Olympia has resulted in a number of problems and a certain amount of confusion for staff at the regional and local level. For the most part, DSHS field personnel and local citizens and officials have little input into these centralized decisions; nor are decisions always communicated in a clear or timely manner. As a consequence, there appear to be frequent breakdowns in both vertical and horizontal communications between Olympia and the field. For ESSO staff, there is much confusion over the role and authority of program managers, particularly in the Office of Family, Children and Adult Services (OFCAS), and the role and authority of regional service delivery coordinators (staff who act as field consultants and program experts).

At present, one regional service delivery coordinator assumes the consultant-expert role for all ESSO programs in the region. ESSO staff do not have direct access to Olympia-based program managers but must route questions through the regional offices. These coordinators do not, however, have enough information, expertise or authority to answer many of the questions referred to them from the local offices and often must themselves call Olympia for answers to field inquiries. The result is lost time and a large potential for incomplete information, as the answers from Olympia are filtered through the regional staff. Not surprisingly, most field staff and local office administrators view the current regional

structure primarily as another "hoop" to go through and as a largely unhelpful and delaying layer of administration.

The Department's relations with communities and local governments are frequently unsatisfactory. Existing community resources in the voluntary sector are underutilized by DSHS due to a lack of DSHS leadership or interest, the centralization of most departmental decision-making, a lack of significant community outreach and a poor public relations/public education effort. Local resources are rarely coordinated with DSHS program resources for enhanced effectiveness in the delivery of services to those in need. Clients and citizens in local communities complain that the Department's leadership is not responsive to their views on program priorities. They assert that citizen participation in the Title XX planning process and regionally-defined needs and priorities have been largely ignored, citing the example of regional Title XX committee recommendations which favored funding for family services and the Department's decision against any funding for that program. County and local government officials claim that the Department rarely coordinates shifts in priorities and funding with them. They rarely receive advanced notice of the potential effects of policy changes on the local programs and services for which they are responsible (see also pages II-112 ff.).

Recommendation on Service Integration and Regionalization

- *A regionalized integrated service delivery system should be designed, implemented and tested in two of the Department's six regions, one in Eastern and one in Western Washington. ESSO and non-ESSO services would be included in the two pilot projects. Institutional services would NOT be placed under the authority of the regional administrators but would continue to be administered centrally. Certain planning, personnel and budget functions and staff would be decentralized from Olympia to the regions. Implicit in our recommendation to decentralize is the assumption that program development and monitoring at the divisional level can be separated from the day-to-day*

## VI-4

*administration of direct services at the regional level without a loss in program integrity. Integration of services and regionalization of functions should be pushed as far as possible in the pilot projects. We do not propose major increases in regional administrative overhead, nor do we anticipate any savings of dollars in the short- or long-run. Our expectation is that more and better services can be provided to people within current funding limitations.*

*The Panel recognizes that any effort to redesign a delivery system and implement it untested, statewide, is likely to fail. For that reason, we recommend that two regional pilot projects be developed and tested for a period of three years. In addition to current ESSO services, developmental disabilities, vocational rehabilitation, adult probation and parole, juvenile parole, services to the blind and deaf, alcoholism, drug abuse, elderly and mental health programs would be included in the two regional pilot projects. Each of these programs should be evaluated as to which functions are most effectively performed in Olympia and which at the regional or local office level. The best ideas of both the Multi-Service Delivery System (MSDS) developed at the Olympic Center in Bremerton in 1972 and the Social Service Delivery System (SSDS) currently being tested in Yakima should be incorporated in the project implementation plans.*

*Early attention should be directed to the development of instruments and a monitoring system for describing, demonstrating and evaluating the extent of service integration and regionalization and their positive and negative effects. If, after careful evaluation, these projects appear to improve service delivery, the system would be gradually phased in statewide over an additional two-year period. If the integration or regionalization of certain services or functions does not appear to improve service delivery, those services or functions would not be continued in the pilot regions. If the projects themselves are not successful, they too would be discontinued. This project approach should allow better*

## VI-5

*implementation of services integration and regionalization, better problem-identification and problem-solving, and better evaluation of the effects of service integration for clients and service outcomes in various programs.*

*In the Department's original regionalization effort, the major obstacles to effective service integration appear to have been the differing professional outlooks of staff from the separate programs and the lack of personal commitment of those staff to service integration. We therefore recommend that all staff positions in the two regions be established as "project" positions to allow an extensive statewide recruitment drive for departmental staff committed to the development of integrated services. These individuals would carry the major responsibility for designing local and regional office operations and structures.*

*Although the Panel does not intend to specify detailed designs for local and regional operations--we prefer to leave those details to experienced delivery staff who accept the challenge of designing and implementing the pilot projects--we offer the following guidelines:*

*Directors of program divisions should be responsible for setting goals and developing minimum quality standards for services delivered. Regional administrators should have as much flexibility as possible in the organization and management of services. Each regional administrator should have the authority and responsibility to develop and manage a regional budget, allocate staff, and plan with local communities how to accomplish service goals and objectives. Regional administrators would control certain discretionary funds which would be used flexibly in meeting needs identified in each region. The area in which it is most feasible for regions to use such funds is purchased services. For example, some or all Title XX funds could be distributed among the six regions in the form of block grants with the only stipulation being that certain service goals be met. The*

*regional offices, in conjunction with regional and local planning groups and the regional advisory committees, could then establish priorities according to regional needs and determine the kinds of services which would best meet priority goals. Our intent is to increase both the administrative and community planning capabilities of the regions. Categorical funds for programs such as mental health, developmental disabilities and vocational rehabilitation would not be included in discretionary regional monies. The delivery of services to clients of these programs would be integrated with other services in the region; categorical dollars would not be integrated but could be used only for the intended client groups.*

*Certain problems will arise when categorical programs are brought into the pilot projects. Coping with federal requirements for single state plans, single state agencies and the provision of equal services statewide will call for creative design efforts and the possible request of federal waivers. Categorical approaches are divisive by definition and by intent. The pilot projects should aim toward developing integrated regional plans which still offer visibility to constituent programs and services.*

*Staff should be available at the regional level to perform the following functions:*

- Service advocacy (see page III-13)*
- Vendor relations (see page III-13)*
- Licensing of vendor facilities and programs*
- Training and staff development (see pages V-1 ff.)*
- Title XX planning*
- Contract administration (negotiation and evaluation of all vendor and local government contracts) (see pages V-10 ff.)*
- Support enforcement*
- Community resource development and coordination*
- Placement in supportive living arrangements (see page II-111)*



## VI-7

- *Regional advisory committee staff support*
- *Regional planning, budgeting and accounting*
- *Management information system evaluation (see page V-13)*
- *Operations review (for local office performance audits)*
- *Specialist consultation for the blind, the deaf and the developmentally disabled.*

*Regional administrators, in recognition of their critical role in service coordination and delivery under our proposals, should report directly to the Deputy Secretary Level of DSHS. Strong support and backup from and in Olympia will be essential to the success of the regional structure we are proposing.*

*At the local office level, a single intake system should be established. (Single intake should be implemented in nonpilot regions as well, see page II-7.) Greater use should be made of generalists as opposed to specialists (e.g., developmental disabilities caseworkers, foster care specialists). Where specialized skills are required, the team approach should be used. Specifically, we recommend experimentation with the case manager system currently used by vocational rehabilitation counselors: A case would be assigned to a single worker who would be responsible for either delivering needed services or acting as a broker to ensure that services are provided by other team members or purchased from vendors. It would also be that worker's responsibility to follow up the case to ensure that services were provided. This system would increase accountability for the worker both to the client and to the Department and encourage more comprehensive approaches to meeting people's needs. (The case manager model should not be attempted in nonpilot regions; without service integration, its effectiveness in improving service delivery to clients would be limited.)*

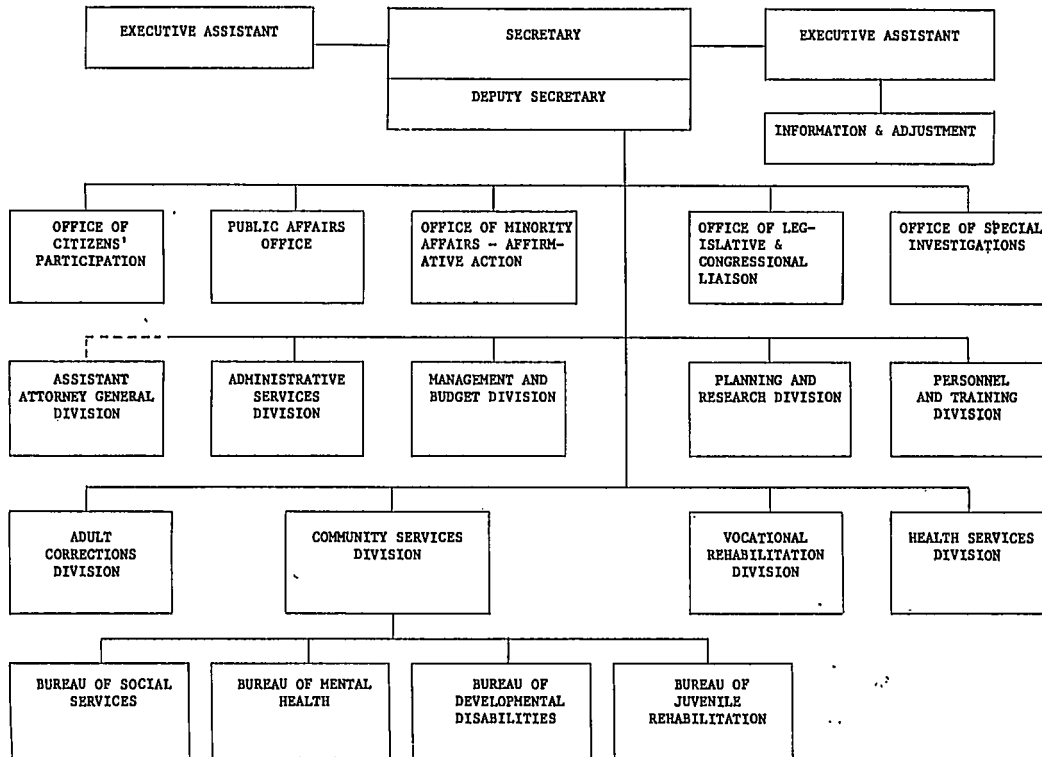
*In the pilot regions advisory committees would work closely with the regional offices in implementing regionalization. Their major*

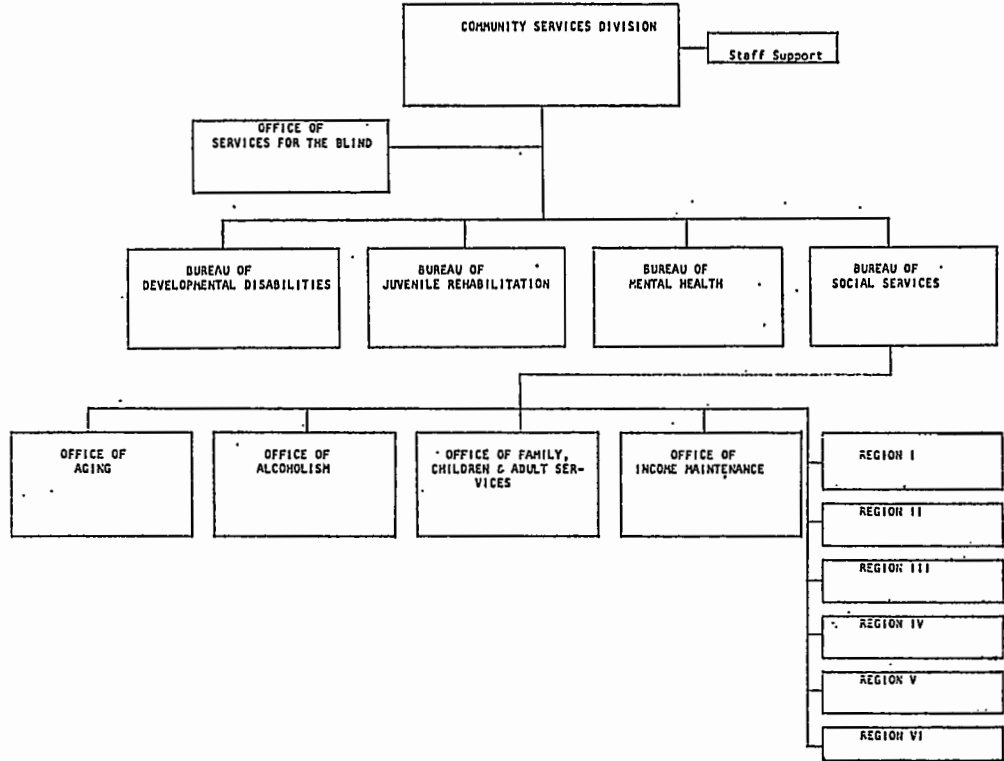
*functions would include Title XX planning, monitoring and evaluating DSHS programs and achievements in the regions, and producing recommendations for the State Advisory Committee's biennial human services report (see page IV-5). Regional advisory committee members should include clients, citizens from the local communities, representatives from private social service agencies (e.g., United Way), local elected officials, school officials, legislators, local planning board members (mental health, LEAA, CETA, alcoholism), and vendors. Ethnic and minority groups should also be represented. Some members of regional advisory committees should be appointed to the State Advisory Committee.*

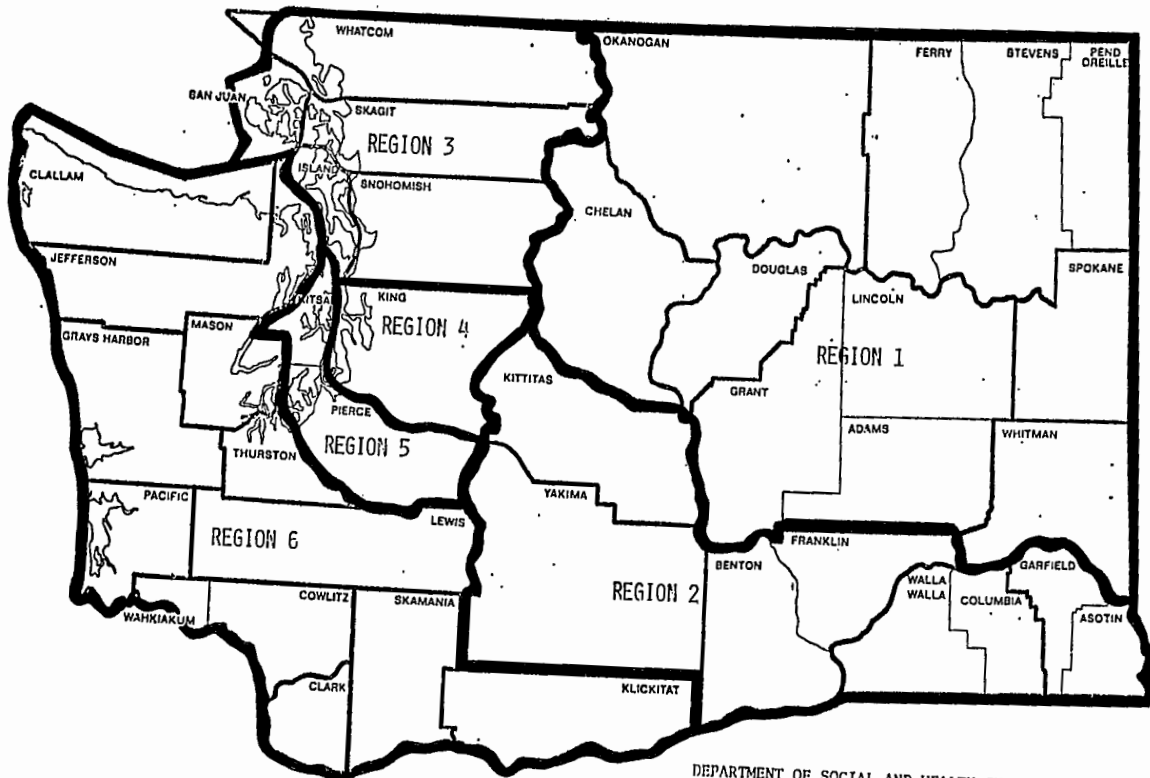
*We are fully aware that a service integration effort was initiated once before and that there are no guarantees of our proposed project's success. We do not expect miracles. Nor do we expect that service integration and regionalization will solve problems whose primary cause is insufficient funding. For these reasons, we have insisted that a strong evaluation component be included in the pilots. But we are convinced that with dedicated personnel and a strong commitment from the Department's top management, a regionalized and integrated service delivery system can and will work to the advantage of citizens, clients and DSHS staff alike.*

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

January 1977

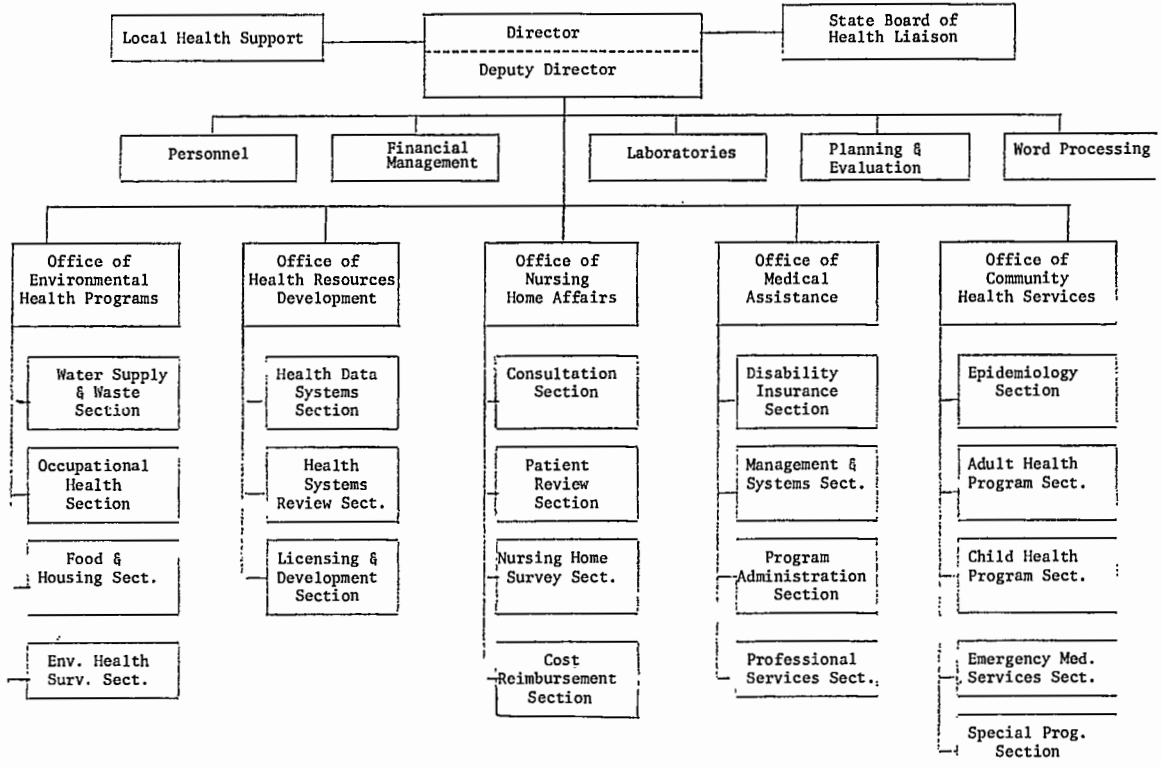




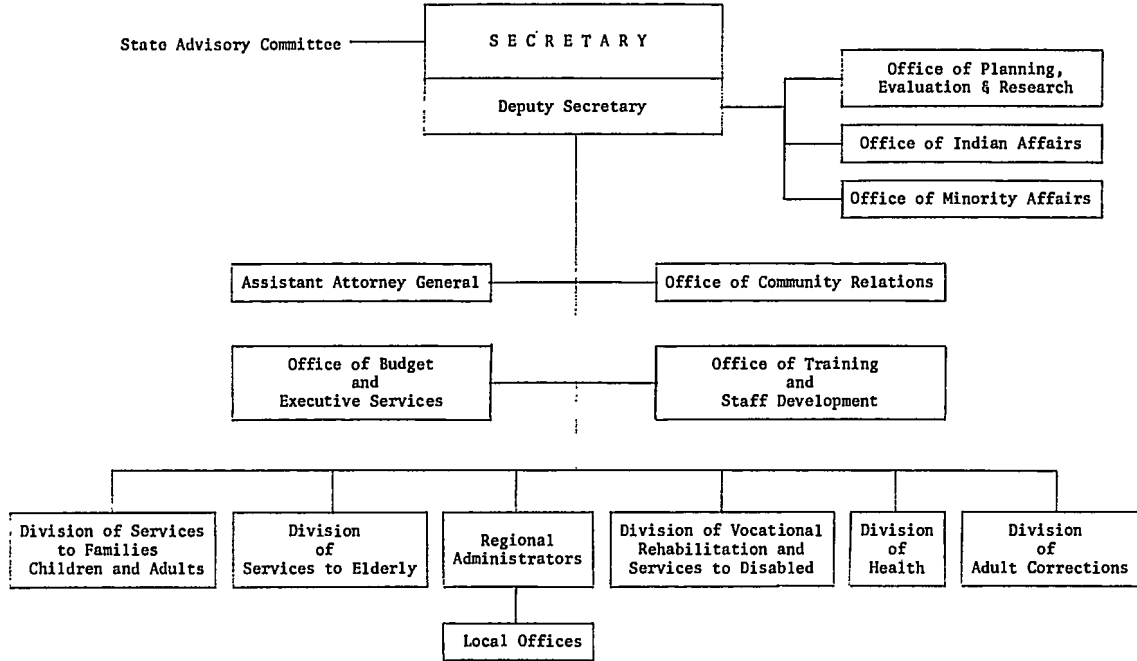


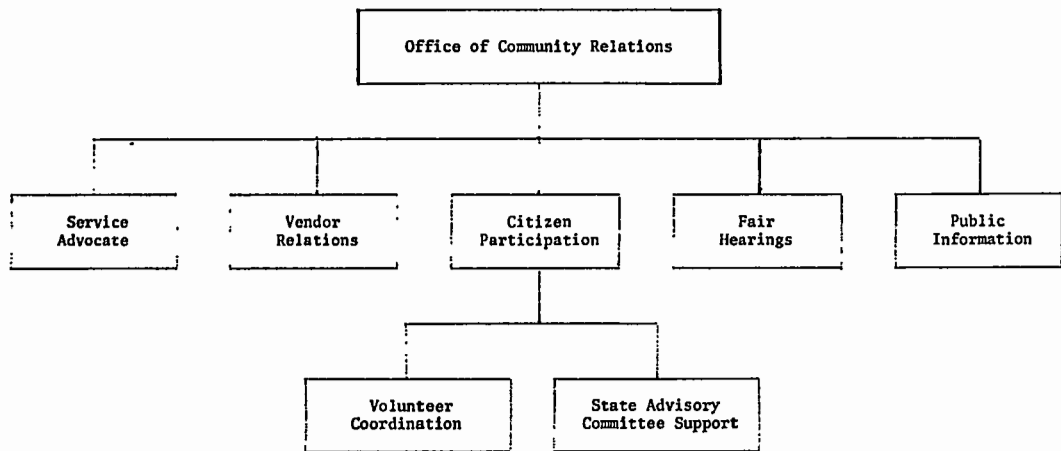
DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
Administrative Regions

HEALTH SERVICES DIVISION

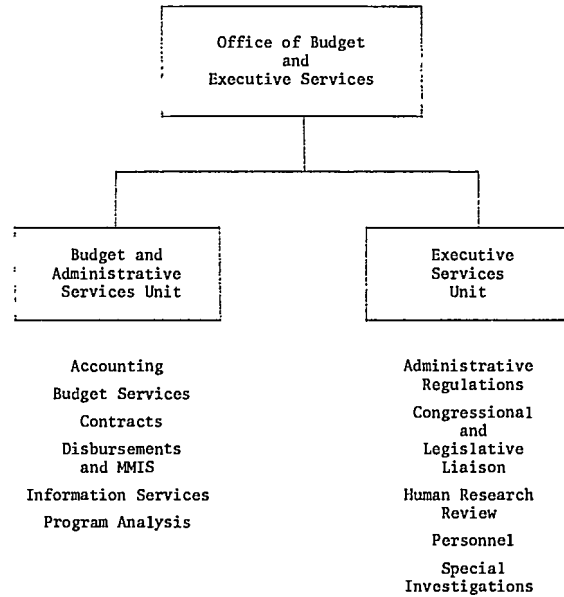


PROPOSED DSHS ORGANIZATION CHART









Division of Services  
to Families,  
Children and Adults

Specialists for

Services to Families,  
Children and Adults

- Mental Health
- Drug Abuse
- Alcoholism
- Developmental Disabilities
- Vocational Services

- Child Protective Services
- Child Welfare Services
- AFDC Services
- Day Care
- Foster Care
- Support Enforcement
- Work Incentive Program
- Maternal and Child Health

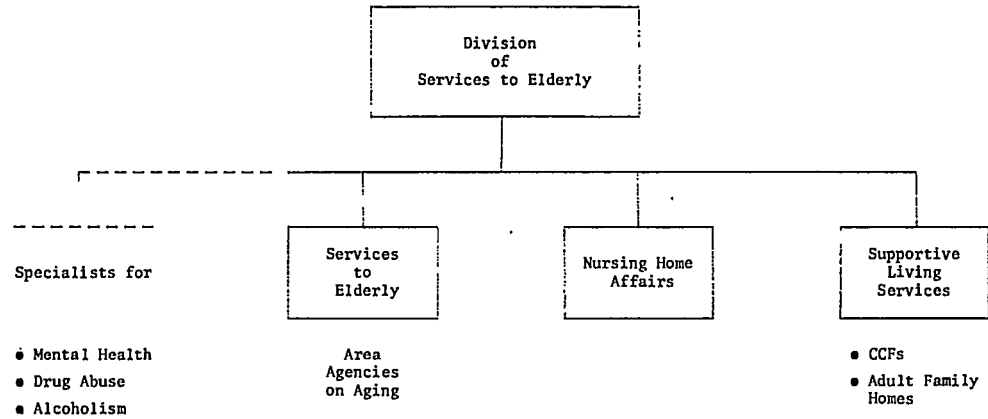
- Adult Day Care
- Adult Protective Services
- Homemaker Services
- Chore Services
- Etc.

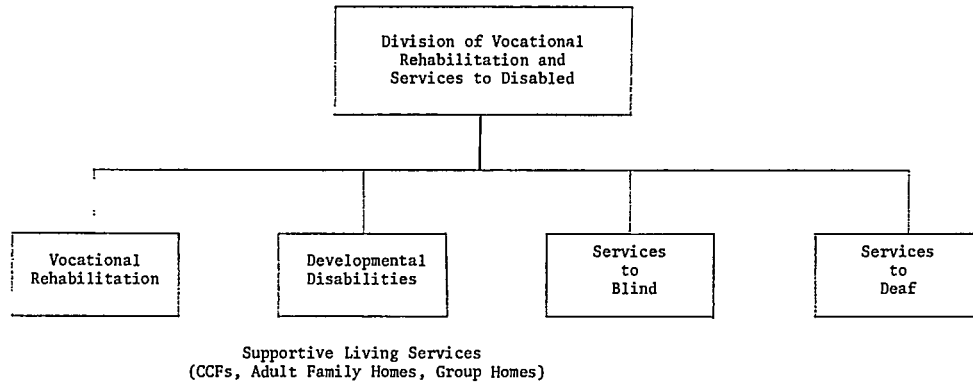
Income  
Maintenance

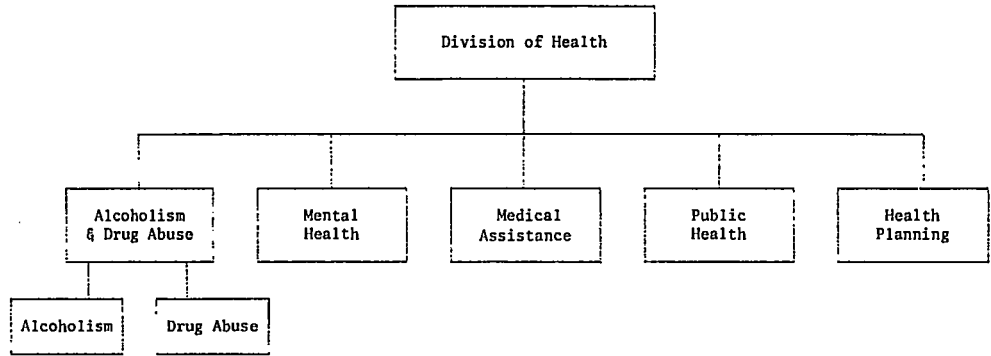
- AFDC Payments
- General Assistance
- Food Stamps
- SSI Coordination

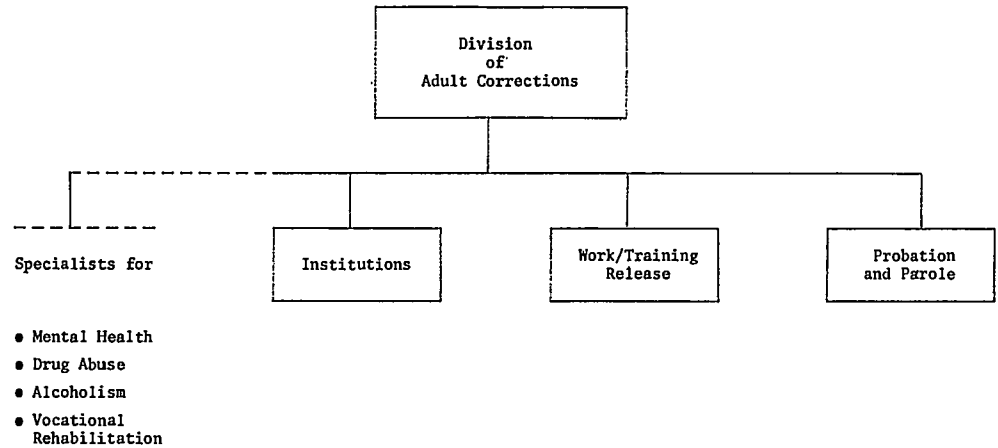
Juvenile  
Rehabilitation

- Juvenile Institutions
- Juvenile Group Homes
- Juvenile Parole
- Probation Subsidy
- Diversion Programs









## APPENDIX A

GLOSSARY

|       |   |
|-------|---|
| AFDC  | Aid to Families with Dependent Children               |
| BDD   | Bureau of Developmental Disabilities                  |
| BJR   | Bureau of Juvenile Rehabilitation                     |
| BSS   | Bureau of Social Services                             |
| CCF   | Congregate Care Facility                              |
| CETA  | Comprehensive Employment Training Act                 |
| CPS   | Child Protective Services                             |
| CWS   | Child Welfare Services                                |
| DD    | Developmentally Disabled                              |
| DHEW  | U.S. Department of Health, Education and Welfare      |
| DOP   | Department of Personnel                               |
| DSHS  | Department of Social and Health Services              |
| DVR   | Division of Vocational Rehabilitation                 |
| EPSDT | Early and Periodic Screening, Diagnosis and Treatment |
| ESSO  | Economic and Social Services Office                   |
| GAU   | General Assistance - Unemployable                     |
| HSA   | Health Systems Agency                                 |
| ICF   | Intermediate Care Facility                            |
| JPS   | Juvenile Parole Services                              |
| LEAA  | Law Enforcement Assistance Administration             |
| MH    | Mental Health   |
| MMIS  | Medicaid Management Information System                |
| MR    | Mentally Retarded                                     |
| OCD   | Office of Community Development                       |
| OFCAS | Office of Family, Children and Adult Services         |
| OSE   | Office of Support Enforcement                         |
| RCW   | Revised Code of Washington                            |
| SNF   | Skilled Nursing Facility                              |
| SRTC  | State Residential Training Center                     |
| SSA   | Social Security Administration                        |
| SSI   | Supplemental Security Income (Administered by SSA)    |

|             |   |
|-------------|---|
| Title XVIII | Medicare Provisions of the Federal<br>Social Security Act     |
| Title XIX   | Medicaid Provisions of the Federal<br>Social Security Act     |
| Title XX    | General Social Services of the Federal<br>Social Security Act |
| WAC         | Washington Administrative Code                                |
| WIN         | Work Incentive Program  |
| WLPC        | Workload Planning and Control                                 |



## APPENDIX B

DESCRIPTION OF PROGRAMS AND SERVICES  
FOR  
FAMILIES, CHILDREN AND ADULTS

Programs

Income maintenance programs provide monies for food, shelter, and clothing to those citizens in the community who meet basic eligibility criteria established by DSHS.

Medical care is available to those individuals determined eligible. Those eligible are individuals receiving financial grants and other individuals who meet income level requirements. Medical programs can provide for emergent, preventive, remedial, and chronic health needs for eligible clients.

Food stamps are available to clients receiving financial assistance grants and to other low-income individuals. The food stamp program enables participants to purchase designated foods at a reduced rate. The intent of the program is to provide a more nutritionally balanced diet for low-income people.

The donable food program provides food commodities for individuals receiving financial assistance and other low-income persons. The program enables participants to receive food stuffs in a quantity predetermined by the size of the family.

Social services are provided to eligible clients upon request. Services are directed toward helping families and individuals improve social functioning and achieve maximum independency. A description of services provided follows.

Services

Child protective services (CPS) are required by state law. This service is initiated on the basis of a report or complaint received in an ESSO alleging abuse, neglect or exploitation of a child under 18 years of age and includes any mentally retarded person regardless of age. CPS provides or arranges for a wide spectrum of services on behalf of children who are reported to be abused, neglected or exploited, or who are threatened with harm through abusive, neglectful or exploitive acts by those responsible for their health, safety, and welfare. Casework intervention is intended to resolve family problems, thereby retaining the family unit intact. In those situations where problems cannot be resolved through casework intervention, other action is initiated.

Child foster care service includes preventive services to children in their own homes to avoid placement in an alternate living arrangement, information and referral services to avoid foster care placement, information and referral services to reunite

B-2

families of children who have been placed in foster care. This service also includes staff activities in recruitment, study, and licensing of foster care facilities, including foster family homes and group facilities. Casework services include the assessment of the child's needs for placement; determination of eligibility for foster care; counseling services with or on behalf of children and their families to remedy the needs for foster care or to plan for stable, long-term substitute care; follow-up services to the child in his/her own home after replacement there; and self-sufficiency services for children who reach their maturity while in foster care.

Adoption services provide the legal and social process for establishing a legal relationship between a child and a parent when they are not so related by birth. Services performed by caseworkers include the recruitment, study and approval of prospective adoptive families, and evaluation of children received by the agency for adoption. Following the placement of a child in an adoptive home, counseling and/or referral of families and children are made when appropriate to ensure success. If adoption plans fail, alternate plans are made for the child. DSHS participates in locating and exchanging children and adoptive families at the state level and nationally and administers the state's adoption subsidy for private agencies.

Child day care services provide for care and protection of children under the age of 15 from eligible families during that portion of a 24-hour day that the child's parents are unable to provide necessary care supervision. Services offered by the Department enable parents to enroll in training or employment leading toward self-sufficiency and self-support or as part of a CPS case plan. Casework services include the determination of need for the service, case planning, and periodic reviews of eligibility for receipt of service. In addition, local offices are responsible for licensing day care homes and centers which have met certain minimum standards. Day care services also provide information and referral for all citizens interested in obtaining day care services such as day care homes, centers, cooperatives, pre-schools, and sitters in their geographic area.

Health support services include a broad spectrum of services to eligible persons who are ill or disabled or who have had health problems of either a temporary or chronic nature. Casework services include counseling individuals and families; assessing their needs; referring them to services; and planning and coordinating with different programs to obtain services (e.g., Crippled Children's Services, Maternal and Child Health Services, Bureau of Developmental Disabilities, Area Agencies on Aging, and Income Maintenance programs). At present, significant emphasis is being placed on the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program, which is available to eligible youths under the age of 21 years. This program screens for conditions which may be detrimental to a youth's health and then gives follow-up diagnosis and treatment as appropriate.

B-3

Family planning services are intended to enable individuals of child bearing age to make choices regarding the number and spacing of children. Services provided include outreach, information, referral, support services (such as transportation and child care), counseling, education, medical care, and follow-up. Family planning medical services include physical examinations, lab tests, diagnosis, treatment, surgical procedures, drugs, supplies, devices and related counseling furnished, prescribed by or under the supervision of a physician. Referrals to other appropriate sources of help are a vital part of the services provided by caseworkers.

Homemaker services are provided to individuals and families in their own home or in special group situations outside their home to help maintain them in the home setting. Homemaker services include the casework functions of determining need for service, developing a plan with the client, and monitoring that plan. They also include teaching clients personal care, home management, household budgeting, maintenance and care of the home, food preparation and nutrition, supervision and discipline of children and adults unable to care for themselves, and information and referral regarding community resources to improve home and family functioning.

Chore services are provided to individuals and families to help them achieve or maintain their self-sufficiency and/or to prevent unnecessary or inappropriate institutional care. The service consists of assisting eligible persons with the costs of hiring persons to perform household tasks which they are unable to do themselves because of frailty or other conditions.

Adult protective services provide for the identification and prompt response to requests regarding individuals in need of protection. Casework services include counseling, arranging for alternate living arrangements, assisting in the location of medical care, legal services and other community resources, and arranging for and providing other appropriate departmental services, such as homemaker, chore or volunteer services. Casework services involve direct work with families of alleged abused and/or neglected adults, referral to mental health centers of either the adult at risk or members of the adult's family, and advocacy on behalf of the client, where necessary. Service activity may include coordination with local health departments, law enforcement officers, attorneys (particularly where guardianship or conservation of property are involved), or clergy.

Adult day care services provide part-day care for aged people who are not capable of full-time independent living but who do not require 24-hour care. Services include meals, physical therapy, personal care and social activities.

Placement services assist persons in selecting the appropriate community or institutional placement when alternate care living

B-4

arrangements are needed. These services are provided in close cooperation with the client's attending physician and the Department's nursing care consultant. Initial planning with the client and/or the family to learn the client's needs, habits, lifestyles, and preferences is especially important in the placement process if the client is to derive the most from his/her living situation. Replacement or relocation of a client as the client's needs change is also part of this service. Alternate living arrangements range from hospitals to nursing homes to CCFs to adult foster homes.

Information and referral services are provided to any member of the community wishing to obtain information about services provided by DSHS and other community agencies. A needs assessment is made at the time of a request for information, followed by a determination about available services or referral to an appropriate provider. The knowledge and expertise of the caseworker often help potential clients gain access to services offered by DSHS or in the community.

## APPENDIX C

INCOME MAINTENANCE PROGRAMSAid to Families with Dependent Children - Employable (AFDC-E)

Provides a monthly grant, medical coverage and food stamps to child(ren) and parent(s).

1. Deprivation is based on unemployment of father.
2. Income and resources must be less than state standards.
3. Father must register with Employment Security and WIN.
4. Father must have work history (earned \$50.00 in six of last 13 quarters, or received UC in last year).
5. Parents must apply for and make use of potential and existing resources.

Aid to Families with Dependent Children - Regular (AFDC-R)

Provides a monthly grant, medical coverage, and food stamps to child(ren) and parent(s).

1. Deprivation must be based on incapacity, death or absence.
2. Income and resources must be less than state standards.
3. Parent must register with Employment Security and Work Incentive (WIN) Program if employable and children are six years old or older.
4. Parent must cooperate with and assign child support to the Office of Support Enforcement.
5. Parents must apply for and make use of potential and existing resources.

Aid to Families with Dependent Children - Emergency Assistance (AFDC-K)

Provides a grant, medical coverage and food stamps to child(ren) and parent(s).

1. Used when immediate assistance is needed for food, clothing, shelter or medical needs.
2. Used when family is ineligible for ADC for other than financial reasons, or when ADC eligibility has not been established.

C-2

3. Grant may be paid for period application is expected to be pended.
4. Limited to one period (up to 30 consecutive days) in any 12 consecutive months.
5. Child(ren) must have lived with parent(s) for six months prior to application.
6. Income and resources must be less than state standards.

#### Supplemental Security Income (SSI)

A state financial supplement to Social Security Assistance administered by the Federal Social Security Administration.

1. Eligibility is based on income, resources, and permanent disability or age (65 years or older).
2. Recipient is eligible for medical coverage through DSHS local office.
3. Recipients living alone are eligible for food stamps from DSHS local office.
4. Recipients can apply for chore services at DSHS local office.

#### General Assistance - Unemployable (GAU)

Provides a monthly grant, medical coverage and food stamps to an unemployable adult.

1. Incapacity must be based on a medical report with diagnosis, prognosis, and be for at least 30 days.
2. Income and resources must be less than state standards.
3. Individual must cooperate by getting medical treatment.
4. Individual must apply for and make use of potential and existing resources.

Food Stamps

A U.S. Department of Agriculture, Food Nutrition Service program, which assists households in buying food at reduced rates.

1. Eligibility is based on income, resources, work registration and deductions of entire household.
2. Continuing grant recipients are eligible, based on grant income.
3. Non-grant recipients must apply separately.
4. Allowable deductions include shelter costs, medical bills, child care, funeral and disaster expenses.
5. Authorization card (ATP) may be exchanged for food commodities at zero cost.
6. Only one ATP can be used per month.

## APPENDIX D

DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
1975-77 BUDGET  
FEDERAL FUNDING SOURCES

|                 |                 |
|-----------------|-----------------|
| Total Budget    | \$1,475,935,498 |
| State Dollars   | 841,833,190     |
| Federal Dollars | 633,008,105     |
| Local Dollars   | 1,094,203       |

DSHS Programs Directly Tied to Federal Programs and Dollars

|  | Match<br>Ratio           | Federal       | State         | Total          |
|--|--------------------------|---------------|---------------|----------------|
| <u>Public Assistance</u>   |                          |               |               |                |
| <u>Grant Programs*</u>   |                          |               |               |                |
| Aid to Families with<br>Dependent Children   | 53% federal<br>47% state | \$160,117,906 | \$137,942,232 | \$ 298,060,138 |
| Federal Emergency<br>Assistance  | 50% federal<br>50% state | 2,412,958     | 2,412,957     | 4,825,915      |
| State Supplementa-<br>tion to the Federal<br>Supplemental Security<br>Income Program |                          |               | 31,750,633    | 31,750,633**   |
| Administrative<br>Staff for Public<br>Assistance Program                             |                          | 25,587,944    | 22,763,466    | 48,350,410     |
| <u>Social Services</u>   |                          |               |               |                |
| Title XX Social<br>Security (Basic<br>Social Services<br>Program)                    | 75% federal              | 82,445,669    | 27,515,223    | 110,060,892    |

\*The Public Assistance and Medical Assistance Programs include state only General Assistance and Medical Assistance which are funded at total state option. The General Assistance Budget for 1975-77 is \$26,862,605; State Medical Assistance is \$25,569,885.

\*\*The SSI program is federally administered by Social Security. The program provides basic income support to the aged, blind, and disabled. The federal share is part of the federal budget. The state supplements the basic federal SSI grant. The current standard for King County for an individual is \$201.90, with the state providing \$34.10 and the federals \$167.80.



D-2

|   | <u>Match<br/>Ratio</u>   | <u>Federal</u> | <u>State</u> | <u>Total</u> |
|---|--------------------------|----------------|--------------|--------------|
| <u>Social Services (Contd.)</u>   |                          |                |              |              |
| Work Incentive Program  |                          | \$ 1,694,048   | \$ 188,227   | \$ 1,882,275 |
| Aging Program   |                          |                |              |              |
| Older American Act  |                          |                |              |              |
| Total   |                          | 17,300,000     | 1,900,000    | 19,200,000   |
| Title III and VII   |                          | 13,500,000     | 0            | 13,500,000   |
| SB 1316   |                          | 3,800,000      | 1,900,000    | 5,700,000    |
| <u>Medical Assistance</u>   |                          |                |              |              |
| Nursing Homes (Skilled<br>Nursing Homes and Inter-<br>mediate Care Facilities<br>funded through Title XIX<br>of the Social Security<br>Act) | 53% federal<br>47% state | 79,387,504     | 69,005,819   | 148,393,323  |
| Basic Medical Assist-<br>ance (Title XIX -<br>Medicaid)   | 53% federal<br>47% state | 122,712,299    | 124,406,924  | 247,119,223  |
| Medical Assistance<br>Administration  |                          | 9,014,122      | 7,738,751    | 16,742,873   |
| <u>Vocational Rehabilitation</u>  |                          |                |              |              |
| Federal DVR Act   | 80% federal<br>20% state | 31,285,054     | 4,023,359    | 35,308,413   |
| Services to the Blind   |                          | 3,012,586      | 997,064      | 4,009,650    |
| Public Health   |                          | 29,056,045     | 14,641,368   | 43,697,413   |

D-3

| <u>Match<br/>Ratio</u>   | <u>Federal</u>       | <u>State</u>         | <u>Total</u>           |
|--|----------------------|----------------------|------------------------|
| <u>Administrative and<br/>Support Services</u>                         |                      |                      |                        |
| Prorated 40% federal<br>share  | \$ 23,647,375        | \$ 40,264,449        | \$ 63,911,824          |
| Title IV-D Support<br>Enforcement and<br>Collections for<br>AFDC Cases | 2,604,116            | 857,297              | 3,461,413              |
| <u>Total DSHS Programs<br/>Directly Tied to<br/>Federal Programs*</u>  | <u>\$590,277,626</u> | <u>\$486,496,769</u> | <u>\$1,076,774,395</u> |

\*The remainder of DSHS programs which include Adult Corrections, Mental Health, Developmental Disabilities, and Juvenile Rehabilitation, are basically state funded. These programs do contain special federal grants such as LEAA or funds from the Federal Developmental Disabilities Act, but these funds do not represent a major element of these programs.

The Department of Social and Health Services Report to the Governor's Indian Advisory Council 1977-78, submitted as part of this exhibit, is on file at the U.S. Commission on Civil Rights.

*Exhibit No. 21*

The material requested for this exhibit is contained in Exhibit No. 18.

*Exhibit No. 22*

STATE OF  
WASHINGTON

Dixy Lee Ray  
Governor

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Olympia, Washington 98504

Harlan P. McNutt, MD, MPH, Secretary

October 28, 1977

Arthur S. Fleming, Chairman  
U.S. Commission on Civil Rights  
1121 Vermont Avenue N.W.  
Washington, D.C. 20424

Dear Mr. Fleming:

During my testimony before your commission in Seattle, Washington, on October 20, 1977, there were two questions I was not able to answer with certainty, and it was agreed that I would subsequently respond in writing.

First, I am able to confirm that, to the best of the knowledge of our Indian Desk, no individual Indian or tribal government has lodged a discrimination complaint, formal or informal, as to implementation of Title VI of the 1964 Civil Rights Act.

The second question concerned the method used by our Department of Social and Health Services for monitoring Title VI. I was correct in my testimony that the department's Office of Minority Affairs has continued full responsibility for statewide monitoring after the Indian Desk was split off as a separate entity a few years ago. As I explained, I was not involved in the meetings that resulted in the Indian Desk's being separated out of the Office of Minority Affairs, nor do I possess the background information on any decision regarding Title VI monitoring.

As you know, the Governor's Select Panel Report on the Department of Social and Health Services was one of the documents included in the Commission's subpoena. Those materials include recommendations relative to Indian affairs that should accomplish clarification of responsibility for Indian concerns under Title VI.

Sincerely,

GERALD E. THOMAS  
Deputy Secretary

*Exhibit No. 23*

The material requested for this exhibit is contained in Exhibit No. 20.

**Superintendent of Public Instruction**

DR. FRANK B. BROUILLET · OLD CAPITOL BLDG., OLYMPIA, WASH. 98504



December 28, 1977

Mr. Paul Alexander  
Assistant General Counsel  
United States Commission on Civil Rights  
Washington, D.C. 20425

Dear Mr. Alexander:

Your recent letter asked that I provide you with information concerning actions of this office or the State Board of Education to require that public school teachers in Washington State have inservice training concerning Indian culture and history.

We encourage school districts throughout the state to offer such inservice programs. However, we have not mandated such programs since neither this agency nor the State Board of Education has the financial resources necessary to implement inservice programs in local school districts. Current state apportionment does not include any resources for inservice education.

During the last session of the Legislature, I submitted a budget request for funds to support inservice programs. However, the Legislature did not appropriate any funds for inservice.

I am supportive of efforts to increase our teachers' knowledge and awareness of the contributions made to our state and to the nation by the Native Americans.

If you have other questions, please contact me again.

Sincerely,

A handwritten signature in cursive script that reads 'Frank Brouillet'.

Frank B. Brouillet  
State Superintendent  
of Public Instruction

FBB/pc

451

Exhibit No. 25



## Quinault Tribal Council

POST OFFICE BOX 1118 □ TAHOLA, WASHINGTON 98587 □ TELEPHONE (206) 276-4448

HUMAN RESOURCE DIVISION

(206)276-4417

December 1, 1976

William T. Quick  
Chief Office of Family Children and Adult Services  
D.S.H.S.  
Olympia, WA 98504

RE: Title XX Daycare

Dear Mr. Quick,

I would like to bring to your attention some problems that have arisen with the Region VII Daycare plan. The Quinault Tribe recently obtained a provisional daycare license. Quinault Daycare mothers have applied for Title XX Daycare funds. To date, only two mother's out of eight have been found to be eligible. Therefore, the Region VII Daycare plan has been found to be of little practical value to the Quinault Tribe.

The primary problems are:

1. Lack of housing on the reservation. Mothers who live next to the exterior boundaries are not eligible.
2. There are no provisions made to determine eligibility for fishing and clam digging income.

In conclusion I am requesting a meeting of the five tribes and representatives of your office to attempt to resolve these problems.

Thank you for your cooperation.

Sincerely,

*Goldie M. Denney*  
Goldie M. Denney  
Social Service Director

*No Reply*

*No response to 3 phone calls*



Marv Christensen  
Service Delivery Coordinator

December 8, 1976

Ralph E. Mackey, Administrator  
By: Dorothy Sisler, Asst. Administrator  
and Gary Anderson, Casework Supervisor

QUINALT DAY CARE CENTER

This memo is to confirm the telephone inquiry and response from the Region VI Social Services Coordinator on November 17, 1976 regarding Quinault Indian application for child care. At that time this office was told that the Indians would have to reside on the Quinault reservation to be eligible for the 80% of state median income provision of Title XX, page 108, and Memo 76-117.

The Quinalts have established a Day Care Center and have a provisional license approved from September 1, 1976 through March 1, 1977. Twenty children can receive care. Under the terms of the Child Care Center contract currently being negotiated with DSHS (verbal approval has apparently been given), the agency could fund up to \$20,706 for the six month period if all 20 children receiving care were eligible. There are currently 18 children receiving care at the center.

Aberdeen ESSC has received 8 applications since the opening of the center. Of these, two have been approved for four children, two have been denied because of income in excess of the 80% state median income, and four are pending.

The problems being encountered are the requirements for residence on the Quinault reservation and the determination of income for self-employed persons. The Indians are frequently employed seasonally and do not receive receipts for payment for fish and clams, making verification of income difficult, if not impossible should it be necessary to do so.

The residence requirement is causing difficulty for registered Indians employed on the reservation but who have not been able to secure housing there. There are 75 families on the waiting list for housing. Possibly another 100 families would apply except for the considerable delay in meeting requests for housing. If they are unable to find a place to live on the reservation, the Indian families try to find quarters in the small towns bordering the reservation. There is another group who, while not employed on the reservation, are still trying to find housing there. Some of these people might also be eligible for day care services if they could secure housing on the reservation.

The Quinault Day Care Center is the only facility of its kind in that area and does provide a service desired by the Indians and developed by them.

It is hoped this information will be useful to you in understanding some of the special concerns of the Quinalts. It is our intent to be as helpful as we can within the constraints of department policy, regulations and resources.

DS:vl

*NO REPLY  
NO RESPONSE TO PHONE CALLS*

453

*Exhibit No. 26*

OFFICE OF  
COUNTY COMMISSIONERS

"MIKE" MURPHY  
FIRST DISTRICT

JOHN PEARBALL  
SECOND DISTRICT

ROLLAND "OMAR" YOUMANS  
THIRD DISTRICT



P.O. BOX 350  
MONTESANO, WASHINGTON 98563  
PHONE (206) 249-3731

**GRAYS HARBOR COUNTY**  
SHREVE OF WASHINGTON

December 27, 1977

Mr. Paul Alexander  
Assistant General Counsel  
United States Commission on Civil Rights  
Washington, D. C. 20425

Dear Mr. Alexander:

Pursuant to the request in your letter of December 13, we are enclosing a copy of the Prosecuting Attorney's opinion relating to the County's jurisdiction over white ownership on the Quinault Indian Reservation.

Sincerely,

ROLLAND A. YOUMANS

BY *Janet Douglas*  
Executive Secretary

Enclosure

## GRAY'S HARBOR COUNTY

STATE OF WASHINGTON

OFFICE OF THE

## PROSECUTING ATTORNEY

CURTIS M. JANHUNEN  
Prosecuting Attorney~~EDWARD BROWN~~  
~~PROSECUTING ATTORNEY~~DENNIS R. COLWELL  
DEPUTY PROSECUTING ATTORNEYGREGORY C. STAHELI  
DEPUTY PROSECUTING ATTORNEYTEMPLE OF JUSTICE  
MONTESANO, WA. 98563  
PHONE 348-3851  
P.O. BOX 529CURTIS M. JANHUNEN  
~~Chief Deputy~~ PROSECUTING ATTORNEYDAVID FOSGUE  
DEPUTY PROSECUTING ATTORNEY1708 SUMNER AVENUE  
ABERDEEN, WA. 98520  
PHONE 532-3652

June 24, 1974

Board of County Commissioners  
Grays Harbor County Courthouse  
Montesano, WA 98563Re: Jurisdiction of County/State Within Exterior Boundaries  
of Quinault Indian Reservation

Gentlemen:

As requested by you, I submitted a request for opinion to the Attorney General's Office relating to the jurisdiction, or lack thereof, of the State and County on the Quinault Indian Reservation. The request was comprehensive in form and related to both fee patent and tribal lands. The areas covered included criminal and civil jurisdiction.

I had hoped that the opinion would be as comprehensive as the request and would put to rest many of the issues presented to the Board and the other County offices over the past years. Unfortunately, the opinion received from the Attorney General is an "un-opinion". See attachment. The state of knowledge concerning Indian law has not been increased by the opinion.

In light of the Attorney General's refusal to issue an opinion, I am taking the following action:

- (1) This office is adopting the position that Grays Harbor County has the authority to enact a zoning ordinance to cover fee patent land within the exterior boundaries of the Quinault Indian Reservation.
- (2) I am restating the position that the State has jurisdiction of criminal offenses occurring on fee patent land, whether the offender is Indian or non Indian, and jurisdiction on tribal or allotted trust lands if the offender is not a Quinault Indian.

Board of County Commissioners  
 June 24, 1974  
 Page Two

(3) I am restating my belief that on tribal lands or allotted lands the State has at minimum under RCW 37.12.010 jurisdiction in the following areas:

1. compulsory school attendance
2. public assistance
3. domestic relations
4. mental illness
5. juvenile delinquency
6. adoption proceedings
7. dependent children
8. operation of motor vehicles upon the public streets, alleys, roads, and highways.

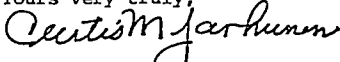
The Board should be made aware of Comenout vs. Burdman, et al., a Grays Harbor County case pending decision in the State Supreme Court. Many of the issues raised by the Board in its request for an opinion will, I hope, be decided by the decision in that case. It is conceivable, for example, that the decision in Comenout could lead to total assumption of jurisdiction by the State on the Quinault Reservation.

In regard to zoning, I point out that my opinion states that the Board may adopt a zoning provision to cover fee patent land on the reservation. Whether or not to enact such an ordinance is a decision to be made by the Board as the legislative body of this county.

If the Board does indeed desire to pass such an ordinance, I would hope that the County Planning Commission would be instructed to work closely with its Quinault Tribe counterpart to insure that the ordinance leads to compatible land use both on fee patent land and tribal/allotment land. If the County zoning provision and the Quinault Tribe zoning code are not compatible with one another, the goal of neither can be achieved.

Insofar as it applies, the Opinion of the Grays Harbor Prosecuting Attorney, dated February 20, 1970, directed to Sidney Glover, Planning Director of Grays Harbor County, is overruled.

Yours very truly,



CURTIS M. JANHUNEN  
 Prosecuting Attorney

CMJ/db

Enclosure



## OFFICE OF THE ATTORNEY GENERAL

SLADE GORTON ATTORNEY GENERAL  
 TEMPLE OF JUSTICE OLYMPIA, WASHINGTON 98504

PHILIP H. AUSTIN  
 Deputy Attorney General

June 20, 1974

RECEIVED

JUN 21 1974

Honorable Curtis M. Janhunnen  
 Prosecuting Attorney  
 Gray's Harbor County  
 P. O. Box 529  
 Montesano, Washington 98563

Dear Sir:

This will acknowledge receipt of your letter dated June 11, 1974, requesting our opinion on several questions pertaining to the extent of the state's jurisdiction over the Quinault Indian Reservation.

Unfortunately, the questions you have asked us are all involved, either directly or indirectly, in currently pending litigation. See, Queets Band of Indians v. State of Washington, et al., U.S.D.C., W.D. Wash., Civil No. C74-189S, now pending in the United States District Court for the Western District of Washington, and Comenout v. Burdman, et al., Supreme Court No. 42976, currently pending before the Washington State Supreme Court.

Accordingly, it would be contrary to long-standing office policy for us to provide you with an opinion on these questions at this time. Simply stated, it has been the consistent policy of this office since statehood to refrain from passing, in an attorney general's opinion, upon any questions of law which are currently pending before the courts or where litigation is imminent and the questions can only be resolved, in a manner binding upon all the parties, by that litigation.

Consistent with this policy, however, we may properly provide you with copies of previously issued opinions, where pertinent. Accordingly, I am enclosing copies of several which, to some degree, bear upon the questions you have at this time asked.

Briefly summarized these prior opinions are as follows:

AGO 1972 No. 9, in which we characterized to the governor's so-called retrocession of jurisdiction with

Honorable Curtis M. Janhunen -2- June 20, 1974

respect to the Quinaults in 1965 as a "recision" and not a retrocession, per se.

AGO 1970 No. 11, dealing with the authority of a county to enact a zoning ordinance to govern "fee patent land" located within the exterior boundaries of an Indian reservation in the state of Washington; notably, the factual situation giving rise to this opinion request involved Gray's Harbor County and the Quinault reservation.

AGO 1970 No. 20, relative to the enforcement of the cigarette excise tax on certain Indian reservations; see, in particular, the discussion appearing on page 11 of this opinion which would appear to bear upon the second part of your third question.

AGO '63-64 No. 68, generally addressing itself to the scope and extent of this state's criminal jurisdiction over acts occurring on an Indian reservation.

As you will note from reading this latter opinion, the extent of state criminal jurisdiction is dependent, in part, upon whether the particular reservation is that of a tribe over which the state has assumed full jurisdiction as provided for in either chapter 36, Laws of 1963, or its 1957 predecessor, chapter 240, Laws of 1957. If the particular tribe in question has assented to full state jurisdiction (as was the case with respect to the Quinaults initially) the United States criminal laws are enforceable against anyone, anywhere within the reservation. On the other hand, if the tribe has not assented to full state jurisdiction, then, except in a case falling within one of the eight listed exceptions set forth in RCW 37.12.010, the state is without criminal jurisdiction in a case involving a tribal Indian and a crime occurring on tribal lands or allotted lands within an established Indian reservation and held in trust by the United States; however, on any other lands within such reservation (e.g., fee patent lands or other non-Indian lands) full state criminal jurisdiction exists just as in the case of all lands within the reservation over which full jurisdiction has been assumed. Accord, our letter of September 15, 1971, to State Senator R. Frank Atwood, which is also among the enclosures to this letter.

Honorable Curtin M. Jänhunen -- -3- June 20, 1974

It is hoped that the foregoing will be of some assistance to you at this time.

Very truly yours,

FOR THE ATTORNEY GENERAL



Philip H. Austin  
Deputy Attorney General

PHA:lj  
Encs.

*Exhibit No. 27*

**THE SECRETARY OF COMMERCE**  
Washington, D.C. 20230

**JAN 26 1978**


Dear Mr. Chairman:

Thank you for your letter of December 23. I have enclosed a copy of the National Marine Fisheries Service, March 3, 1975 report entitled "The Economic Impact of the Judge Boldt Decision" which you requested.

You also requested the Department's views on a critique of that report prepared by Mr. William L. Smith, Executive Director of the Northwest Indian Fisheries Commission. A response to that critique was provided by Mr. Robert W. Schoning, Director of the National Marine Fisheries Service, to Senator Jackson on May 28, 1975. A copy of that response is also enclosed.

If you need any other documents to complete your hearing record, we will be pleased to provide copies.

Sincerely,

  
Juanita M. Kreps

Enclosures

Mr. Arthur S. Flemming  
Chairman, United States  
Commission on Civil Rights  
Washington, D. C. 20425



THE ECONOMIC IMPACT  
OF THE  
JUDGE BOLDT DECISION

by

*Jack Richards*

*Regional Economist*

*National Marine Fisheries Service*

*Northwest Region*

March 3, 1975

THE ECONOMIC IMPACT OF THE JUDGE BOLDT DECISION

In response to a request by members of the Washington Congressional Delegation, the National Marine Fisheries Service collected information from fishermen and other data sources to evaluate the economic impact of restricting fishing by non-treaty commercial fishermen. This is a summary of the results of that survey and related information.

Major Conclusions

Fishermen, because of their age, years spent in commercial fishing and attachment to this industry, are likely to be somewhat immobile in moving to other types of employment, although many of the respondents in this study indicated an interest in selling their fishing business. Fishing vessels and gear may be much more restricted in finding alternative uses due to the size of many of the vessels involved and the limited opportunities particularly in other salmon fisheries.

The sharply reduced landings experienced by Puget Sound net fisheries during 1974 were due in large part to court decisions that apparently transferred about \$2 million in landings from non-treaty commercial gear to treaty-Indian gear. This, plus sharply lower fish prices and higher operating costs (e.g., fuel) and perhaps in some cases, reduced fish runs during 1974, resulted in a drop of net earnings from \$9379 during 1973 to \$1527 during 1974 for gillnetters, from \$30,568 to \$13,026 for purse seiners, and \$9287 to an average loss of \$68 for reef netters, who provided information for this study. These sharp declines in net earnings are also affected by fixed cost items such as insurance, taxes, and depreciation as revenues decline.

There seem to be few good alternative fisheries, particularly for the smaller boats. There are more feasible alternative fisheries for larger vessels but most fisheries where this equipment is feasible are likely to be already seriously overfished. Based on participation in other fisheries reported in this survey, the potential to move present gear to another fishery seems likely to provide only a minor degree of benefit for a majority of fishermen (except possibly for a shift of gear currently used in this fishery to Indian fishermen).

Non-fishing income supplements also are likely to be limited for many fishermen due to their age, years spent in fishing, and desire to continue fishing.

The immediate impact during 1974 of the decision to restrict non-treaty commercial fishing in inner Puget Sound apparently fell almost entirely on the net fisheries. Essentially all purse seiners, reef netters and gill net fishermen who traditionally fished in this area were probably affected by varying degrees. Ultimately the impact of this decision may be distributed more broadly in that fishermen may seek opportunities in other areas and fisheries.

About one-third of the respondents to this questionnaire indicated that they would prefer to sell their fishing business, apparently to seek other types of employment. A total of 201 fishermen indicated that they would consider selling, and placed an average value of \$76,728 on their fishing business.

DATA SOURCE

Information relating to the views and experience of commercial fishermen was obtained by mailed questionnaires sent to 2,509 Puget Sound gillnet, purse seine and reef net 1974 license holders. Information relating to trends in number of fish landed and similar data was obtained from the Washington Department of Fisheries.

Although 2,509 questionnaires were mailed to license holders, probably only around 1,800 licenses actually had fish landings during 1974 (information on licenses with landings was not available when this report was prepared). Many duplicates in vessel licenses occurred in the mailing list (e.g., several vessels owned by one individual or licenses held by processors). During 1973, the latest year with complete information available at the time this report was written, there were 1,673 vessels with landings in Puget Sound. During 1973 there were landings by 89% of the gillnet licenses, 91% of the purse seine licenses and 95% of the reef net licenses. Comparable figures for 1972 were 80% of the gillnet licenses with actual landings, 72% of the purse seine licenses, and 77% of the reef net licenses. Since salmon prices and earnings by fishermen were higher during 1973, the number of licenses with actual landings would be expected to increase.

Fishermen returned 622 questionnaires that are used as the basis for this report. Since all questions were not answered on many of the questionnaires, the number of fishermen supplying information on each topic is indicated in each section of this report.

Status of Fish Stocks During 1974

The Washington Department of Fisheries (WDF) attempted to follow the guidelines established in the Court decision to increase fish landings by Treaty Indians by restricting landings by sportsmen and troll fisheries that were under State jurisdiction. However, regulations to reduce the catch by the ocean troll fisheries and by sport fishermen were both rejected in State courts. If these restrictions on other fisheries could have been implemented, the impact on non-treaty inner Puget Sound net fisheries that is analyzed in this report conceivably could have been less severe.

Reducing the catch by troll and sport gear would have distributed the impact of requirements to increase landings by Treaty Indians more widely than actually occurred. However, reduced landings by trollers and sportsmen, in addition to increasing the numbers of fish returning to Puget Sound commercial fisheries, would also be expected to increase the numbers of fish returning to the Columbia River, landed by Canadian fishermen, or other similar fisheries and areas.

The analysis that provides the basis for this report was restricted to the Puget Sound net fisheries which ultimately bore the impact of the court decision to increase fish landings by Treaty Indians. However, trends in numbers of fish landed in Washington are listed in Table 1 to permit comparison of 1974 runs with those of recent years. Similar information for the Puget Sound area is included in Table 2 (WDF Areas 3-10) and Table 8 (WDF Areas 1-2)

The inability of the Washington Department of Fisheries to control the catch in other areas had a bearing on the transfer

of fishing income that ultimately occurred from non-treaty commercial fishermen to Treaty Indians. The percent of total landings by Indian gear for chinook, coho, and chum salmon and for all species combined in WDF Areas 3-10 where the major impact of Boldt decision occurred during 1974 is summarized below.

INDIAN AND TOTAL LANDINGS IN WDF AREAS 3 TO 10 - 1970-1974  
(thousands of fish)<sup>1/</sup> <sup>2/</sup>

| <u>Year</u> | <u>Total chinook salmon</u> | <u>% Indian catch</u> | <u>Total coho salmon</u> | <u>% Indian catch</u> | <u>Total chum salmon</u> | <u>% Indian catch</u> | <u>Total all species</u> <sup>3/</sup> | <u>% Indian catch</u> |
|-------------|-----------------------------|-----------------------|--------------------------|-----------------------|--------------------------|-----------------------|--|-----------------------|
| 1974        | 86.5                        | 71.2                  | 444.4                    | 80.6                  | 184.4                    | 90.3                  | 724.6                                  | 82.0                  |
| 1973        | 79.5                        | 52.6                  | 449.7                    | 25.2                  | 259.5                    | 27.4                  | 955.2                                  | 38.6                  |
| 1972        | 68.1                        | 49.3                  | 329.5                    | 29.0                  | 434.0                    | 11.7                  | 842.9                                  | 22.2                  |
| 1971        | 73.6                        | 40.0                  | 295.0                    | 27.5                  | 122.4                    | 22.1                  | 946.1                                  | 30.6                  |
| 1970        | 80.5                        | 37.9                  | 439.5                    | 22.5                  | 148.7                    | 29.7                  | 674.6                                  | 25.8                  |

<sup>1/</sup> Area where major impact of decision to limit non-treaty commercial fishery occurred.

<sup>2/</sup> See Table 2 for additional detail.

<sup>3/</sup> Includes pink and sockeye salmon.

A rough indication of the economic impact can be obtained by comparing the average share of fish landed by Indian gear from 1970 to 1973 with that taken during 1974. A simple average of the Indian share of landings from 1970 to 1973 indicates that 44.6% of the chinook salmon, 27.7% of the coho salmon and 20.0% of the chum salmon (29.8% of all species combined including pink and sockeye salmon) were landed by Indian gear in this area.

If these average percentages had occurred during 1974, there would have been approximately 23,021 fewer chinook salmon, 235,263 fewer coho salmon, and 129,673 fewer chum salmon landed on Indian gear. Although data on the value of fish landed during 1974 is not yet available, a

rough estimate can be made. Using an average price per pound of 75¢ for chinook (16 lbs. av. wt.), 65¢ for coho (7 lbs. av. wt.) and 45¢ for chum (10 lbs. av. wt.), a transfer of approximately \$1,930,227 from non-Indian to Indian gear took place during 1974. Although this is only a rough estimate of the magnitude of the additional Indian catch that may have occurred, these statistics indicate the magnitude by which earnings were reduced for non-treaty commercial fishermen in Puget Sound during 1974.

#### Impact of Reduced Catch by Non-Treaty Commercial Fishermen

The basic purpose of this survey was to evaluate the impact of the reduced earnings by non-treaty commercial fishermen that were indicated in the previous section. The general mobility of fishermen and their interest and capacity to transfer to, or increase landings, in other fisheries or areas, and to take advantage of non-fishing opportunities was evaluated. The impact of reduced fishing revenue in the area influenced by the decision by Judge Boldt on net earning was considered. The situation faced by fishermen such as investment in fishing equipment, fishing debts, and their views regarding alternative solutions were also included. Other related data were also included in this report.

The major contribution of this survey, however, may be the information base that it has provided. As alternative solutions are suggested by policy makers, additional analysis of specific areas may provide important information that is not included in this general report of the results of the survey.

### Characteristics and Mobility of Fishermen

Age and years spent at commercial fishing were determined to indicate the extent fishermen are likely to be dependent on fishing and possible mobility in obtaining other types of employment. The average age of 526 gillnetters answering this question was 43.4 years with an average of 16.0 years spent at commercial fishing (519 responses). The average purse seiner was 47.7 years old (62 replies) with 28.0 years spent at commercial fishing (62 replies). The average reef netter was 40.5 years of age with 18.2 years in commercial fishing (19 replies). There was little difference between full-time and part-time fishermen in this regard (see Table 3).

Part-time gillnetters averaged slightly larger number of dependents including the fisherman (3.4) than all gillnetters who average 3.0 (522 replies), all purse seiners 3.3 (62 replies) and all reef netters 2.8 dependents (based on 19 responses).

Older and younger individuals may be slightly more dependent on fishing income although little variation was observed in this regard and this has apparently changed little during recent years or with the reduced catches of 1974 (see Table 4). Considering all fishermen who responded to this question (Table 4), the average Puget Sound fisherman is highly dependent on income from fishing.

Fishermen were asked to indicate the type of non-fishing employment in which they participated in order to determine the extent of activities unrelated to fishing. All activities directly related to fishing (e.g., crew member on another vessel) were included with fishing income in this section of the report since these sources of incomes would generally decline with reduced catches. A wide range of activities unrelated to fishing were indicated by respondents. This information is summarized in Table 5.

A serious weakness exists in using income data either to distinguish between part-time and full-time fishermen or importance of non-fishing income. Fishermen often compare their gross revenue from fishing with



income from other sources. This confusion can indicate that fishing income is more important than the actual situation justifies. Time spent fishing or other criteria could be used, but problems can also result with these alternatives.

The extent of injury from reduced catches depends on share of fishing income from the Puget Sound area and ability to change to other fisheries as well as the non-fishing income summarized in the previous section. Shifting to other fisheries depends on the interests of those involved as well as the versatility of their equipment.

Reef nets are fixed by site requirements and they are generally immobile, although vessels and related equipment may be mobile. These gear are located in waters influenced by international treaty (Washington Department of Fisheries Areas 1 & 2) and seasons in this area were not restricted during 1974. Restrictions on future use of available sites by non-treaty fishermen also is an important issue for reef netters. The reduced earnings by reef netters during 1974 apparently was due in part to fish migration patterns, but the major reduction probably resulted from increased purse seine and gill net fishing due to reduced fishing in WDF Areas 3 to 10 (see Table 6).

Several reasons may explain the lack of mobility in moving to other fisheries during 1974. Considerable uncertainty existed during 1974 regarding the final outcome of legal actions. Sharp increases in operating costs, particularly for fuel and reduced prices for salmon compared to 1973 also would affect shifts in fishing effort. The size of fish runs, expected in alternative areas also would influence this decision. Probably the major factor involved, however, is the limited opportunities in other fisheries for most of the vessels and gear involved, particularly smaller vessels, and the large amounts of fishing effort already competing in alternative fisheries.

#### Vessel Characteristics

|             | <u>Av. vessel length (ft)</u> |       | <u>Av. vessel tonnage</u> |       | <u>Av. crew size</u> |       |
|-------------|-------------------------------|-------|---------------------------|-------|----------------------|-------|
| Gillnet     | 31.5                          | (524) | 8.0                       | (434) | 1.3                  | (510) |
| Purse seine | 52.1                          | (61)  | 25.6                      | (58)  | 5.4                  | (62)  |
| Reef net    | 38.5                          | (12)  | 5.8                       | (4)   | 3.6                  | (18)  |

Net Earnings by Fishermen

Average net earnings for gillnetters declined from \$9379 (320 responses) during 1973 to \$1527 (365 responses) during 1974. Comparable figures for purse seiners show a decline in net earnings from \$30,568 (44 responses) in 1973 to \$13,026 (43 responses) in 1974. Net fishing income for reef netters dropped from \$9287 (16 responses in 1973 to a loss of -\$68 (16 responses) in 1974. This information and comparable data for part-time and full-time fishermen is summarized in Table 9, along with gross revenue and expense data.

Net earnings by fishermen were affected by factors similar to those influencing shifts to alternative fisheries. In addition to the reduced catch associated with the decision by Judge Boldt, increased expenses relative to revenue (particularly for fuel, see Table 9), sharply lower salmon prices during 1974 compared to 1973, and possibly reduced numbers of fish for some areas and species all contributed to poorer net earnings by fishermen. However, some of these factors may change in the future (e.g., fish prices). Restricted fishing opportunities and higher operating costs mean that many fishermen must expect poor net earnings from fishing.

Poor net earnings would be expected to cause many fishermen to have inadequate cash flows to meet financial obligations. The magnitude and size of fishing debts, which are summarized in Table 10, indicate that a large share of the fishermen have substantial obligations to meet. The average gillnetter reported total fishing debts of \$11,010 while the average purse seiner responding to this survey owed \$29,278

on his fishing business. The average reef netter had total debts of \$4622. Since these are average figures, obviously many fishermen have high debt obligations to meet. Similar information for part-time and full-time fishermen and the number of responses are listed in Table 10.

Non-treaty commercial fishermen have a substantial investment in fishing equipment and gear (see Table 11). Much of this equipment, particularly for smaller gillnet boats, apparently has few alternative uses. Thus a permanent reduction in fish landings may force many of the present non-treaty commercial fishing firms in Puget Sound to quit fishing and suffer serious financial losses.

Fishermen were asked if they would consider selling their fishing business and the price that they would expect (including selling all fishing equipment).

Sell Fishing Business

|             | <u>Part-time</u> <sup>1/</sup> |                    | <u>Full-time</u> |                    | <u>All Fishermen</u> |                    |
|-------------|--------------------------------|--------------------|------------------|--------------------|----------------------|--------------------|
|             | <u>Av. value</u>               | <u>No. replies</u> | <u>Av. value</u> | <u>No. replies</u> | <u>Av. value</u>     | <u>No. replies</u> |
| Gill net    | \$30,669                       | (45)               | \$111,297        | (94)               | \$76,105             | (178)              |
| Purse seine | --                             | --                 | 125,000          | (9)                | 115,000              | (11)               |
| Reef net    | 87,500                         | (2)                | 56,917           | (6)                | 64,563               | (8)                |

<sup>1/</sup> Part-time is less than 70% of income from fishing.

While many fishermen expressed an interest in selling their fishing business, almost two-thirds of those responding indicated that they would not want to sell. The most common reasons given for remaining in fishing was attachment to this occupation and continuing a self-employed status (see Table 12).

The general comments made by fishermen also indicated the interests of many fishermen in continuing to fish. A total of 184 fishermen

commented in some form regarding the need to change the decision by Judge Boldt. The only other comment repeated regularly concerned the view that fisheries in general were not being managed properly. A total of 55 comments were made regarding this general topic, many of whom wanted some form of restriction on the total amount of fishing gear.

#### Questionnaire Bias

As with any mail questionnaire, the possibility of serious bias may result due to lack of response by a representative cross section of those interviewed. To check as far as possible for potential non-response bias, the ranking of 1973 value of fish landings for a subsample of 260 respondents was determined. When fishermen were ranked from highest to lowest value of landings for 1973 (1,673 vessels had landings during 1973), it can be seen that the respondents to this survey were widely dispersed throughout all categories. This indicates that the sample included in this survey is probably quite representative of all fishermen involved.

#### Sample Distribution Among 1973 Fishing Vessels (260 subsamples)

| <u>Rank</u> <sup>1/</sup> | <u>No.</u> | <u>Rank</u> | <u>No.</u> | <u>Rank</u> | <u>No.</u> |
|---------------------------|------------|-------------|------------|-------------|------------|
| 1-50                      | 7          | 501-600     | 20         | 1101-1200   | 17         |
| 51-100                    | 8          | 601-700     | 19         | 1201-1300   | 14         |
| 101-200                   | 19         | 701-800     | 15         | 1301-1400   | 13         |
| 201-300                   | 14         | 801-900     | 20         | 1401-1500   | 11         |
| 301-400                   | 24         | 901-1000    | 17         | 1501-1600   | 7          |
| 401-500                   | 15         | 1001-1100   | 15         | 1601-1673   | 5          |

<sup>1/</sup> Highest value ranked 1 and lowest value of landings ranked 1,673.

Even though the sample of respondents in this survey seems to be well distributed, other types of bias may be present. For example, there could have been a tendency for individuals particularly disadvantaged by the decision by Judge Boldt to have responded in the survey. While bias of this type is a valid concern, the number of individuals who had high-value catches in 1973 and responded to this survey suggests that this study probably reflects a representative sample of the fishermen involved.

TABLE 1

WASHINGTON LANDINGS -- ALL GEAR & AREAS 1/  
*(Thousands of Fish)*

| Year           | Total<br>Chinook | Total<br>Coho | Total<br>Chum | Total<br>All Species <u>2/</u> |
|----------------|------------------|---------------|---------------|--------------------------------|
| 1974 <u>p/</u> | 613.0            | 2109.7        | 456.8         | 5689.8                         |
| 1973           | 684.5            | 1672.9        | 606.7         | 8061.2                         |
| 1972           | 485.0            | 1239.9        | 894.7         | 3850.0                         |
| 1971           | 565.0            | 2001.6        | 188.1         | 8377.7                         |
| 1970           | 326.4            | 1120.0        | 269.8         | 3110.0                         |

p/ Preliminary figures - Data on Indian catch 95% complete and does not include personal use. Other catch data over 98% complete.

1/ Includes Indian and non-Indian landings.

2/ Includes sockeye and pink salmon.

TABLE 2

| Landings in Washington Department of Fisheries Areas 3 - 10 <sup>1/</sup> |         |             |                                |                      |         |             |                                |                      |
|---|---------|-------------|--------------------------------|----------------------|---------|-------------|--------------------------------|----------------------|
| <i>(Thousands of Fish)</i>  |         |             |                                |                      |         |             |                                |                      |
| Year  | Chinook |             |                                |                      | Coho    |             |                                |                      |
|   | Gillnet | Purse Seine | Total <sup>2/</sup> Non Indian | Indian <sup>3/</sup> | Gillnet | Purse Seine | Total <sup>2/</sup> Non Indian | Indian <sup>3/</sup> |
| 1974 <sup>P/</sup>  |         |             | 24.9                           | 61.6                 |         |             | 86.3                           | 358.1                |
| 1973  | 34.8    | 2.9         | 37.7                           | 41.8                 | 219.3   | 116.9       | 336.2                          | 113.5                |
| 1972  | 34.0    | .5          | 34.5                           | 33.6                 | 213.6   | 20.2        | 233.8                          | 95.7                 |
| 1971  | 40.7    | 4.2         | 44.9                           | 28.7                 | 143.6   | 40.9        | 184.5                          | 110.5                |
| 1970  | 49.1    | .9          | 50.0                           | 30.5                 | 306.1   | 34.5        | 340.6                          | 98.9                 |
| Chum  |         |             |                                |                      |         |             |                                |                      |
| Sockeye   |         |             |                                |                      |         |             |                                |                      |
| 1974 <sup>P/</sup>  |         |             | 17.9                           | 166.6                |         |             | 1.1                            | 8.2                  |
| 1973  | 98.4    | 89.9        | 188.3                          | 71.2                 | 1.6     | .5          | 2.1                            | 30.6                 |
| 1972  | 260.9   | 122.4       | 383.3                          | 50.7                 | .4      | 3.5         | 3.9                            | 7.4                  |
| 1971  | 58.9    | 36.4        | 95.3                           | 27.1                 | 108.5   | 216.6       | 325.1                          | 7.5                  |
| 1970  | 51.6    | 52.9        | 104.5                          | 44.2                 | 5.2     | .4          | 5.6                            | .1                   |
| All Species <sup>4/</sup>   |         |             |                                |                      |         |             |                                |                      |
| 1974 <sup>P/</sup>  |         |             | 130.1                          | 594.5                |         |             |                                |                      |
| 1973  | 373.4   | 213.4       | 586.8                          | 368.4                |         |             |                                |                      |
| 1972  | 508.9   | 146.6       | 655.3                          | 187.4                |         |             |                                |                      |
| 1971  | 358.2   | 298.1       | 656.3                          | 289.8                |         |             |                                |                      |
| 1970  | 412.0   | 88.8        | 500.8                          | 173.8                |         |             |                                |                      |
| Total   |         |             |                                |                      |         |             |                                |                      |
| Indian & Non Ind.   |         |             |                                |                      |         |             |                                |                      |
| <i>(all gear &amp; species)</i>   |         |             |                                |                      |         |             |                                |                      |
| 1974 <sup>P/</sup>  |         |             |                                | 724.6                |         |             | 82.0                           |                      |
| 1973  |         |             |                                | 955.2                |         |             | 38.6                           |                      |
| 1972  |         |             |                                | 842.9                |         |             | 22.2                           |                      |
| 1971  |         |             |                                | 946.1                |         |             | 30.6                           |                      |
| 1970  |         |             |                                | 674.6                |         |             | 25.8                           |                      |

<sup>P/</sup> Preliminary figures - Data on Indian catch 95% complete and does not include personal use. Other catch data over 98% complete.

<sup>1/</sup> Area of major impact during 1974 of decision to restrict non-treaty commercial fishing

<sup>2/</sup> Includes reef net landings

<sup>3/</sup> All gear

<sup>4/</sup> Includes pink salmon catch

Table 3.—Average Age and Years in Commercial Fishing<sup>1/</sup>

| <u>Gear type</u> | <u>Average age</u>             |                  |                      |
|------------------|--------------------------------|------------------|----------------------|
|                  | <u>Part-time</u> <sup>2/</sup> | <u>Full-time</u> | <u>All fishermen</u> |
| Gill net         | 44.3 (115)                     | 42.7 (311)       | 43.4 (526)           |
| Purse seine      | 48.3 (3)                       | 47.8 (53)        | 47.7 (62)            |
| Reef net         | 46.3 (3)                       | 39.4 (16)        | 40.5 (19)            |

| <u>Gear type</u> | <u>Years fishing</u>           |                  |                      |
|------------------|--------------------------------|------------------|----------------------|
|                  | <u>Part-time</u> <sup>2/</sup> | <u>Full-time</u> | <u>All fishermen</u> |
| Gill net         | 13.9 (111)                     | 18.5 (313)       | 16.0 (519)           |
| Purse seine      | 21.7 (3)                       | 29.1 (53)        | 28.0 (62)            |
| Reef net         | 14.3 (3)                       | 18.9 (16)        | 18.2 (19)            |

<sup>1/</sup> Numbers in parentheses are number answering each question. Note that part-time and full-time will not add to the total answering this question since some fishermen did not provide adequate information to indicate if they should be considered part-time or full-time fishermen.

<sup>2/</sup> Part-time is less than 70% of income from fishing.



TABLE 4

Average Percent of Income from Fishing - 1970 to 1974

| <u>1970</u> | <u>Age</u><br><u>10-19</u> | <u>Age</u><br><u>20-29</u> | <u>Age</u><br><u>30-39</u> | <u>Age</u><br><u>40-49</u> | <u>Age</u><br><u>50-59</u> | <u>Age</u><br><u>60-69</u> | <u>Age</u><br><u>70-79</u> |
|-------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| Gill net    | 90(2)                      | 85(40)                     | 73(68)                     | 78(62)                     | 79(67)                     | 83(49)                     | 85(5)                      |
| Purse seine | --                         | 83(7)                      | 78(4)                      | 87(14)                     | 85(20)                     | 88(8)                      | --                         |
| Reef net    | --                         | 20(1)                      | 62(3)                      | 100(2)                     | 70(2)                      | 100(1)                     | --                         |
| <u>1971</u> |                            |                            |                            |                            |                            |                            |                            |
| Gill net    | 95(2)                      | 84(45)                     | 71(72)                     | 77(71)                     | 76(72)                     | 84(48)                     | 95(4)                      |
| Purse seine | --                         | 88(7)                      | 75(4)                      | 90(14)                     | 89(20)                     | 90(8)                      | --                         |
| Reef net    | --                         | 53(2)                      | 84(3)                      | 100(2)                     | 91(2)                      | 100(1)                     | --                         |
| <u>1972</u> |                            |                            |                            |                            |                            |                            |                            |
| Gill net    | 93(2)                      | 74(61)                     | 69(77)                     | 73(76)                     | 74(78)                     | 81(53)                     | 98(5)                      |
| Purse seine | --                         | 93(7)                      | 79(4)                      | 88(13)                     | 83(19)                     | 90(8)                      | --                         |
| Reef net    | --                         | 83(3)                      | 60(4)                      | 100(2)                     | 95(2)                      | 100(1)                     | --                         |
| <u>1973</u> |                            |                            |                            |                            |                            |                            |                            |
| Gill net    | 89(5)                      | 86(79)                     | 75(98)                     | 75(90)                     | 77(89)                     | 84(58)                     | 81(7)                      |
| Purse seine | --                         | 88(8)                      | 92(5)                      | 94(16)                     | 94(18)                     | 92(9)                      | --                         |
| Reef net    | --                         | 87(5)                      | 71(5)                      | 93(4)                      | 99(3)                      | 100(1)                     | 50(1)                      |
| <u>1974</u> |                            |                            |                            |                            |                            |                            |                            |
| Gill net    | 95(5)                      | 84(88)                     | 69(101)                    | 71(90)                     | 68(93)                     | 83(52)                     | 95(6)                      |
| Purse seine | --                         | 94(8)                      | 78(7)                      | 89(15)                     | 92(19)                     | 93(8)                      | --                         |
| Reef net    | --                         | 74(15)                     | 43(5)                      | 100(2)                     | 97(3)                      | 100(1)                     | --                         |

Note: Numbers in parentheses indicate number of fishermen answering this question.

TABLE 5

Sources of Non-Fishing Income During 1973

Average Percent of Total Income from Non-Fishing Activity

| Source                   | <u>GILL NET</u>                |                  |            | <u>PURSE SEINE</u> |                  |            | <u>REEF' NET</u> |                  |            |
|--------------------------|--------------------------------|------------------|------------|--------------------|------------------|------------|------------------|------------------|------------|
|                          | <u>Part-time</u> <sup>1/</sup> | <u>Full-time</u> | <u>All</u> | <u>Part-time</u>   | <u>Full-time</u> | <u>All</u> | <u>Part-time</u> | <u>Full-time</u> | <u>All</u> |
| Government <sup>2/</sup> | 49 (4) <sup>3/</sup>           | 10 (3)           | 32 (7)     |                    |                  |            |                  |                  |            |
| Soc. Sec.                | 37 (6)                         | 8 (10)           | 19 (16)    |                    |                  |            | 20 (1)           |                  | 20 (1)     |
| Unemploy. Ins.           | 10 (2)                         | 14 (3)           | 12 (5)     |                    |                  |            |                  | 2 (1)            | 2 (1)      |
| Agriculture              | 36 (5)                         | 6 (2)            | 27 (7)     |                    |                  |            |                  |                  |            |
| Pension                  | 37 (7)                         | 22 (4)           | 31 (11)    |                    |                  |            | 30 (1)           |                  | 30 (1)     |
| Teaching                 | 61 (14)                        | 30 (1)           | 59 (15)    | 40 (1)             | 25 (2)           | 30 (3)     | 67 (1)           |                  | 67 (1)     |
| Mechanic                 | 53 (4)                         | 20 (2)           | 42 (6)     |                    |                  |            |                  |                  |            |
| Logging                  | 35 (1)                         | 12 (5)           | 16 (6)     |                    |                  |            |                  |                  |            |
| Misc.                    | 49 (87)                        | 17 (104)         | 36 (191)   | 40 (3)             | 9 (19)           | 14 (22)    | 47 (1)           | 11 (11)          | 14 (12)    |

<sup>1/</sup> Part-time fishermen are those earning less than 70 percent of their income from fishing.

<sup>2/</sup> Teaching considered separately if reported as teaching.

<sup>3/</sup> Numbers in parentheses indicate number of fishermen answering this question.

TABLE G

## Pounds of Fish Landed

|  | <u>GILL NET</u>                |             |                    |              |              |              |
|--|--------------------------------|-------------|--------------------|--------------|--------------|--------------|
|  | <u>Part-time <sup>1/</sup></u> |             | <u>Full-time</u>   |              | <u>Total</u> |              |
|  | <u>1973</u>                    | <u>1974</u> | <u>1973</u>        | <u>1974</u>  | <u>1973</u>  | <u>1974</u>  |
| Salmon -<br>WDF Areas 3-10 <sup>2/</sup>               | 4,144 (51) <sup>3/</sup>       | 863 (51)    | 7,662 (155)        | 1,719 (123)  | 6,903 (214)  | 1,422 (206)  |
| Salmon -<br>WDF Areas 1 & 2                            | 5,736 (56)                     | 4,168 (80)  | 13,645 (174)       | 7,536 (222)  | 11,424 (240) | 6,186 (359)  |
| Salmon - Alaska<br>Salmon - Col. River,<br>Wash. Coast | 25,040 (8)                     | 72,325 (5)  | 46,724 (77)        | 39,761 (67)  | 43,949 (87)  | 40,420 (79)  |
|  | 476 (1)                        | 500 (1)     | 27,337 (17)        | 15,653 (20)  | 25,845 (18)  | 14,707 (22)  |
| Crab - Wash.   | 1,025 (4)                      | 425 (4)     | 9,346 (17)         | 8,462 (17)   | 7,761 (21)   | 6,746 (24)   |
| Bottomfish   | 2,597 (2)                      | ---         | 19,024 (3)         | 43,677 (4)   | 12,453 (5)   | 28,227 (8)   |
|  |                                |             | <u>PURSE SEINE</u> |              |              |              |
| Salmon -<br>WDF Areas 3-10                             | ---                            | ---         | 26,130 (21)        | 24,981 (12)  | 26,130 (21)  | 23,521 (13)  |
| Salmon -<br>WDF Areas 1 & 2                            | 35,295 (2)                     | 28,689 (3)  | 83,097 (39)        | 52,953 (42)  | 80,765 (41)  | 48,977 (48)  |
| Salmon - Alaska  | 89,694 (1)                     | ---         | 277,659 (13)       | 120,721 (17) | 269,194 (14) | 132,388 (20) |
| Bottomfish   | ---                            | ---         | 61,645 (2)         | 98,741 (4)   | 61,645 (2)   | 98,741 (4)   |
|  |                                |             | <u>REEF NET</u>    |              |              |              |
| Salmon -<br>WDF Areas 1 & 2                            | 27,544 (3)                     | 13,060 (3)  | 34,270 (13)        | 11,104 (14)  | 33,008 (16)  | 11,449 (17)  |

<sup>1/</sup> Part-time is less than 70% of income from fishing.

<sup>2/</sup> WDF Areas 3-10 is major area affected during 1974 by Boldt decision.

<sup>3/</sup> Nos. in parentheses indicate number of fishermen answering this question.

TABLE 1  
Value of Fish Landed

|   | <u>GILL NET</u>                |             |                    |             |              |             |
|---|--------------------------------|-------------|--------------------|-------------|--------------|-------------|
|   | <u>Part-time <sup>1/</sup></u> |             | <u>Full-time</u>   |             | <u>Total</u> |             |
|   | <u>1973</u>                    | <u>1974</u> | <u>1973</u>        | <u>1974</u> | <u>1973</u>  | <u>1974</u> |
| Salmon -<br>WDF Areas 3-10 <sup>2/</sup>                | 4,250 (54) <sup>3/</sup>       | 1,004 (53)  | 7,615 (167)        | 1,429 (125) | 6,808 (227)  | 1,227 (208) |
| Salmon -<br>WDF Areas 1 & 2                             | 5,217 (61)                     | 3,847 (84)  | 11,626 (182)       | 6,387 (224) | 9,896 (251)  | 3,441 (365) |
| Salmon - Alaska<br>Salmon - Col. River<br>& Wash. Coast | 7,725 (13)                     | 13,049 (10) | 22,248 (82)        | 20,159 (68) | 20,116 (96)  | 18,935 (83) |
|   | ---                            | 400 (1)     | 18,664 (18)        | 9,934 (20)  | 18,664 (18)  | 9,480 (21)  |
| Crab - Wash.  | 2,322 (3)                      | 2,117 (3)   | 5,146 (15)         | 4,203 (16)  | 4,675 (18)   | 3,734 (23)  |
| Bottomfish  | 449 (2)                        | 450 (1)     | 2,955 (4)          | 11,431 (5)  | 2,120 (6)    | 7,238 (8)   |
|   |                                |             | <u>PURSE SEINE</u> |             |              |             |
| Salmon -<br>WDF Areas 3-10                              | ---                            | ---         | 17,331 (16)        | 13,526 (10) | 17,331 (16)  | 12,705 (11) |
| Salmon -<br>WDF Areas 1 & 2                             | 26,103 (2)                     | 23,995 (13) | 56,498 (34)        | 41,784 (33) | 54,819 (36)  | 38,231 (39) |
| Salmon - Alaska   | 2,725 (1)                      | 43,680 (1)  | 60,493 (11)        | 47,145 (16) | 60,707 (12)  | 49,605 (18) |
| Bottomfish  | ---                            | ---         | 8,216 (2)          | 9,892 (3)   | 8,216 (2)    | 9,892 (3)   |
| Crabs   | ---                            | ---         | 2,000 (1)          | ---         | 2,000 (1)    | ---         |
|   |                                |             | <u>REEF NET</u>    |             |              |             |
| Salmon -<br>WDF Areas 1 & 2                             | 22,181 (3)                     | 9,274 (3)   | 22,541 (8)         | 8,483 (12)  | 22,469 (15)  | 8,641 (15)  |

1/ Part-time is less than 70% of income from fishing.  
 2/ WDF Areas 3-10 is major area affected during 1974 by Boldt decision.  
 3/ Nos. in parentheses indicate number of fishermen answering this question.

TABLE 8  
(Thousands of Fish)

| Landings in Washington Department of Fisheries Areas 1 - 2 <sup>1/</sup> |         |             |                                |                      |         |             |                                |                      |
|--|---------|-------------|--------------------------------|----------------------|---------|-------------|--------------------------------|----------------------|
| Year   | Chinook |             |                                |                      | Coho    |             |                                |                      |
|  | Gillnet | Purse Seine | Total <sup>2/</sup> Non Indian | Indian <sup>3/</sup> | Gillnet | Purse Seine | Total <sup>2/</sup> Non Indian | Indian <sup>3/</sup> |
| 1974 <sup>P/</sup>   |         |             | 52.9                           | 5.2                  |         |             | 391.6                          | 25.1                 |
| 1973   | 12.8    | 42.1        | 56.5                           | 2.0                  | 146.0   | 193.2       | 349.3                          | 2.9                  |
| 1972   | 8.7     | 39.9        | 49.4                           | .2                   | 73.9    | 137.1       | 219.9                          | 1.5                  |
| 1971   | 13.7    | 70.3        | 85.9                           | .5                   | 128.8   | 112.0       | 249.5                          | 8.0                  |
| 1970   | 10.3    | 57.8        | 70.1                           | .6                   | 152.3   | 238.5       | 405.6                          | 4.2                  |
| Chum   |         |             |                                |                      |         |             |                                |                      |
| 1974 <sup>P/</sup>   |         |             | 194.6                          | 9.4                  |         |             | 2439.4                         | 34.1                 |
| 1973   | 133.8   | 137.5       | 274.5                          | 1.1                  | 1052.8  | 1424.1      | 2618.0                         | 23.6                 |
| 1972   | 117.1   | 232.8       | 353.0                          | 1.2                  | 503.8   | 532.2       | 1124.2                         | 9.2                  |
| 1971   | 12.2    | 15.7        | 28.5                           | .5                   | 969.0   | 1556.2      | 2714.2                         | 16.1                 |
| 1970   | 42.3    | 35.8        | 79.0                           | .1                   | 504.7   | 784.8       | 1355.2                         | 4.7                  |
| Sockeye  |         |             |                                |                      |         |             |                                |                      |
| 1974 <sup>P/</sup>   |         |             | 194.6                          | 9.4                  |         |             | 2439.4                         | 34.1                 |
| 1973   | 133.8   | 137.5       | 274.5                          | 1.1                  | 1052.8  | 1424.1      | 2618.0                         | 23.6                 |
| 1972   | 117.1   | 232.8       | 353.0                          | 1.2                  | 503.8   | 532.2       | 1124.2                         | 9.2                  |
| 1971   | 12.2    | 15.7        | 28.5                           | .5                   | 969.0   | 1556.2      | 2714.2                         | 16.1                 |
| 1970   | 42.3    | 35.8        | 79.0                           | .1                   | 504.7   | 784.8       | 1355.2                         | 4.7                  |
| All Species <sup>4/</sup>  |         |             |                                |                      |         |             |                                |                      |
| 1974 <sup>P/</sup>   |         |             | 3078.7                         | 73.8                 |         |             |                                |                      |
| 1973   | 167.18  | 3593.1      | 5523.7                         | 33.8                 |         |             |                                |                      |
| 1972   | 1212.3  | 1088.6      | 2402.0                         | 12.0                 |         |             |                                |                      |
| 1971   | 1451.1  | 3656.2      | 5426.5                         | 32.0                 |         |             |                                |                      |
| 1970   | 710.7   | 1117.9      | 1911.6                         | 9.5                  |         |             |                                |                      |
| Total Indian & Non Indian (all gear & species)                           |         |             |                                |                      |         |             |                                |                      |
| 1974 <sup>P/</sup>   |         |             |                                | 3152.5               |         |             |                                | 2.3                  |
| 1973   |         |             |                                | 5557.5               |         |             |                                | .6                   |
| 1972   |         |             |                                | 3404.3               |         |             |                                | .4                   |
| 1971   |         |             |                                | 5458.4               |         |             |                                | 1.0                  |
| 1970   |         |             |                                | 1921.1               |         |             |                                | .5                   |

<sup>2/</sup> Preliminary figures - Data on Indian catch 95% complete and does not include personal use. Other catch data over 98% complete.

<sup>1/</sup> Excluded from restrictions on non-treaty fishing. Management in this area influenced by international agreements with Canada.

<sup>3/</sup> Includes reef net landings

<sup>4/</sup> All gear

<sup>1/</sup> Includes pink salmon catch

TABLE 9

Average Income & Expenses - 1973 & 1974  
(rounded to nearest dollar)

|                 | GILL NET                 |            |              |              |                     |             |
|-----------------|--------------------------|------------|--------------|--------------|---------------------|-------------|
|                 | Part-time <sup>1/</sup>  |            | Full-time    |              | Total <sup>2/</sup> |             |
|                 | 1973                     | 1974       | 1973         | 1974         | 1973                | 1974        |
| Av. Revenue     | 7,441 (87) <sup>3/</sup> | 4,735 (95) | 20,974 (256) | 10,674 (251) | 17,345 (354)        | 8,274 (412) |
| Labor           | 1,630 (37)               | 939 (43)   | 2,447 (115)  | 1,623 (107)  | 2,308 (155)         | 1,365 (180) |
| Fuel            | 868 (83)                 | 373 (91)   | 765 (235)    | 856 (236)    | 778 (329)           | 668 (396)   |
| Repair & Maint. | 757 (73)                 | 851 (81)   | 2,196 (221)  | 1,658 (220)  | 1,860 (304)         | 1,385 (370) |
| Taxes, License  | 216 (84)                 | 238 (97)   | 488 (237)    | 415 (234)    | 413 (331)           | 338 (398)   |
| Interest        | 437 (33)                 | 755 (49)   | 815 (133)    | 1,074 (143)  | 784 (174)           | 961 (239)   |
| Depreciation    | 1,637 (60)               | 1,957 (61) | 2,678 (187)  | 2,546 (172)  | 2,390 (254)         | 2,315 (274) |
| Insurance       | 375 (48)                 | 391 (62)   | 586 (188)    | 594 (199)    | 536 (244)           | 547 (317)   |
| Other           | 1,140 (56)               | 1,150 (61) | 3,088 (161)  | 2,726 (163)  | 2,565 (223)         | 2,204 (261) |
| Profit or Loss  | 3,596 (78)               | 371 (82)   | 11,520 (232) | 2,630 (219)  | 9,379 (320)         | 1,527 (365) |

| PURSE SEINE     |            |            |             |             |             |             |
|-----------------|------------|------------|-------------|-------------|-------------|-------------|
|                 | 1973       | 1974       | 1973        | 1974        | 1973        | 1974        |
| Av. Revenue     | 51,317 (2) | 43,838 (3) | 78,171 (43) | 56,301 (44) | 74,234 (47) | 51,513 (53) |
| Labor           | 16,584 (2) | 16,145 (3) | 30,930 (39) | 23,656 (39) | 29,534 (42) | 21,769 (47) |
| Fuel            | 2,128 (2)  | 1,781 (2)  | 2,178 (41)  | 2,027 (40)  | 2,099 (45)  | 1,903 (49)  |
| Repair & Maint. | 3,405 (2)  | 4,280 (3)  | 5,431 (40)  | 7,427 (39)  | 5,152 (44)  | 6,795 (48)  |
| Taxes, Licenses | 1,937 (2)  | 2,285 (3)  | 2,206 (42)  | 2,127 (42)  | 2,151 (45)  | 1,979 (50)  |
| Interest        | - - -      | 2,300 (1)  | 2,469 (18)  | 3,873 (16)  | 2,339 (19)  | 3,604 (19)  |
| Depreciation    | 2,199 (2)  | 2,103 (3)  | 4,370 (34)  | 5,375 (33)  | 4,160 (37)  | 4,785 (40)  |
| Insurance       | 2,693 (2)  | 2,878 (3)  | 2,182 (40)  | 2,455 (39)  | 2,163 (43)  | 2,417 (46)  |
| Other           | 13,236 (1) | 5,939 (2)  | 3,918 (28)  | 3,629 (28)  | 4,228 (30)  | 3,573 (33)  |
| Profit or Loss  | 15,754 (2) | 11,452 (2) | 32,463 (40) | 14,979 (35) | 30,568 (44) | 13,026 (43) |

..Average Income & Expenses - 1973 & 1974 - continued (Table 9)

...

|                 | <u>REEF NET</u>  |             |                  |             |              |             |
|-----------------|------------------|-------------|------------------|-------------|--------------|-------------|
|                 | <u>Part-time</u> |             | <u>Full-time</u> |             | <u>Total</u> |             |
|                 | <u>1973</u>      | <u>1974</u> | <u>1973</u>      | <u>1974</u> | <u>1973</u>  | <u>1974</u> |
| Av. Revenue     | 24,372 (3)       | 12,613 (3)  | 26,628 (13)      | 8,201 (14)  | 26,205 (16)  | 8,980 (17)  |
| Labor           | 12,581 (3)       | 1,419 (2)   | 9,143 (13)       | 3,611 (13)  | 9,788 (16)   | 3,319 (15)  |
| Fuel            | 594 (2)          | 598 (2)     | 557 (10)         | 333 (10)    | 563 (12)     | 377 (12)    |
| Repair & Maint. | 336 (3)          | 1,058 (2)   | 2,168 (12)       | 2,349 (12)  | 1,801 (15)   | 2,165 (14)  |
| Taxes, Licenses | 1,448 (3)        | 515 (2)     | 1,159 (13)       | 597 (12)    | 1,213 (16)   | 585 (14)    |
| Interest        | - - -            | - - -       | 1,182 (4)        | 856 (3)     | 1,182 (4)    | 856 (3)     |
| Depreciation    | 1,397 (3)        | 876 (2)     | 1,548 (13)       | 1,202 (13)  | 1,520 (16)   | 1,158 (15)  |
| Insurance       | 386 (2)          | 123 (1)     | 662 (9)          | 435 (10)    | 612 (11)     | 406 (11)    |
| Other           | 1,765 (3)        | 7,919 (3)   | 2,479 (8)        | 1,661 (8)   | 2,285 (11)   | 3,367 (11)  |
| Profit or Loss  | 6,192 (3)        | 1,679 (3)   | 10,001 (13)      | - 472 (13)  | 9,287 (16)   | - 68 (16)   |

1/ Part-time is less than 70 percent of income from fishing.

2/ Part-time and full-time fishermen usually will not add to total fishermen since some fishermen provided data on income and expenses but did not indicate the source of their 1973 income adequately to determine if they should be considered part-time or full-time fishermen.

3/ Parentheses indicates number of fishermen answering each question.

TABLE 10

## Fishing Debts

Gill Net

|                  | <u>Part-time</u> <sup>1/</sup> | <u>Full-time</u> | <u>All</u>   |
|------------------|--------------------------------|------------------|--------------|
| Mortgage         | 8,545 (63) <sup>2/</sup>       | 11,041 (185)     | 10,330 (311) |
| Accounts payable | 2,607 (32)                     | 3,064 (143)      | 2,841 (214)  |
| Total            | 9,420 (66)                     | 11,757 (211)     | 11,010 (347) |

Purse Seine

|                  |            |             |             |
|------------------|------------|-------------|-------------|
| Mortgage         | 23,000 (1) | 30,782 (27) | 29,278 (31) |
| Accounts payable | ---        | 6,696 (14)  | 6,276 (15)  |
| Total            | 23,000 (1) | 30,829 (30) | 29,464 (34) |

Reef Net

|                  |           |           |           |
|------------------|-----------|-----------|-----------|
| Mortgage         | 2,000 (1) | 4,813 (7) | 4,462 (8) |
| Accounts payable | 2,000 (1) | 1,300 (3) | 1,475 (4) |
| Total            | 2,000 (2) | 5,371 (7) | 4,622 (9) |

---

<sup>1/</sup> Part-time fishermen are those earning less than 70 percent of their income from fishing.

<sup>2/</sup> Numbers in parentheses indicate number of fishermen answering this question.





TABLE 12Fishermen's Reasons to Continue Fishing

| <u>Reason</u>                       | <u>Part-Time</u> | <u>Full-Time</u> |
|-------------------------------------|------------------|------------------|
| Supplement other income             | 21               | 7                |
| Expect change in Boldt decision     | 5                | 8                |
| Only occupation                     | 26               | 160              |
| Too old to change                   | 17               | 45               |
| Have Alaska limited entry privilege | 0                | 1                |
| Enjoy fishing                       | 39               | 46               |
| Want to be self-employed            | 47               | 24               |
| Working way through college         | 0                | 3                |
| Future expectations good            | 2                | 3                |
| Still making money                  | 6                | 5                |



# Puyallup Tribe of Indians

MEDICINE CREEK TREATY NATION

April, 1976



APPENDIX I: Analysis of Boldt Decision Impact on Indian and Non-Indian Salmon Harvests or Catch Totals in the Court Case Area.

The Northwest Region of National Marine Fisheries Service (NMFS) has issued a March 3, 1975, report titled, "The Economic Impact of the Judge Boldt Decision", by Jack Richards, NMFS Regional Economist. The study was prepared at request of the Washington Congressional Delegation for their educational information and decisional use.

The 'Major Conclusions' of the NMFS Report suggest that the direct impact of the Boldt Decision has meant disastrous results for non-Indian commercial fishermen, and that Indian fishermen have benefitted and gained from each measure of loss experienced or claimed by non-Indian fishermen. As example, the study reports 'net earnings' declines, or average fish income losses, to non-Indian commercial fishermen in the following amounts: Purse Seiners, average income reduction of \$17,542.00, leaving net earnings at \$13,026; Gillnetters, reduction of \$7,852 on average; and Reef Netters, losing money with an average decline in net earnings of \$9,355 to leave reefers \$68.00 in the red.

The Report claims these reductions and losses "were due in large part to court decisions that apparently transferred about \$2 million in landings from non-treaty commercial gear to treaty-Indian gear."

Both the stated conclusions and the implications of the NMFS study can reliably be considered as being invalid in its measurements of impact, in its giving general application to limited items of selective information -- or disregard of areas of major harvest impact -- and as a basis of judgement of the Boldt Decision and its benefits to Indian Tribes and fishermen.

What has been the collective impact of the Boldt Decision upon the total non-Indian salmon catches and Indian fishermen catches in the Case Area?

We have analyzed total Indian and non-Indian salmon catch figures of Chinook, Sockeye, Coho, and Chum salmon harvested in Puget Sound and Coastal Areas of Washington for the 1970, 1971, 1972, 1973 and 1974 seasons. Analysis permits the following information and statements to be presented as verifiable or statistically proven facts, factually supported beliefs, and valid considerations for evaluating actual impact of the Boldt Decision upon species harvests:

\*\*\* 1. Of 6,507,792 salmon of all species harvested in 1974, non-Indians caught a total of 5,752,235 salmon, or 88.39% of all salmon in the Case Area.

\*\*\* 2. Indians caught 755,557, or 11.61%, salmon from the 6,507,792 combined total. (Including January & February 1975 later season Chum by Indians.)

\*\*\* 3. Of the total combined 1974 salmon catch, non-Indians caught 547,718 more salmon than their average harvest level in the four previous, or pre-Boldt, salmon fishing seasons (5,204,517 annual average, 1970-73, inclusive).



# Puyallup Tribe of Indians

## MEDICINE CREEK TREATY NATION



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\*\*\* 4. Of the total 1,010,046 salmon increase over the 4-Year pre-Boldt average combined total harvest, the non-Indian increase equalled 54.23% of the increase.

\*\*\* 5. The 45.77% of the 1974 catch increase, or 462,328 salmon, accountable to Indians over their 4-Year pre-Boldt average, represents an amount that exceeds the actual post-Boldt Indian catch impact.

\*\*\* 6. Non-Indians experienced harvest increases in their Chinook, Coho, and Sockeye catches, and suffered decline over the 4-Year pre-Boldt harvests average for only the Chum species.

\*\*\* 7. Of the 1974 respective salmon species harvests, the percentage of the catch which represented an increase or decline over the 4-Year pre-Boldt species average is calculated at: Chinook, 19.6% increase; Coho, 19.47% increase; Sockeye, 15.8% increase; and Chum, 10.3% decline.

\*\*\* 8. It's erroneous to regard the total Indian catch as a post-Boldt impact measure, or even all increases as being "off-reservation" harvests. (The Indian catch levels and post-Boldt impact are too frequently treated in news media as though 1974 totals can 'accurately' be figured from a zero-data-base, or like all catch figures represent a post-Boldt off-reservation Indian harvest.)

\*\*\* 9. Of Indians' 11.61% share of 1974 total salmon harvests, if all tribal harvest increases are regarded as result or benefit impact of the Boldt Decision, then 7.1% of total 1974 salmon harvests could be regarded as the post-Boldt (off-reservation) increase to Indians; 4.5% of 1974 harvests; continuing as the measure of pre-Boldt (reservation) Indian harvests -- and, apparently, the 8.4% of harvests representing non-Indian increases would be a post-Boldt impact result.

\*\* 10. Adjusting base figures to reflect the general fluctation or harvest increases in available resources, 5.3% of total 1974 salmon harvests (or 345,062 salmon) would be regarded as the post-Boldt (off-reservation) increase to Indians; while 6.31% of 1974 harvests (410,495 salmon) would represent the number caught under pre-Boldt (on-reservation) conditions, but reflecting the general increases or same rate of increase as all 1974 harvests. (Adjusted figures seem more appropriate for evaluating post-Boldt impact. To argue against the Boldt Decision by using the unadjusted figures to 'maximize' the alleged gain to Indians in 1974 incorporates an argument that non-Indians should or would have had the gain of all increases in harvestable resources in 1974, as if the absence of the Boldt Decision would have frozen Indian harvest totals at pre-1974 average levels. By the unadjusted standard or rates, the result would be that the Boldt Decision has prevented non-Indians in 1974 from taking 95.5% of the harvests, or 6,214,563 salmon, and leaving fishermen from some 20 Tribes to divide up their 4.5% share of harvests, or 293,229 salmon.)

\*\* 11. Of total 1974 Sockeye harvests of 2,499,476 salmon, a 15.8% increase over the 4-Year pre-Boldt average, Indian fishermen caught only 51,675 Sockeye -- an increase of 1,350 over the pre-Boldt average; a sizeable Indian decline over the 3 immediate previous years; and only 2.1% of total 1974 Sockeye harvests. The net increase to non-Indian fishermen in 1974 was 377,214 Sockeye.

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# Puyallup Tribe of Indians

## MEDICINE CREEK TREATY NATION



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\*\* 12. Of 1974 total Chinook harvests of 949,424 salmon, a 19.6% increase over the pre-Boldt average, Indian fishermen caught 8.9% of the total, or 84,050 Chinooks. Adjusted to reflect the general rate on resources increase, the Indian share can be divided as reflecting 6.8% being caught under pre-Boldt (on-reservation) conditions, totalling 64,126 Chinooks; and 2.1%, or 19,924 Chinooks, being counted as the post-Boldt (off-reservation) increase to Indians. Unadjusted, the figures would be 5.1%, or 47,652 Chinook, caught under pre-Boldt (on-reservation) levels, and 3.8%, or 36,398 Chinook, being counted as post-Boldt (off-reservation) increases to Indians.

\*\* 13. The non-Indian 1974 Chinook harvest total of 865,374 salmon shows a collective increase of 149,687 Chinook over the 4-Year pre-Boldt average -- and an increase in range of 53,902 to 232,365 Chinook over non-Indian harvests for each of the previous 4 years, 1970 through 1973. The increase of Chinooks to non-Indians in 1974 is 15.8% of total harvests, compared to Indians' 8.9% share in that total -- of which increases to Indians are in range of 2.1% to 3.8% of 1974 harvests.

\*\* 14. Of 1974 total Coho harvests of 2,717,746 salmon, a 19.47% increase over the pre-Boldt average, Indian fishermen caught 16.6% of the total, or 451,196 Coho (silvers). Unadjusted figures would account 5.4% of 1974 totals to pre-Boldt (on-reservation) Indian catches, and 11.2% to a post-Boldt (off-reservation) increase to Indians. Adjusting division of the Tribes' 451,196 Coho harvest to the general rate of resources increase, a 8.6% share or 234,540 Coho, would be the pre-Boldt (on-reservation) count, and 8.0% or 216,656 Coho, would represent the post-Boldt (off-reservation) increase to Indians. The 1974 non-Indian Coho harvest of 2,226,550 salmon exceeded total non-Indian harvests of Coho in 1970, 1972, and 1973. The non-Indian Puget Sound commercial fishermen's 1974 harvest of 477,885 Coho exceeded their pre-Boldt harvests of 1971 and 1972 -- as well as being larger than the total 1974 Coho harvests of all Indian fishermen and Tribes in the Case Area combined.

\*\* 15. Of 1974 total Chum harvests of 381,146 salmon, a 10.3% decline under the 4-Year pre-Boldt average, Indian fishermen caught 44.2% of the total, or 168,636 Chums (including January and February 1975 totals), of which 120,076 Chum, or 31.5% of 1974 totals, could be counted as an unadjusted post-Boldt increase to Indian fishermen. The non-Indian 1974 Chum harvest of 212,510 salmon exceeded 1970 and 1971 non-Indian harvests, but did not approach the level of their Chum harvests of 1972 and 1973, which exceeded the 1974 harvest in the range of a quarter to more than half a million more Chums. (Although Indian Chum harvest increases have relied upon the Boldt Decision to a more substantial degree than appears the case with other species under post-Boldt conditions, the Indian Chum harvests represent only partial explanation for non-Indian reductions in Chum catch totals, and probably don't constitute the most substantial reason in results of readjustments under Boldt; eg., Chum escapement levels.)

(3 of 3)

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**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
 NATIONAL MARINE FISHERIES SERVICE  
 Washington, D.C. 20235

MAY 1975

F2x1/PS

Honorable Henry M. Jackson  
 United States Senate  
 Washington, D.C. 20510

Dear Senator Jackson:

This is in response to your letter of April 28, 1975, written on behalf of Mr. William L. Smith, concerning the NMFS report, "The Economic Impact of the Judge Boldt Decision."

In response to the telegram of October 25, 1974, from Senator Magnuson, Congressman Meeds, and yourself, I met on November 6, 1974, in Seattle, Washington, with Puget Sound fishermen and representatives of Washington State and Federal agencies, to explore means to alleviate the economic hardships being experienced.

Fishing industry representatives at the meeting commented on the type of assistance they would like. Some of these were immediate relief of economic strain such as meeting mortgage payments, grants for loss of income, greater share of the fishery resources, and longer term action for legislation providing for future fishing viability and a speedup of the legal process which could modify the Boldt decision or at least exhaust the appeal route so the final decision would be known, thus permitting more permanent plans to be developed as necessary.

As a specific short-term action, the National Marine Fisheries Service was requested to develop a mail questionnaire in cooperation with concerned fisheries associations in the Puget Sound area. This questionnaire, subsequently approved by the Office of Management and Budget, was to be used, together with a small sample of personal interviews, to assess the economic impact of Judge Boldt's decision solely on the non-treaty commercial net fishermen. Dr. Richards' report, to which Mr. Smith refers, is the result of that effort.

We recognize that our report was limited in scope and did cover the effect of the Boldt decision only on non-treaty commercial fishermen during 1974, in areas where the decision restricted fishing. This was exactly what was requested of us. However, we are willing to do a similar study for Indian commercial fisheries upon request.

JUN 2 1975

Mr. Smith indicates that several critical factors must be considered when analyzing the economics of the fishery. Dr. Richards' study reflects in large part an analysis of the results of the mail questionnaire. However, his study does recognize, within its major conclusions, that sharply lower fish prices and higher operating costs were contributing factors to the loss of income by the net fishermen. Mr. Smith also considers that the overcapitalization of the fishery, with too many fishermen licensed to harvest the limited numbers of available fish, is a serious problem. With this factor in mind, a portion of Dr. Richards' survey was directed toward a determination of preferences on the part of non-treaty commercial net fishermen regarding the disposition or alternative uses of their gear.

In recognition of the fact that there are too many licensed fishermen seeking to harvest too few fish, I understand that the State of Washington is undertaking legislative action and is seeking funds from the Economic Development Administration to alleviate the problem.

I hope this information will be helpful in responding to your constituent.

Sincerely,

Robert W. Schoning  
Director

NMFS #5011

cc: A, Ax2, Office of Legislative Affairs, DOC, CA(2), GCx2, F,  
Fx31, GCx2-Robinson, F24-Miller, Burr, FNW

The Northwest Indian Fisheries Commission  
 P.O. Box 2445  
 Olympia, Washington 98507

U.S. Senator Henry M. Jackson  
 Senate Offices Building  
 Washington, D.C. 20510

Please return to  
 SENATOR HENRY M. JACKSON

Honorable Henry M. Jackson, Senator:

We have reviewed and have the following comments on the National Marine Fisheries Service's [NMFS] report entitled, "The Economic Impact of the Judge Boldt Decision", dated March 3, 1975.

We have found that the questionnaire used during 1974 (attached) was designed specifically to determine the effect of the Boldt decision upon the non-Indian commercial fishery. The report does not state that the questionnaire and letters attached encouraged response directly relating to the Boldt decision. Rather it implies that the analysis with regard to the decision was made independently from the survey. Actually, the fishermen were asked to compare their income before and after the Boldt decision and thus were alerted to the intent of the survey. The potential for bias here is obvious.

It is somewhat discrediting that NMFS allows and encourages fishermen to emphasize the Boldt decision when it is fully aware that the decision is not the major cause of the present dilemma facing non-Indian fishermen. Perhaps the most obvious failing is the report title itself. It implies that the study assesses the total economic impact of the Judge Boldt decision. However, not one treaty Indian fisherman was contacted and the report carries no reference whatsoever to the obvious economic benefits in the Indian community. Further, it is interesting to note that the one Federal fishery agency working directly with Indian people and the State agencies to implement the Boldt decision was "overlooked" as a source of information on Indian Fisheries [Northwest Fisheries Program - U.S. Fish and Wildlife Service].

Mr. Richards' report never discusses the 1974 commercial fishing regulations or tries to measure how much of the fishing cutback in 1974 was really due to the Boldt decision. He only estimates changes in non-Indian fishing income for a limited group of fishermen and attributes any apparent decline to the decision; A better title for this report would have been "The Economic Impact of the Reduction of Fishing Time in 1974".



Page 2.

There are several critical factors, largely ignored by Mr. Richards, that should be considered when analyzing the economics of the fishery. Perhaps the one overriding factor is that entry into the non-Indian commercial fishery has been unlimited and the number of fishermen currently licensed is simply too great to harvest the limited numbers of available fish and still guarantee reasonable individual incomes. One respected economist at the University of Washington estimates that there are probably two to three times as many licensed commercial fishermen as would be necessary to provide an economically profitable harvest. The number of commercial licenses issued in 1974 is up sharply from 1973.

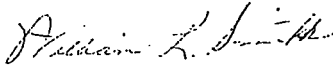
Other key factors ignored or only fleetingly acknowledged by Mr. Richards are:

- 1) Salmon runs were generally down in 1974 (see Washington Department of Fisheries 1974 proposed Puget Sound commercial regulations and salmon forecasts). With the exception of the chinook run in Bellingham Bay, there were no Washington stocks of chinook or chum salmon sufficiently large to support significant commercial fisheries in 1974.
- 2) Native coho stocks have been over-harvested in the past and the Department of Fisheries would have proposed drastic reductions in 1974 in the coho fishery regardless of the Boldt decision (testimony in Thurston County Court, 1974).
- 3) No pink salmon were available for harvest in 1974 and yet income from fisheries in this year was compared with those in 1973 when there was a pink salmon harvest. Pink salmon are unique among all the salmon of Washington in that they run only in the odd numbered years.
- 4) Prices paid to fishermen in 1974 were drastically lower than they were in 1973 and the operating costs were greatly increased.
- 5) Mr. Richards has designed his study to exclude consideration of the major harvest by non-Indian Washington fishermen in the northern Puget Sound and coastal troll fishery areas.
- 6) All ocean catches (sport and commercial, by U.S. and Canadian citizens) were greatly increased in 1974, thus depressing the number of fish available to Puget Sound fisheries.

Page 3

In summary, Mr. Richards has analyzed some of the economic characteristics of a group of non-Indian fishermen and tabulated the survey results. However, allusions to the Judge Boldt decision and its impact on non-Indian fishermen are not based on fact, but rather on personal opinion. It is appalling to us that NMFS, a Federal agency bound by a Trust Responsibility to Indian people, should be responsible for such an incomplete, biased report. Knowingly or not, NMFS has wrongly fanned the flames of public opinion against Indian people.

Respectfully,



William L. Smith,  
Executive Director,  
Northwest Indian Fisheries Commission

WLS:ccl

NORTHWEST INDIAN FISHERIES COMMISSION

Date: October 7, 1977

U.S. v. Washington Case Area Indian vs. Non-Indian Catch Comparisons 1/

Species Chinook Year 1975

| Region of Origin                | Non-Indian                                      |  |                 | Indian  |                            |          | Off-Res. Catch |          | Total Catch |         |
|---------------------------------|---|--|-----------------|---------|----------------------------|----------|----------------|----------|-------------|---------|
|                                 | Marine Sport and Prior Commercial Interceptions | Commercial Net and River Sport Catch in Region of Origin | Personal Use 2/ | On-Res. | Subsistence and Ceremonial | Off-Res. | Indian.        | Non-Ind. | Indian      | Non-Ind |
|                                 |   |  |                 |         |                            |          | % Total        | % Total  | % Total     | % Total |
| Canadian                        | 18,200  | 76,700   |                 | 400     | 0                          | 5,200    | 5              | 95       | 6           | 94      |
| Nooksack-Samish                 | 19,200  | 33,500   |                 | 27,200  | 900                        | 8,800    | 14             | 86       | 41          | 59      |
| Skagit                          | 5,000   | 5,200  |                 | 2,200   | 1,400                      | 7,200    | 41             | 59       | 51          | 49      |
| Stillaguamish/Snohomish         | 6,900   | 300  |                 | 2,000   | 700                        | 100      | 1              | 99       | 28          | 72      |
| South Puget Sound               | 33,800  | 2,000  |                 | 4,000   | 700                        | 22,800   | 39             | 61       | 43          | 57      |
| Hood Canal                      | 8,300   | 2,000  |                 | 4,300   | 1,400                      | 9,400    | 48             | 52       | 59          | 41      |
| Strait of Juan de Fuca          | 1,200   | 200  |                 | 300     | 200                        | 700      | 33             | 67       | 46          | 54      |
| Coastal (North of Grays Harbor) | 7,600   | 800  |                 | 8,500   | 1,200                      | 1,700    | 17             | 83       | 58          | 42      |
| Grays Harbor                    | 6,500   | 8,100  |                 | 700     | 100                        | 1,300    | 8              | 92       | 13          | 87      |
| Total                           | 106,700   | 128,800  |                 | 49,600  | 6,600                      | 57,200   | 20             | 80       | 32          | 68      |

1/ Data presented in these tables are taken from the "1975 Joint Salmon Catch Report for Case Area" which was jointly prepared by Washington Department of Fisheries, USF&WS and NWIFC.

2/ Personal use fish are fish caught during commercial fisheries and taken home. These fish do not appear in commercial landings.

NORTHWEST INDIAN FISHERIES COMMISSION

Date: October 7, 1977

U.S. v. Washington Case Area Indian vs. Non-Indian Catch Comparisons 1/

Species Sockeye Year 1975

| Region of Origin                | Non-Indian                                      |  |                   | Indian  |                            |          | Off-Res. Catch |          | Total Catch |         |
|---------------------------------|---|--|-------------------|---------|----------------------------|----------|----------------|----------|-------------|---------|
|                                 | Marine Sport and Prior Commercial Interceptions | Commercial Net and River Sport Catch in Region of Origin | Personal Use 2/   | On-Res. | Subsistence and Ceremonial | Off-Res. | Indian.        | Non-Ind. | Indian      | Non-Ind |
|                                 |   |  |                   |         |                            |          | % Total        | % Total  | % Total     | % Total |
| Canadian                        | 67,800  | 1,490,400  |                   | 9,700   | 2,100                      | 41,400   | 1              | 97       | 1           | 97      |
| Nooksack-Samish                 | 0   | 0  |                   | 0       | 0                          | 0        | -              | -        | -           | -       |
| Skagit                          | 0   | 100  |                   | 200     | 500                        | 400      | 80             | 20       | 92          | 8       |
| Stillaguamish/Snohomish         | 0   | 0  |                   | 0       | 0                          | 0        | -              | -        | -           | -       |
| South Puget Sound               | 0   | 100  | NO DATA AVAILABLE | 0       | 100                        | 5,700    | 98             | 2        | 98          | 2       |
| Hood Canal                      | 0   | 0  |                   | 0       | 0                          | 0        | -              | -        | -           | -       |
| Strait of Juan de Fuca          | 0   | 0  |                   | 0       | 0                          | 0        | -              | -        | -           | -       |
| Coastal (North of Grays Harbor) | 0   | 0  |                   | 74,300  | 7,100                      | 100      | 100            | 0        | 100         | 0       |
| Grays Harbor                    | 0   | 0  |                   | 0       | 0                          | 0        | 0              | 0        | 0           | 0       |
| Total                           | 67,800  | 1,490,600  |                   | 84,200  | 9,800                      | 47,600   | 13             | 97       | 8           | 92      |

NORTHWEST INDIAN FISHERIES COMMISSION

Date: October 7, 1977

U.S. v. Washington Case Area Indian vs. Non-Indian Catch Comparisons 1/

Species Pink Year 1975

| Region of Origin                | Non-Indian                                      |  |                            | Indian        |                            |               | Off-Res. Catch |           | Total Catch |           |
|---------------------------------|---|--|----------------------------|---------------|----------------------------|---------------|----------------|-----------|-------------|-----------|
|                                 | Marine Sport and Prior Commercial Interceptions | Commercial Net and River Sport Catch in Region of Origin | Personal Use <sup>2/</sup> | On-Res.       | Subsistence and Ceremonial | Off-Res.      | Indian         | Non-Ind.  | Indian      | Non-Ind.  |
|                                 |   |  |                            |               |                            |               | % Total        | % Total   | % Total     | % Total   |
| Canadian                        | 105,900   | 1,168,800  |                            | 0             | 900                        | 12,700        | 1              | 99        | 1           | 99        |
| Nooksack-Samish                 | 4,200   | 800  |                            | 30,600        | 0                          | 100           | 2              | 98        | 86          | 14        |
| Skagit                          | 14,800  | 2,800  |                            | 16,700        | 100                        | 5,600         | 24             | 76        | 56          | 44        |
| Stillaguamish/Snohomish         | 15,200  | 100  |                            | 16,800        | 3,000                      | 900           | 6              | 94        | 57          | 43        |
| South Puget Sound               | 4,700   | 2,500  |                            | 12,300        | 100                        | 2,400         | 25             | 75        | 67          | 33        |
| Hood Canal                      | 2,000   | 400  |                            | 100           | 100                        | 500           | 17             | 83        | 22          | 78        |
| Strait of Juan de Fuca          | 2,700   | 100  |                            | 0             | 100                        | 800           | 22             | 78        | 24          | 76        |
| Coastal (North of Grays Harbor) | 0   | 100  | NO DATA AVAILABLE          | 0             | 0                          | 100           | 50             | 50        | 50          | 50        |
| Grays Harbor                    | 0   | 0  |                            | 0             | 0                          | 0             | -              | -         | -           | -         |
| <b>Total</b>                    | <b>149,500</b>                                  | <b>1,175,600</b>   |                            | <b>76,500</b> | <b>4,300</b>               | <b>23,100</b> | <b>2</b>       | <b>98</b> | <b>7</b>    | <b>93</b> |

NORTHWEST INDIAN FISHERIES COMMISSION

Date: October 7, 1977

U.S. v. Washington Case Area Indian vs. Non-Indian Catch Comparisons 1/

Species \_\_\_\_\_ Coho \_\_\_\_\_ Year 1975

| Region of Origin                | Non-Indian                                      |  |                 | Indian  |                            |          | Off-Res. Catch |                  | Total Catch    |                 |
|---------------------------------|---|--|-----------------|---------|----------------------------|----------|----------------|------------------|----------------|-----------------|
|                                 | Marine Sport and Prior Commercial Interceptions | Commercial Net and River Sport Catch in Region of Origin | Personal Use 2/ | On-Res. | Subsistence and Ceremonial | Off-Res. | Indian % Total | Non-Ind. % Total | Indian % Total | Non-Ind % Total |
| Canadian                        | 242,400   | 263,500  |                 | 300     | 0                          | 1,400    | 1              | 99               | 1              | 99              |
| Nooksack-Samish                 | 29,300  | 3,000  |                 | 41,700  | 700                        | 6,500    | 17             | 83               | 60             | 40              |
| Skagit                          | 33,700  | 8,500  |                 | 4,100   | 2,100                      | 20,600   | 33             | 67               | 39             | 61              |
| Stillaguamish/Snohomish         | 61,000  | 16,800   |                 | 37,000  | 4,500                      | 4,600    | 6              | 94               | 37             | 63              |
| South Puget Sound               | 169,000   | 112,200  |                 | 37,500  | 1,700                      | 150,500  | 35             | 65               | 40             | 60              |
| Hood Canal                      | 46,900  | 26,600   |                 | 22,900  | 4,000                      | 29,600   | 29             | 71               | 43             | 57              |
| Strait of Juan de Fuca          | 23,200  | 4,400  |                 | 200     | 4,400                      | 23,300   | 46             | 54               | 50             | 50              |
| Coastal (North of Grays Harbor) | 55,200  | 500  |                 | 18,700  | 2,000                      | 1,500    | 3              | 97               | 28             | 72              |
| Grays Harbor                    | 63,200  | 22,200   |                 | 0       | 100                        | 3,500    | 4              | 96               | 4              | 96              |
| Total                           | 723,900   | 477,700  |                 | 162,400 | 19,500                     | 241,500  | 17             | 83               | 26             | 74              |

NORTHWEST INDIAN FISHERIES COMMISSION

Date: October 7, 1977

U.S. v. Washington Case Area Indian vs. Non-Indian Catch Comparisons 1/

Species Chum Year 1975

| Region of Origin               | Non-Indian                                      |  |                 | Indian  |                            |          | Off-Res. Catch |                  | Total Catch    |                 |
|--------------------------------|---|--|-----------------|---------|----------------------------|----------|----------------|------------------|----------------|-----------------|
|                                | Marine Sport and Prior Commercial Interceptions | Commercial Net and River Sport Catch in Region of Origin | Personal Use 2/ | On-Res. | Subsistence and Ceremonial | Off-Res. | Indian % Total | Non-Ind. % Total | Indian % Total | Non-Ind % Total |
| Canadian                       | 800   | 82,700   |                 | 0       | 0                          | 1,600    | 2              | 98               | 2              | 98              |
| Nooksack-Samish                | 800   | 100  |                 | 5,900   | 1,800                      | 600      | 43             | 57               | 91             | 9               |
| Skagit                         | 600   | 200  |                 | 600     | 0                          | 1,200    | 60             | 40               | 69             | 31              |
| Stillaguamish/Snohomish        | 500   | 100  |                 | 1,100   | 900                        | 100      | 14             | 86               | 78             | 22              |
| South Puget Sound              | 4,500   | 4,700  |                 | 3,700   | 800                        | 22,000   | 71             | 29               | 74             | 26              |
| Hood Canal                     | 3,400   | 4,500  |                 | 5,900   | 2,900                      | 8,700    | 52             | 48               | 69             | 31              |
| Strait of Juan de Fuca         | 200   | 0  |                 | 0       | 300                        | 800      | 80             | 20               | 85             | 15              |
| Constal(North of Grays Harbor) | 0   | 0  |                 | 2,600   | 600                        | 100      | 100            | 0                | 100            | 0               |
| Grays Harbor                   | 0   | 10,000   |                 | 0       | 0                          | 2,800    | 22             | 78               | 22             | 78              |
| Total                          | 10,800  | 102,300  |                 | 19,800  | 7,300                      | 37,900   | 25             | 75               | 36             | 64              |

NORTHWEST INDIAN FISHERIES COMMISSION

Date: October 7, 1977

U.S. v. Washington Case Area Indian vs. Non-Indian Catch Comparisons 1/

Species Chinook Year 1976

| Region of Origin               | Non-Indian  |  |                            | Indian  |                            |          | Off-Res. Catch |                  | Total Catch    |                 |
|--------------------------------|---|--|----------------------------|---------|----------------------------|----------|----------------|------------------|----------------|-----------------|
|                                | Marine Sport and Prior Commercial Interceptions <sup>4/</sup> | Commercial Net and River Sport Catch in Region of Origin | Personal Use <sup>2/</sup> | On-Res. | Subsistence and Ceremonial | Off-Res. | Indian % Total | Non-Ind. % Total | Indian % Total | Non-Ind % Total |
| Canadian                       | 70,100  | 0  |                            | 500     | 3/                         | 10,000   | 12             | 88               | 13             | 87              |
| Nooksack-Samish                | 19,200  | 24,000   |                            | 20,700  | -                          | 16,600   | 28             | 72               | 46             | 54              |
| Skagit                         | 5,000   | 1,000  |                            | 3,000   | -                          | 7,400    | 55             | 45               | 63             | 37              |
| Stillaguamish/Snohomish        | 6,900   | <100   |                            | 8,000   | -                          | 1,000    | 13             | 87               | 56             | 43              |
| South Puget Sound              | 33,800  | 3,800  |                            | 2,800   | -                          | 36,100   | 48             | 52               | 50             | 50              |
| Hood Canal                     | 8,300   | 100  |                            | 3,200   | -                          | 17,500   | 68             | 32               | 71             | 29              |
| Strait of Juan de Fuca         | 1,200   | 200  |                            | 1,100   | -                          | 200      | 13             | 87               | 18             | 82              |
| Coastal(North of Grays Harbor) | 13,400  | 0  |                            | 9,800   | -                          | 8,000    | 37             | 63               | 57             | 42              |
| Grays Harbor                   | 7,200   | 6,400  |                            | 0       | -                          | 3,100    | 18             | 82               | 18             | 82              |
| Total                          | 165,100   | 35,600   |                            | 48,100  | -                          | 98,900   | 33             | 67               | 42             | 57              |



NORTHWEST INDIAN FISHERIES COMMISSION

Date: October 7, 1977

U.S. v. Washington Case Area Indian vs. Non-Indian Catch Comparisons 1/

Species Sockeye Year 1976

| Region of Origin               | Non-Indian                                      |  |                        | Indian  |                            |          | Off-Res. Catch |          | Total Catch |         |
|--------------------------------|---|--|------------------------|---------|----------------------------|----------|----------------|----------|-------------|---------|
|                                | Marine Sport and Prior Commercial Interceptions | Commercial Net and River Sport Catch in Region of Origin | Personal Use <u>2/</u> | On-Res. | Subsistence and Ceremonial | Off-Res. | Indian         | Non-Ind. | Indian      | Non-Ind |
|                                |   |  |                        |         |                            |          | % Total        | % Total  | % Total     | % Total |
| Canadian                       | 1,132,100                                       | 0  |                        | 8,800   | 3/                         | 77,800   | 6              | 94       | 7           | 93      |
| Nooksack-Samish                | 0   | 0  |                        | 0       | -                          | 0        | -              | -        | -           | -       |
| Skagit                         | 0   | 0  |                        | 500     | -                          | 200      | 100            | 0        | 100         | 0       |
| Stillaguamish/Snohomish        | 0   | 0  |                        | 0       | -                          | 0        | -              | -        | -           | -       |
| South Puget Sound              | 7,700   | 0  | NO DATA AVAILABLE      | 100     | -                          | 1,000    | 11             | 89       | 12          | 88      |
| Hood Canal                     | 0   | 0  |                        | 0       | -                          | 0        | -              | -        | -           | -       |
| Strait of Juan de Fuca         | 0   | 0  |                        | 0       | -                          | 0        | -              | -        | -           | -       |
| Constal(North of Grays Harbor) | 0   | 0  |                        | 0       | -                          | 100      | 100            | 0        | 100         | 0       |
| Grays Harbor                   | 0   | 0  |                        | 14,800  | -                          | 0        | 100            | 0        | 100         | 0       |
| Total                          | 1,139,800                                       | 0  |                        | 24,200  |                            | 79,100   | 7              | 93       | 8           | 92      |

NORTHWEST INDIAN FISHERIES COMMISSION

Date: October 7, 1977

U.S. v. Washington Case Area Indian vs. Non-Indian Catch Comparisons 1/

Species Coho Year 1976

| Region of Origin                | Non-Indian  |  |                        | Indian  |                            |          | Off-Res. Catch |                  | Total Catch    |                 |
|---------------------------------|---|--|------------------------|---------|----------------------------|----------|----------------|------------------|----------------|-----------------|
|                                 | Marine Sport and Prior Commercial Interceptions <u>4/</u> | Commercial Net and River Sport Catch in Region of Origin | Personal Use <u>2/</u> | On-Res. | Subsistence and Ceremonial | Off-Res. | Indian % Total | Non-Ind. % Total | Indian % Total | Non-Ind % Total |
| Canadian                        | 500,500   | 0  |                        | 200     | 3/                         | 32,400   | 6              | 94               | 6              | 94              |
| Nooksack-Samish                 | 32,000  | 1,900  |                        | 29,700  | -                          | 7,400    | 18             | 82               | 52             | 48              |
| Skagit                          | 22,800  | 600  |                        | 8,800   | -                          | 8,900    | 28             | 72               | 43             | 57              |
| Stillaguamish/Snohomish         | 46,200  | 2,700  |                        | 10,000  | -                          | 19,900   | 29             | 71               | 38             | 62              |
| South Puget Sound               | 185,800   | 17,900   |                        | 19,800  | -                          | 117,500  | 37             | 63               | 40             | 60              |
| Hood Canal                      | 46,200  | 2,100  |                        | 12,300  | -                          | 11,800   | 20             | 80               | 33             | 67              |
| Strait of Juan de Fuca          | 16,800  | 0  |                        | 200     | -                          | 10,100   | 38             | 62               | 38             | 62              |
| Coastal (North of Grays Harbor) | 17,300  | 0  |                        | 13,400  | -                          | 7,800    | 31             | 68               | 55             | 45              |
| Grays Harbor                    | 26,900  | 9,700  |                        | 8,500   | -                          | 14,700   | 29             | 71               | 39             | 61              |
| Total                           | 894,500   | 34,900   |                        | 102,900 | -                          | 230,500  | 20             | 80               | 26             | 74              |

NORTHWEST INDIAN FISHERIES COMMISSION

Date: October 7, 1977

U.S. v. Washington Case Area Indian vs. Non-Indian Catch Comparisons 1/

Species Chum Year 1976

| Region of Origin                | Non-Indian                                      |  |                 | Indian  |                            |          | Off-Res. Catch |          | Total Catch |          |
|---------------------------------|---|--|-----------------|---------|----------------------------|----------|----------------|----------|-------------|----------|
|                                 | Marine Sport and Prior Commercial Interceptions | Commercial Net and River Sport Catch in Region of Origin | Personal Use 2/ | On-Res. | Subsistence and Ceremonial | Off-Res. | Indian         | Non-Ind. | Indian      | Non-Ind. |
|                                 |   |  |                 |         |                            |          | % Total        | % Total  | % Total     | % Total  |
| Canadian                        | 221,900   | 0  |                 | 200     | 3/                         | 30,900   | 12             | 88       | 12          | 88       |
| Nooksack-Samish                 | 1,200   | 2,700  |                 | 11,400  | -                          | 3,100    | 44             | 56       | 79          | 21       |
| Skagit                          | 6,700   | 9,200  |                 | 2,800   | -                          | 19,300   | 55             | 45       | 58          | 42       |
| Stillaguamish/Snohomish         | 22,900  | 3,000  |                 | 20,900  | -                          | 2,100    | 7              | 93       | 47          | 53       |
| South Puget Sound               | 36,400  | 82,800   |                 | 24,100  | -                          | 94,900   | 45             | 55       | 50          | 50       |
| Hood Canal                      | 47,700  | 21,700   |                 | 24,500  | -                          | 47,300   | 42             | 58       | 52          | 48       |
| Strait of Juan de Fuca          | 100   | 0  |                 | 100     | -                          | 1,300    | 93             | 7        | 93          | 7        |
| Coastal (North of Grays Harbor) | 0   | 0  |                 | 200     | -                          | 0        | 100            | 0        | 100         | 0        |
| Grays Harbor                    | 0   | 11,600   |                 | 7,400   | -                          | 10,200   | 47             | 53       | 60          | 40       |
| Total                           | 336,900   | 131,000  |                 | 91,600  | -                          | 209,100  | 31             | 69       | 39          | 61       |

1/ These tables contain preliminary catch data only. A final accounting of fish receiving tickets by WDF has not been completed. The non-Indian catch data was taken from WDF's "soft data" system. The Indian catch data was taken from U. S. Fish and Wildlife Service summaries of fish ticket informaton.

Separation of net interceptions to the regions of origin was based on preliminary estimates of run size for coho and chinook and on pre-season projections for run size for chum.

2/ (Same as for 1975 data)

3/ Complete estimates are not yet available.

4/ Interception estimates for regions of origin in Puget Sound were obtained from WDF. Interception rates for Coastal and Grays Harbor areas were obtained from Quinault biological staff.

# Northwest Indian Fisheries Commission



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JUNE 1975

BULLETIN

Vol. 1., No. 1

## NWIFC STAFF NOW ON THE JOB IN OLYMPIA OFFICE

The Commission now is established in its Olympia office, and has a staff servicing requests from the five tribal areas. Heading the operation is Bill Smith, Chairman of the Skokomish Tribe, assisted by Candace LeClerc, administrative assistant; Ron Charles, former chairman of the Little Boston, as treaty coordinator; and Marie Miller, a Skokomish Tribal member, who is receptionist/clerk/typist. Smith and his staff invites suggestions and correspondence from treaty area fishermen and their committees, which will then be passed on in our regular bulletin when it is information needed by all Indians involved in the Boldt case implementation for the tribes.

## FUNDING FOR NWIFC BASED ON SEVERAL SOURCES

Funding for the Commission is being derived from several sources. In the early days of the Commission it was financed for many activities and duties by the tribes of some of the individual Commission members, but now it is hoped that the Commission is formally launched, and the individuals who got it going will not have to dig down into their own pockets to make it operate successfully. Operating budgets now are:

1. \$45,000 from the Bureau of Indian Affairs in a contract to cover gear marking, measuring and assessing the Indian fleet, starting this newsletter, catch monitoring, coordination of law enforcement programs, and formulation of Indian treaty policies and programs.
2. \$50,000 from the U. S. Fish & Wildlife Service in a contract to cover some of the same activities as listed in the BIA contract above.
3. Pending is another contract to cover public relations and work in the Indian communities.

All this is interim funding to finance the Commission until Congressional funding is available in September or October, if appropriated by Congress. The big package of funding embraces the Commission and the Small Tribes Organization of Western Washington, each of them autonomous. They are the only truly Indian organizations working at the reservation level in the treaty areas. NWIFC works with the treaty [recognized] tribes, and STOWW represents tribes not yet recognized by the federal court in the fishing rights case. Once those tribes are recognized, they can expect services through both STOWW and NWIFC.

The big package of funding will bring the following resources to NWIFC and STOWW, provided, of course, that Congress Acts favorably:

1. \$291,000 to NWIFC
2. \$294,450 to STOWW

This funding does not impinge on the funding for individual tribes that may be pending through the BIA or other sources of federal funding. These funds will come down through what is called special "add-on" legislation to be voted by the House and Senate Appropriations Committees. An integrated budget was presented by NWIFC and STOWW in conjunction with the BIA, U. S. Fish & Wildlife Service, and Washington Game and Fisheries Departments at the request of Senators Henry Jackson and Warren G. Magnuson in an effort to avoid duplications of requests for identical services from the parties involved in the Boldt case.

CONTRACT WORKSHOP SET AT NWIFC OFFICE

A contract workshop has been scheduled for June 10-11 at the Olympia office of the Commission at 10:00 AM, sponsored by the BIA and hosted by the NWIFC for tribes with BIA contracts in the past year. Marshall Cutsforth will conduct the class for the BIA, assisted by Bill Smith, Executive Director of NWIFC. Seven tribes are expected to attend, and if you have any questions just call NWIFC at the number listed on this news bulletin. Don't neglect to attend! It is at workshops like this that you learn of new federal regulations and how to crank your tribe into the bureaucratic machinery for future funding.

GEAR MARKING ACTIVITY SET UNDER CHARLES

All Boldt court-recognized tribes were sent a letter on May 21 informing them that NWIFC will coordinate a fishing gear marking program under the EIA. Under the program, nets in the rivers will be tagged on one end, and nets in marine areas will also be tagged, with boats to have a plate affixed to them that can be seen through binoculars. The purpose of this is to conform to Judge Boldt's requirement for all the tribes coming under the jurisdiction of the case. Up until now no one has said who was to do it. The BIA had the funds, but assigned no one to do it. As matters now stand, the BIA issues Indian fishing cards with your picture plasticized into it. The BIA has a master list against which tribal fishermen will be checked before their gear is marked. Tags and plates will be made available through NWIFC to tribal fishing committees.

"If any tribal fisherman plans to fish in the next year," said Bill Smith, "be sure to send your name to your tribal fishing committee or call Ron Charles at NWIFC."

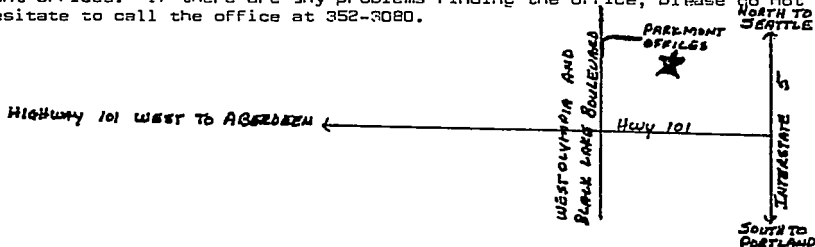
Tags and plates will be number coded to treaty area and tribe, with an identification number for each. Completion date: July 1, 1975.

COMMISSIONERS FOR NWIFC

Forest Kinley, Lummi/Point Elliot, Chairman; Charles Peterson, Makah, Vice-Chairman; Calvin Peters, Squaxin Island/Medicine Creek, Secretary-Treasurer; Guy R. McMinds, Quinalt; and Dennis Allen, Skokomish/Point No Point.

NWIFC OFFICE IN OLYMPIA

The NWIFC Office is located on Black Lake Blvd. in a development marked Parkmont offices. If there are any problems finding the office, please do not hesitate to call the office at 352-3080.



Northwest Indian  
Fisheries Commission  
post office box 2445  
olympia, washington 98507

# Northwest Indian Fisheries Commission



post office box 2445 • olympia, washington 98507 • phone (206) 352-8030

June 19, 1975

BULLETIN

Vol. 1, No. 2

## GEAR MARKING COSTS ABSORBED BY NWIFC

Costs of marking treaty Indian fishermen's gear in conformity with the Judge Boldt ruling will be absorbed by the Northwest Indian Fisheries Commission, said NWIFC Executive Director Bill Smith today.

"We have sent out a letter to all tribes and in the last issue of the BULLETIN we informed you that Judge Boldt's decision requires that this gear marking be done before you go fishing," said Smith.

Tribes are not responding as quickly as is necessary to get this done for the coming season to meet enforcement requirements they will be faced with.

This gear marking is in addition to your BIA identification cards with plasticized photos which most of you now have.

Under Judge Boldt, qualifications to allow tribal member fishing includes:

- Indian personnel trained for and competent to provide effective enforcement to all tribal fishing regulations.
- Provision for tribal membership certification, with individual identification by photographs, in a suitable form that shall be carried on the person of each tribal member when approaching, fishing in, or leaving either on or off reservation waters.

In order to coordinate this gear marking project, we need your tribe to furnish the Commission with 1. a list of river fishermen, 2. list of marine fishermen (if both, please note), and 3. your tribe's 1974 and 1975 fishing regulations, if available.

Call Ron Charles of the NWIFC staff at (206) 352-8030, or write him at our address above. REMEMBER! This gear marking must be done before you begin fishing!

## INDIAN OWNERSHIP VITAL TO FISHING

In writing up tribal fishing regulations, the question of ownership of a boat on which an Indian is fishing under his treaty rights needs to be resolved. The situation of treaty Indian fishermen being exploited by non-Indian gillnetters so they can make a profit from Indian rights has been a hot topic of discussion. The Commissioners of NWIFC have agreed that all regulations written up by the tribes should stress that boats, gear and equipment **MUST BE OWNED BY THE FISHERMAN EXERCISING TREATY FISHING RIGHTS.**

"Every fish taken otherwise," said Ron Charles of the NWIFC staff, "for instance in a charter situation, is counted against the Indian share of the fish. Having a token Indian on board, with the dollars going to non-Indians, is no way to conform to the Boldt decision. Some non-Indian gillnetters have boasted they're going out to get an Indian so they can fish the Indian share of the fish to generate a non-Indian income for themselves."

NWIFC strongly advocates that tribal regulations include specific rules covering this so that non-Indians don't ripoff the tribes.

## NEED FOR REGULATIONS STRESSED

In the writing of tribal fishing regulations, when overlaps occur in exclusive areas, it is hoped that the parties involved will come in to NWIFC to negotiate. If we have your tribal regulations on file, it will make it much

easier to reach an understanding that will be acceptable to the court as well as the tribes involved.

Anyone having difficulty drafting their regulations is invited to come in, and we will sit down and help them. The regulations must spell out, for instance, when you can fish and where, and the sooner we get this information, the better it is for all concerned.

We need to define which tribes have exclusive areas and which do not, and we need to address problems that may arise in the overlaps of fishing areas and exclusive claims.

#### INJUNCTION HEARING SET

A hearing on a request for an injunction by the United States on behalf of the Indian fishermen vs. the State of Washington will be heard June 26 before Judge George Boldt, 9:30 A.M., in Room 330, PO Bldg., Tacoma.

George Dysart, assistant regional solicitor for the U. S., is asking that Boldt enjoin any non-Indian from fishing the Fraser River sockeye runs until the State of Washington has provided some Indian-only fishing time.

The 1975 regulations of the International Pacific Salmon Fisheries Commission, as adopted by the Washington Department of Fisheries, excludes Indian fishermen from "an opportunity to catch an equal share of the total number of fish," as provided for in the Boldt decision.

The season is set to open July 7, said Dysart, and "we want everything that has to be done to straighten this out to be done by then."

#### HEAD OF ONAP TO VISIT THE NORTHWEST

Dr. George Blue Spruce, head of the Office of Native American Programs, will visit the Pacific Northwest June 26-27, and the Small Tribes Organization of Western Washington will be coordinating his visit. He will speak to a meeting of northwest Indians June 26 from 10:00 A.M. to noon at Cascadia Diagnostic Center [formerly Cushman] Auditorium, Top Floor, Tacoma.

He will discuss ONAP functions, policies and redirection of ONAP programs.

Bill Smith, NWIFC Executive Director, will be on a plane trip with Blue Spruce and Leo LaClair, head of STONW, the next day, when visits to Lummi, Makah and Quinault reservations is set. Visits to Squaxin Island and Skokomish are scheduled the previous afternoon.

#### MEMBERS OF NWIFC

Forrest Kinley, Lummi/Point Elliot, Chairman; Charles Peterson, Makah, Vice-Chairman; Guy R. McMinds, Quinault; Calvin Peters, Squaxin Island/Medicine Creek, Secretary-Treasurer; and Dennis Allen, Skokomish/Point no Point.



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# Northwest Indian Fisheries Commission



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AUGUST 1975

BULLETIN

Vol. 1, No. 3

## GEAR MARKING NEARLY COMPLETE

The gear marking program of the Northwest Indian Fisheries Commission is nearly completed. We have contacted all tribes in the Case Area and have received lists of their fishermen. From these lists we have prepared boat plaques for marine boats and net tags for the river fishermen. Either the tags or the plaques can be picked up from your tribal business office or from your designated tribal fisheries manager.

It is imperative that the identification markers for either boats or nets be attached to the gear before you begin fishing. The marine boat plaques are to be conspicuously displayed on the port bow of your boat or on the port side of the cab if the boat has a cab. The river net tags are to be strapped over or on the last buoy on the outside end of the net, the end out in the river or stream.

As we mentioned in previous news bulletins, these tags are furnished by the NWIFC at no cost to the tribes. Use them because it is our responsibility under the Boldt decision to have our gear marked. Let's not unnecessarily jeopardize our "new" rights. (As we go to press, no arrests have been reported by Game Department officers who have been making noise in the public media about a July 21st deadline. If you have not marked your gear, however, you can expect to have little defense against harassment.)

## TWO NEW NWIFC STAFF PEOPLE

Two Treaty Area Coordinators have been hired by the NWIFC for Point Elliott and Quinalt Treaty Areas. They are Helen Keeline, 27, a Tulalip and Mike Mail, 28, a Quinalt.

"I'm delighted," said Bill Smith, Executive Director of NWIFC, "that we have such highly qualified people. Both have proven past experience in fisheries. They will be applying their experience now to an entire treaty area instead of just one tribe."

They will coordinate between the tribes and the NWIFC in their treaty areas. They will work directly with the tribes in the field on such things as gear marking and organization of tribal treaty councils.

Helen, who formerly worked for the Muckelshoot Fisheries Department, lives in Auburn at 3607 Auburn Way South, Apt. 2-B, 98002, and may be telephoned at 939-1294.

Mike lives at the Quinalt Reservation and may be telephoned at 276-4471.

## STATE TO APPEAL

The Ninth Circuit Court ruling upholding the Judge George Boldt ruling that reaffirmed Indian treaty fishing rights and spelled out that the fish harvest was to be split on a 50-50 basis will be appealed, it was announced by Deputy Attorney General Edward B. Mackie, after the Ninth Circuit Court denied a State of Washington petition for rehearing. The appeal will go to the U.S. Supreme Court.

## BOLDT RULES IN INTERNATIONAL FISHING ISSUE

Following a period of off-again on-again for State regulations designed to give Indians a greater share of the Sockeye Salmon catch in the border waters between Canada and the United States, Judge George Boldt, July 30th, ruled that in regards to the "Kinley Plan", which is whenever any non-Indian fishery is open the fishery is open to all types of Indian gear under the IP5FC Regulations.

Boldt's ruling came at the close of a serio-comic struggle for jurisdiction in which a state court -- again! -- tried to wrest decision-making from Boldt in the Indian treaty fishing rights issue.

Thurston County Superior Court Judge Gerry Alexander, issued a preliminary injunction against the state regulations, bowing to pressure from the Purse Seine Vessel Owners Association and the Puget Sound Gillnetters, thereby putting a state ruling in conflict with a federal court supremacy in the issue.

On July 22nd Judge Boldt had issued a second stay of his increased Indian fishing order to half a dozen tribes and his extension from two to five days for Indians fishing Area 2. [The Straits of Juan de Fuca], while non-Indians are restricted to two days.

Indians in 1974 caught only 1.4 percent of the American half of the Sockeye runs bound for the Fraser River and governed by an international treaty, and this is contrary to Judge Boldt's ruling that the American fishermen should share equally the fish harvest with the Indians.

Don Moos, State Director of Fisheries, sought but did not obtain concurrence of the International Pacific Salmon Fisheries Commission that Judge Boldt's ruling conflicted with regulations by that Commission which controls international convention waters.

Moos had formally filed regulations which allow the tribes to gillnet in the daytime which non-Indian commercial fishermen cannot do.

Judge Alexander's order had the effect of invalidating the Moos regulations which were written to comply with Judge Boldt's federal court ruling. Last year Judge Boldt overturned a similar Judge Alexander injunction against state regulations that cut back Puget Sound gill-netting and purse seining by non-Indians to give Indians a greater share of the fish.

#### MEMBERS OF NWIFC

Forrest Kinley, Lummi/Point Elliot, Chairman  
 Charles Peterson, Makah Treaty Area, Vice Chairman  
 Calvin Peters, Squaxin Island/Medicine Creek Treaty Area,  
 Secretary-Treasurer  
 Guy McMinds, Quinault, Quinault Treaty Area, Member  
 Dennis Allen, Skokomish/Point-No-Point Treaty Area, Member



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# Northwest Indian Fisheries Commission



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September 8, 1975 Newsletter Vol. 1., No. 5

## September 10 Marks Series of Court and State Hearings

### \*\*Puyallup-Nisqually Closure

On Wednesday, September 10, at 9:00 a.m. U.S. District Court Judge George Boldt is expected to render a decision concerning state closure of Puyallup and Nisqually River Indian Fisheries. On September 8 a preliminary hearing was held by presiding Master Robert Cooper. Cooper held for a continuance of the temporary restraining order enjoining Puyallup and Nisqually tribes from fishing on their reservations until a final decision is made this Wednesday by Judge Boldt. Cooper did not deal with contempt charges against the tribes. The Court was seeking contempt of court charges against treaty fishermen who inadvertently fished beyond the time the temporary restraining order was issued.

### \*\*NWIFC Injunction

Immediately following the Puyallup-Nisqually hearing, Judge Boldt will consider placing an injunction against all non-Indian commercial and sport Fisheries in Puget Sound. Tribal attorneys on behalf of a NWIFC resolution filed for this injunction on the grounds that non-Indian Fisheries have already taken their fifty percent share of the harvestable salmon. In addition, all appearances reveal that non-Indian Fisheries are not attempting to ensure that treaty fishermen are allowed an opportunity to harvest fifty percent of the total available harvest.

### \*\*State Proposals For Puget Sound Fishing

Also on Wednesday, September 10 at 10:00 a.m., the Dept. of Fisheries will hold a public hearing in the Olympic Room at the Seattle Center. The purpose of the hearing is to consider proposed regulations for Puget Sound fishing areas for the period of September 14 through October 10. Final regulations will be adopted at a public hearing on September 12, beginning at 10:30 a.m. in the small conference room, General Administration Building, in Olympia.

A NWIFC representative will testify against the Dept. of Fisheries proposal to allow fishing by non-treaty fishermen in the terminal areas and to the proposal to cause further heavy impact upon native runs of coho to the Green, Quigness, Skokomich, and Puyallup Rivers, which have already been depressed to dangerously low levels by non-treaty sport and commercial fishermen. Except for some fishing by non-treaty fishermen in portions of Area 4 where Fraser River stock of coho and chum salmon would essentially comprise the entire available harvest, the NWIFC rejects the Dept. of Fisheries' proposals for any non-treaty commercial fishing season in Puget Sound (including the Strait of Juan De Fuca) during the remainder of 1975. Commission statistics show that non-treaty fishermen have harvested far in excess of their 50 percent share of salmon available for harvest in 1975.

NWIFC Adopts Sounding Board Policy

Commissioners have indicated that if there is difficulty between tribes in a treaty area they should utilize the commission as a "sounding board" to settle the argument rather than taking it to court. The NWIFC would guarantee equity by not allowing Commissioners from the treaty Tribes in disagreement to participate in mediation. The final decision would not be arbitrary, but would represent a recommendation based on careful examination of the situation taking into consideration all facts from both sides. A plan would be drafted and negotiations between the disagreeing Tribes would be conducted through the NWIFC. This plan is designed to keep Indians out of court, and to accommodate more unity between Tribes.

NWIFC Offices Expand to Mt. Vernon

Helen Keeline, NWIFC Coordinator for the Pt. Elliot Treaty Tribes, moved into new offices in Mt. Vernon on Monday. Her new address is 416 Myrtle St. in the Bureau of Indian Affairs Law Enforcement Building (phone: 336-3784). Her field location will enable her to develop a closer relationship and maintain better communication with Pt. Elliot Treaty Tribes. Pt. Elliot tribes include the Suquamish, Lummi, Tulalip, Swinomish, Stillaguamish, Sauk-Suiattle, Upper Skagit, and Nooksak.

Ms. Keeline has been working in the Pt. Elliot area since June 30 to help coordinate fishery activities in compliance with the Boldt decision. She says that so far the greatest accomplishment of the tribes has been their success in the gear marking program. This week she will be working with the Pt. Elliot Treaty Council to make usual and accustomed grounds and stations determinations and to work on the development of Indian fishing regulations.

Ms. Keeline will also be monitoring fish catches along with tribal officials. She says that both her short and long term goals are "to get more fish for the Indians." She hopes to be able to assist the Pt. Elliot Tribes in forming a strong united front enabling them to have better access to funding and more efficient coordination in developing and harvesting their fisheries.

NWIFC Director Seeks Fishermans Help

NWIFC Director, Bill Smith, says that there are still problems in monitoring fish catches. He said that non-Indian buyers don't always record the Indian catch properly. Smith stressed that it is of utmost importance to have accurate counts because they are vital to fish regulation. They are also needed for use in court proceedings. Smith said that Indian fishermen must take responsibility in making sure that their buyer records all catches properly. He also indicated that the state should insist that buyers check Indian identification cards before counting any catch against a tribe. NWIFC Coordinators plan to keep close tabs on fish buyers, but the Director says that each Indian fisherman should take responsibility of ensuring accurate counts.



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# Northwest Indian Fisheries Commission newsletter

October 28, 1975

Vol. 1 No. 8

## BOLOT ENJOINS NON-INDIANS FROM FISHING ON CHUMS IN SOUTHERN PUGET SOUND

On October 27, U.S. District Court Judge George Boldt enjoined non-Indians from fishing for Chum salmon in Puget Sound (not including Area 1 and a limited test fishery in Hood Canal). Judge Boldt said that there was indisputable evidence that during the Coho season non-Indians willfully and deliberately obstructed treaty fishermen to a very substantial extent. He said that he was completely satisfied that treaty Indian take of Chum salmon has been substantially diminished from what it would have been had there not been lawbreaking and failure to enforce regulations. The Judge declared that an equitable adjustment is necessary to implement "U.S. v. Washington", and to make up for the denial of a Coho fishery to treaty tribes under the law of the land. Non-Indians will continue fishing according to State regulations in Northern Area 1, and a limited test fishery in Hood Canal. Indians may fish exclusively in all other areas of Puget Sound.

## STATISTICS AND CO-MANAGEMENT: PRIMARY CONCERNS IN CHUM BATTLE

The battle for Chums was a long, slow moving debate over statistics and co-management concepts. At the State Chum Regulation Hearing on October 9, Bill Smith, Executive Director, NWIFC, testified that Indians were being denied a fifty percent opportunity to fish on the Coho run because of continued non-Indian illegal fishing. In addition, Smith protested the fact that Indian tribes had not been consulted in the development of Chum regulations in accordance with Judge Boldt's co-management edict. Regardless of these and other objections to the proposed State Regulations, the State adopted the regulations the next day.

Anticipating that no equitable adjustment would be made on the Chum Regulations by the State, fourteen attorneys representing various Tribes met the afternoon of October 9 in U.S. Attorney Stan Pitkin's office. NWIFC Commissioners were also present. After a lengthy discussion of the problems occurring during the Coho season and the prediction that no relief would come during the Chum Season, all attorneys agreed to file a request for determination of the State's Chum Regulations by the Court and a motion for a temporary restraining order and preliminary injunction to prevent non-Indian fishing as proposed by the State Regulations.

## COURT HEARING ON CHUM REGULATIONS: BACKGROUND

The Court hearing on Chum regulations began on Monday, October 20. Before the hearing began, Judge Boldt stated that he would hear only the facts of the case that day because he wanted the newly appointed court review committee (see story on page 2) to discuss the issue before he reached a decision.

During Monday's factual hearing Jim Heckman, USFWS, testified that Indians had taken 241,000 Coho through October 17 in Southern Puget Sound. However, 110,000 of those fish were taken on reservations. The "on-Reservation" catch is not included in the 50/50 Boldt allocation plan. Heckman also testified that the total Coho catch for non-Indians (commercial and sport) as of October 17 in Southern Puget Sound was 322,000. An additional 274,000 Coho were harvested by non-Indians in Northern Area 1 and 141,000 Coho bound for Puget Sound were caught by non-Indians in Ocean fisheries.

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Judge Boldt scheduled the argument on the issue for late Wednesday afternoon, October 22. The Court's advisory committee did not meet Wednesday, as the Judge had requested, probably because the two opposing sides could not foresee reaching an agreement. The issues were known and each side was determined not to compromise.

Wednesday's court session proved to be primarily a debate over statistics. The State attempted to present figures estimating that Indians would catch between 50 and 60 thousand additional Coho in on-going fisheries this year. However, Jim Heckman testified that the major portion of the 80,000 Coho were already in the rivers and many had spawned. Tribal Attorneys continued to argue that no significant Coho fishery exists for Indians at this time.

In another statistics issue, State Biologist, Sam Wright, testified that the "on reservation" catch was probably higher than statistics show because of illegal fish ticket reporting. The court technical advisor, Dr. Richard Whitney, said that the "on reservation" catch statistics were probably off by 50 or 60 thousand fish. He said, "It would be difficult to technically justify this measure [enjoining non-Indians] with the whole set of assumptions that have to be made in the situation."

In final argument, Tribal Attorney, Alan Stay, pointed out that illegal fishing and illegal fish ticket reporting by non-Indians could have made statistics regarding Indian catch higher than they actually were. Indian fishermen recorded several instances of non-Indians reporting their "catch" as "Indian" and "on reservation".

Judge Boldt scheduled a continuation of the hearing for Monday, October 27th, stating that he needed to hear more argument before reaching a final decision. Meanwhile non-Indians fished Wednesday night, non-Indian seiners fished Thursday during the day, and non-Indian seiners fished Monday while court was in session.

#### NWIFC HIRES NEW EMPLOYEES

Amid the turmoil of working for an Indian only Chum Season, NWIFC has hired Mark Peterson of Tacoma as the new Assistant Director. Mark will spend much of his time working on contracts and budgets for NWIFC. The Commission has also hired Carol Cordova of Shelton as the new Olympia Office Secretary. Needless to say, both of our new staff members are greatly appreciated.

#### JUDGE BOLDT FORMS NEW COURT FISHERIES ADVISORY COMMITTEE

On October 15, Judge Boldt called the NWIFC, the plaintiff attorneys, and Donald Moos to an informal meeting in his chambers. The Judge outlined his plan for a new court advisory committee which would be composed of Indian and State representatives. The purpose of the committee is to discuss and attempt to solve problems before resorting to court action. Although the court advisory committee was to represent Indians as well as the State, only one Indian was appointed to the board. Other representatives were to have been attorneys and biologists. The Northwest Indian Fisheries Commission felt that Indians should be representing Indians when policy making decisions were involved. The Commission brought the issue to the Governor's Salmon-Steelhead Advisory Committee on October 22. Representatives from all sides agreed that this was a valid complaint and an agreement was made to request the court to appoint the Northwest Indian Fisheries Commission to the court advisory board as representatives of the treaty tribes. Judge Boldt has agreed to the plan. The court advisory committee will be composed of the NWIFC and delegates from the State. However, each side will have only one vote. Should the committee be unable to reach agreement on an issue, the matter will be determined by the court.

UPDATE ON INDIAN BOAT AND GEAR STATISTICS COMPLETED

Marie Miller has completed an update on Indian boat and gear marking. As of October 8, 1975, the Treaty Area and Tribal breakdown is as follows:

October 8, 1975

## 1 - POINT-NO-POINT TREATY AREA

|                | <u>River</u> | <u>Marine</u> | <u>Total</u> |
|----------------|--------------|---------------|--------------|
| 1. Skokomish   | 93           | 60            | 99           |
| 2. Port Gamble | 9            | 9             | 9            |
| 3. Lower Elwha | 34           | 22            | 35           |
| Total          | <u>136</u>   | <u>91</u>     | <u>143</u>   |

## 2 - MAKAH TREATY AREA

|          |    |    |     |
|----------|----|----|-----|
| 1. Makah | 82 | 23 | 100 |
|----------|----|----|-----|

## 3 - QUINALT TREATY AREA

|             |           |           |           |
|-------------|-----------|-----------|-----------|
| 1. Quinalt  | 19        | 40        | 47        |
| 2. Quileute | --        | --        | --        |
| 3. Hoh      | 22        | --        | 22        |
| Total       | <u>41</u> | <u>40</u> | <u>69</u> |

## 4 - MEDICINE CREEK TREATY AREA

|                   |            |            |            |
|-------------------|------------|------------|------------|
| 1. Squaxin Island | --         | 70         | 70         |
| 2. Muckleshoot    | 106        | 37         | 106        |
| 3. Nisqually      | 48         | 48         | 48         |
| 4. Puyallup       | 54         | 29         | 54         |
| 5. Steilacoom     | --         | 44         | 44         |
| Total             | <u>208</u> | <u>228</u> | <u>322</u> |

## 5 - POINT ELLIOT TREATY AREA

|                  |            |            |            |
|------------------|------------|------------|------------|
| 1. Suquamish     | 3          | 16         | 16         |
| 2. Lummi         | 198        | 198        | 198        |
| 3. Tulelip       | -          | 50         | 50         |
| 4. Swinomish     | 41         | 25         | 42         |
| 5. Stillaguemish | 13         | 13         | 13         |
| 6. Sauk-Suiattle | 11         | --         | 11         |
| 7. Upper Skagit  | 63         | -          | 63         |
| 8. Nooksack      | 45         | 10         | 45         |
| 9. Snohomish     | -          | 10         | 10         |
| 10. Snoqualmie   | 23         | 23         | 23         |
| 11. Samish       | -          | 4          | 4          |
| Total            | <u>397</u> | <u>348</u> | <u>475</u> |

|             |     |     |       |
|-------------|-----|-----|-------|
| Grand Total | 864 | 731 | 1,109 |
|-------------|-----|-----|-------|



# Northwest Indian Fisheries Commission newsletter

November 12, 1975  
Vol. 1 No. 9

## TRIBES OPEN CHUM FISHERIES TO COLLECT DATA

The Northwest Indian Fisheries Commission recommended opening an Indian Chum Fishery on November 9 in order to obtain comprehensive catch data. Refusal of the State Department of Fisheries to exchange complete data was a primary reason for the opening. Both NWIFC staff and U.S. Fish and Wildlife Service biologists attempted to get catch data from the State. They were given "the run around." Either someone was out of town, on annual leave, or they would call back (which they failed to do). NWIFC staff called the Department of Fisheries four times in one day attempting to obtain catch data. Not only were the responsible individuals unavailable, but they also failed to leave anyone in charge to take their place. When two U.S. Fish and Wildlife Service biologists went to the Department of Fisheries to get data, they were finally allowed to talk to a State biologist who told them he was not authorized to give them complete information.

Another reason that NWIFC concurred with an Indian chum opening was that State and Federal interpretations of available data were conflicting for some Puget Sound areas. For example, U.S. Fish and Wildlife Service statistics showed a normal run return in Hood Canal.

The State had also informed Tribal biologists that they planned to discontinue gillnet test fishing for the remainder of the chum season. NWIFC felt that one way to obtain comprehensive and accurate data was to open a fishery for a limited number of days until the information could be obtained.

Although the fishery was considerably hampered because the State continued arresting Indian fishermen (only 20 Indians participated because they feared expensive state ticketing) the catch data that NWIFC was able to obtain indicated a low run. Therefore, on Tuesday, November 11, the NWIFC recommended a closure to commercial Indian chum fishing. Test fisheries will continue under the direction of U.S. Fish and Wildlife Service to monitor the progress of the run.

Unfortunately, while Indians are restricted from fishing, illegal non-Indian fishing continues without State-enforcement on the Sound or at the buyers.

Meanwhile, the three Northwest Indian Commissioners who signed the recommendation for a limited opening and filed it in Federal Court have learned that the State plans to sue them in State Court for aiding and abetting an illegal fishery. The case will probably be filed in Olympia with Judge Gerry Alexander who has publicly declared the Boldt decision unconstitutional.

It is interesting to note that when the Puget Sound Gillnetters' Association publicly announced their own fishing regulations and proceeded to follow them during the Coho season contrary to State regulations, they were not charged with aiding and abetting an illegal fishery. Nor were they stopped from fishing by State enforcement officers.



It is also interesting to note that Donald Moos did not sign the order closing non-Indians for equitable adjustment as Judge Boldt had directed. Instead, Moos waited two days before he closed all fishing on the basis of a conservation "disaster." That left non-Indians an additional legal day of fishing on what the State told NWIFC was a "non-existent run." As U.S. Attorney George Dysart told the Seattle P-I, "Moos is skating on awfully thin ice and flirting with contempt."

#### MOOS CLOSES INDIAN FISHERY IN UNILATERAL ACTION, NWIFC CALLS FOR PROCEDURES

Only two days after Judge Boldt ordered an Indian only chum fishery, Donald Moos called an emergency meeting of the newly established Court Advisory Board. The meeting was held on October 22 at the NWIFC office. Moos said that because of a conservation disaster it was necessary to close the Indian fishery. This came as a surprise to some because only the week before the State was predicting a run of 60,000 fish. The State data backing their request was presented to Bill Smith at the Court Advisory Board meeting. Jim Heckman, U.S. Fish and Wildlife Service, received the information fifteen minutes before the meeting. Smith refused to second Moos' motion to close all Indian fishing because he did not have sufficient time to examine the State data and to consult with his biological advisors. Smith did not believe that the State data was conclusive enough to warrant a wholesale closure of the Indian fishery at that time.

One of the arguments used by the State to back an Indian closure was that Canada was asking the State to reduce their fishing because their run size was low. However, Jim Heckman had talked to the same Canadian spokesman that day and he was told that the Canadian run was not low. In fact, the Canadians were raising their run predictions. Heckman also said that he did not see conclusive biological evidence warranting a total Indian closure.

Following this discussion, Donald Moos removed from his brief case the order to close Indian chum fishing. Expressing his regrets that Indians would not cooperate and that his primary responsibility was that of a fish manager, Moos signed the order. Incidentally, Mr. Moos arrived with a television crew (it is not known whether the event was broadcast). The next day NWIFC received in the mail a copy of the written statement made by Moos at the meeting which suspiciously looks as if it were written and sent before the advisory board even met.

In the aftermath of Moos' unilateral action to close the chum fishery, NWIFC agreed to withdraw from the Court Advisory Board until a set of procedures could be established. The original plan for the board was to give each member one vote and if they could not agree the matter would be settled in Court. Instead, the Indians were automatically closed. NWIFC requested a court hearing to review procedure. The hearing was granted for Monday, November 3, but Tribal attorneys requested a postponement because they wanted more data.

NWIFC met later that week and decided to develop a set of procedures for the Court Advisory Board and to be agreed upon by Moos. NWIFC is desirous of establishing a better line of communication with the State and they see the Court Advisory Board as a tool for this if the board members can develop and abide by procedures which respect the common rights of each side.

TREATY TRIBES AGREE ON CHUM REGULATIONS

Although their efforts were once again aborted by the unilateral action of Donald Moos to close Indian fishing, Point Elliot and Medicine Creek Treaty Tribes met at Tulalip on October 30 to develop "in common" chum fishing regulations. Bill Smith, NWIFC Director, praised the cooperative and sincere efforts of the Tribes in negotiating a plan for a coordinated and orderly Indian chum fishery.

One of the major concerns of Tribal leaders at the meeting was fair allocation of the available chum harvest to the Tribes. It was well understood that without inter-Tribal planning, the Northern Tribes could harvest all of the salmon before they reach Southern Puget Sound. Based on U.S. Fish and Wildlife Service run predictions, Medicine Creek Tribes were allotted 79 percent of the Southern Puget Sound bound chum and Point Elliot Tribes were allotted 21 percent. Tribal representatives agreed to reserve the late chum run exclusively for the Medicine Creek Tribes.

The Indian leaders agreed that exclusive Tribal fishing areas would be the waters adjacent to the Tribe's reservation with exceptions for Tribes not located on marine waters. The Muckleshoot exclusive area was designated as Elliot Bay. The Suquamish exclusive area will be Port Madison.

The area designated as "in common" grounds for all Tribes is the area in Puget Sound North of the Southern Boundry Line of the Point Elliot Treaty Line and South of the Apple Tree Cove Clcsure Line fixed by the State of Washington, excluding those areas specifically designated as exclusive Tribal grounds.

All of the Tribes took a strong stand on the subject of charter boat fishing. This is strictly prohibited. In addition, all boats must be marked with the red plaque issued by the Northwest Indian Fisheries Commission. All boats must be lighted.

Tribal enforcement officers shall assist each other in patrolling in common areas. In the event that an officer witnesses a violation by an Indian fishermen from another Tribe, he shall notify an officer from that Tribe and then assist in issuing the citation. All officers will monitor and utilize the same citizen band radio channel.

All gear shall be described and limited by individual tribal fishing regulations. Fishing hours were designated as 24 hours a day from 4:00 p.m. Sunday through 4:00 p.m. Friday, with closures on the weekend. The season is to be regulated by the NWIFC, U. S. Fish and Wildlife Service and the Tribes in a cooperative effort.



# Northwest Indian Fisheries Commission newsletter

December 4, 1975  
Vol. 1 No. 10

## TRIBES MEET WITH STATE ON STEELHEAD

Indian fisheries representatives met with Dept. of Game officials at the Tye Motor Inn on Nov. 26th to discuss steelhead regulations.

Although the tribes submitted steelhead regulations to the court and to the Game Dept. last Spring, the Dept. of Game contends that those regulations are "not acceptable" because they were developed prior to the release of Dept. of Game data. However, the tribes argue that the original regulations included emergency provisions to manage the steelhead harvest in accordance with returning run sizes. Therefore, the Dept. of Game should not question tribal management unless a severe conservation problem exists.

The Dept. of Game has devised a new method of predicting steelhead run sizes which they call the "step wise regression" method. Basing their system on Indian and Sport steelhead landings from past years, the Dept. of Game feeds five variables into a computer to come out with the predicted run size on a particular river. The variables are the size of the coho harvest, the number of returning steelhead jacks, the flow conditions in the river when the fish are rearing, the Spring flow conditions, and the number of fish planted. According to this system the 1975-76 steelhead runs will be 20 to 25% below average. However, the reliability of the step wise regression model has been questioned by Quinault and other biologists. The 5 variables used by the Game Dept. are not proven indicators which accurately reflect steelhead returns.

Tribes agreed to re-submit steelhead regulations sometime this week. However, the Dept. of Game may find these regulations "not acceptable" because there is some management disagreement. The main conflict between tribal regulations and Dept. of Game desires is the timing of the Indian fishing season. The majority of the tribes have indicated that they intend to fish on the early part of the run, harvesting their fifty percent of the predicted run and then closing Indian fisheries. This would allow time for the runs to build up for sports fishing later in the season and it would reduce conflict between sportsmen and Indian fishermen. The Game Dept. and the Northwest Steelheaders association would like to see Indians extend their fishing season throughout the runs, saying that this would be "better management". One of the major dangers for the Tribes in spreading out their season is that the Dept. of Game could change their predictions midway through the season and attempt to stop Indian fishing on the premise that Indians have already taken their fifty percent. There would be no way of determining the sport catch until the end of the season, so sportsmen would be allowed to continue fishing while Indians would be stopped. The tribal spokesmen wanted to know if the Game Dept. planned to stand by the statistics handed out at the meeting, or whether they would change them. Game Dept. officials indicated that the statistics would remain constant until they obtained new information which would change them.

BOLDT DENIES TRO ON NOOKSACK

On December 2nd, U.S. District Court Judge George Boldt denied a State requested temporary restraining order to halt treaty fishing on the Nooksack River within the boundaries of the Lummi Indian Reservation.

State Attorney, James Johnson, argued that the Lummis were incapable of managing their fishery, using the recent two day opening of marine waters by the tribe as an example of irresponsible management. Johnson said that one reason the run is low this year is because of past Lummi fisheries on the Nooksack. State Biologist, Sam Wright, testified that the run was low, citing state run predictions and spawning escapement goals. Later in the hearing some question was raised by federal biologists as to how the state statistics were obtained and by what criteria they were determined.

However, Lummi Attorney, Mason Morisset, argued that the issue was not one of numbers, but rather a question of whether or not the tribal power to regulate on reservation would be interfered with by the State.

Morisset said that the history of the river system proves the tribal ability to manage, noting that if the tribe had wanted to they could have "choked off" the river long ago. Forrest Kinley, Lummi Director of Fisheries, testified that the tribe has been capable of managing the reservation fishery, ensuring adequate run returns even though the State has allowed a continued non-Indian fishery at the mouth of the Nooksack River.

In handing down his decision Judge Boldt praised the Lummi Tribe for its efficient management record. He appreciated the fact that tribal fish managers closely monitor the river each day and that they have the power to enact closures rapidly and effectively when necessary for conservation. Judge Boldt said that the Lummi enforcement record was remarkable with 100 percent convictions of fishing violators. The Judge ordered the Lummi Tribe to fish two days per week under their own management with technical advise from USEWS. He said, "If we do not trust the Lummis and their Director of Fisheries (Forrest Kinley) in this matter, who will we trust ever? If they fail they will lose their good name and more importantly jeopardize future generations of Lummi fishermen."

SKOKOMISH RIVER TEMPORARILY CLOSED BY COURT ORDER

On December 2, Judge Boldt granted a temporary restraining order to close treaty fishing on the Skokomish River within the boundaries of the Skokomish Indian Reservation. Judge Boldt said that he would reconsider the matter on Friday, December 5.

New catch statistics on the Skokomish River have shown an increase catch per unit of effort. On Dec. 1 Skokomish fishermen were catching 41 fish per net. However, because of flood conditions in the river fishing effort has been severely limited. The flood conditions have also made it difficult if not impossible to count numbers of fish in the spawning grounds.

Biologists from U.S.F.W.S. and the State planned to meet Thursday to discuss the state determined spawning escapement goals on the Skokomish. The escapement goal rose from 10,000 in 1974 to 20,000 in 1975.

The Director of the Department of Game, Carl Crouse, said that his main concern is "proper allocation and preservation of the steelhead". Contrary to the situation with other anadromous fish, Indians have virtual control over the steelhead harvest because they have first chance at the fish, generally on reservation.

Several tribal leaders asked Mr. Crouse how he proposed to ensure equal allocation when there is no way of determining the sport catch until the season is over.

The efficiency of the sport steelhead punchcard system was also questioned. Crouse admitted that there would be no way of knowing what the sport catch is until the season is over because sportsmen don't return their punch cards until then. He said that the Dept. of Game plans an increased enforcement effort on the rivers this year to check for accurate punch card reporting. Both Crouse and Gary Ellis, Northwest Steelheaders, doubted that punch card data was detrimental to Indian harvest opportunity. Crouse said, "We have every reason to believe that punch card data is on the high side." Ellis said, "More punches are made in the taverns than on the rivers." Their reassurances did little to quell rising Indian concern over fairplay in the management of the steelhead fishery. According to Bill Smith, Director NWIFC, "Tribes are gunshy after a frustrating and embittering salmon season with the Dept. of Fisheries."

Dennis Austin, Washington Dept. of Fisheries Biologist, reported at the steelhead meeting that his Dept. would be monitoring the rivers closely for returning chum salmon and that they would effect closures on an emergency basis where they felt it advisable.

All fisheries managers agreed that steelhead harvest management should be done on a river by river basis.

#### NATIONAL COMMITTEE ON BOLDT DECISION HOLDS PUBLIC HEARING

A sub-committee appointed by the National Marine Fisheries Advisory Committee to develop recommendations concerning the role of the National Oceanic and Atmospheric Administration (NOAA) in implementation of the Boldt decision will hold a public hearing on December 16. The hearing will begin at 10:00 a.m. The address is 2725 Mountlake Blvd. East, Seattle. Although the sub-committee was formed to make recommendations concerning implementation of the Boldt decision, there are no Indian representatives, no representatives from the BIA, and no representatives from the Dept. of Interior. Instead, the chairman of the committee is Frank Cassidy, Chairman of the Washington State Game Commission. The Director of the Oregon State Dept. of Fish and Wildlife also sits on the sub-committee. Non-Indian commercial fishing interests are represented by the Manager, Fisheries Relations, Del Monte Corporation, Vice President, Penguin Frozen Foods, the President of Booth Fisheries Division of Consolidated Foods Corporation and the Secretary-Manager of Fishermens Marketing Association. Representing the financial community is the Chairman of the Board of the National Bank of Alaska and the Vice President of Security Pacific National Bank of California. We will be in attendance and encourage all interested tribal people to attend.



## Northwest Indian Fisheries Commission newsletter

Vol.1 No. 11  
December 23, 1975

\*\*\*\*HAPPY HOLIDAYS\*\*\*\*

### TRIBES PLAN JOINT FISHERIES BUDGETS

In anticipation of forthcoming congressional Boldt funding, several tribes are starting to work on fisheries management budgets with the assistance of the Northwest Indian Fisheries Commission.

This will be the first money available to many tribes for fisheries management since the Boldt Decision.

The Point No Point Treaty Tribes (Skokomish, Lower Elwha, Pt. Gamble) have agreed to combine their budgets for fisheries management. They will hire a joint enforcement and biological staff.

The tribes on the Skagit River System (The Upper Skagit, Sauk Suiattle, Swinomish) are negotiating for a similar arrangement.

The joint budgets, where they can be applied will avoid duplicate spending and predictably will allow for bigger and better enhancement programs.

### LOWER ELWHAS NET \$500,000 FOR ENHANCEMENT

The Lower Elwha Band of Clallams have obtained a \$500,000 grant for fisheries enhancement programs through Title X funding. The money will be channeled through the Office of Native American Programs (ONAP) and should be available to the Tribe by January, 1976.

Blanchard Matte, Tribal Business Manager, said that the enhancement program is still in the planning stages but that the first year project could involve the release of at least 1 million salmon fry into Puget Sound.

### STEILACOOMS PLAN SALMON REARING PROJECT W/PENINSULA HIGH SCHOOL

The Steilacoom Tribe is planning a joint participation program with the Peninsula School District (Gig Harbor) to raise 50,000 coho eggs for release as fingerlings in S. Puget Sound streams.

Eggs will be incubated in the fisheries classroom at Peninsula High School and reared in a campus pond. Supervision for the tribe will be Adam Ross.

"Primarily the program is aimed at putting more fish in the water for all user groups," says Brian Topping, Steilacoom Fish Committee Chairman; "but it will also

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give high school students the opportunity to see, first hand, the efforts and problems of fisheries programs, and more importantly a first hand contact with Native Americans."

According to a Steilacoom spokesperson project plans will be finalized as soon as negotiations can be completed with a state hatchery for the eggs.

BOLDT RULES ON SKOKOMISH CONTEMPT CHARGES

On December 22, U.S. District Court Judge George Boldt heard argument on contempt charges brought by the State against the Skokomish Tribe. The State accused the tribe and several Indian tribal fishermen of refusing to comply with a Dec. 2 temporary restraining order which was made permanent Dec. 5. The order prohibited fishing in the Skokomish River on Reservation. The off-reservation waters were closed by the Tribe and the State. The Judge did not find the Tribe in contempt of his order. He said, "I can't say the evidence presented is sufficient to show that the tribe failed or refused to comply with the (Dec. 2) order."

However, Boldt ordered a show cause hearing to require certain individuals who were fishing illegally to show why they should not be penalized. The date for that hearing is January 12.

Boldt also recommended that any members of the Skokomish Tribe be disqualified from sitting on the Boulton Court Advisory Board.

Background:

On December 5, several members of the Skokomish Tribe returned to the Boldt Court to defend their right to manage their on-reservation fishery. After hearing testimony from several tribal members involved in the fishery, Judge Boldt conceded that the Skokomish Tribe had been active as a fisheries manager for many years, opening and closing the fishery when needed.

...However, the Judge granted a permanent restraining order against fishing in the Skokomish River on-reservation until the end of the Chum season. He said that "if and when a threat to the survival and now the significant diminution' of a run exists", it is his duty to intervene.

The Skokomish Tribe acknowledged the lowness of the Chum run. However, they also contended that it is their right to manage the fishery on-reservation, as they have successfully managed it for the past hundred years. U.S.F.W.S. statistics show that the Tribe has achieved its escapement goals for the past several years. At the time the injunction was ordered the tribal council had not closed the river fishery because the flooding conditions naturally prohibited fishing.

Following the permanent restraining order against the tribe, the tribal enforcement officer quit in protest of the court ruling affecting the on-reservation fishery. As river conditions became more favorable there was some illegal fishing, for a short while. The Dept. of Fisheries had a hayday taking pictures, flying television reporters over the area, and generally attempting to create the false image that Indians are out to destroy the last living salmon.

However 9 illegal fishermen were cited and 9 were convicted by tribal court. The tribal council hired 2 new enforcement officers who were instructed to strictly enforce the injunction.

The Tribe was contacted once by the State on the 9th regarding illegal fishing.

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By the 10th, all fishable nets had been cleared. Some of the nets could not be removed because they were buried in mud and filled with debris. However, those nets were not fishable.

Meanwhile, the State Dept. of Fisheries filed contempt charges against Bill Smith, Skokomish Tribal Council Chairman and Gary Peterson, Skokomish Business Manager.

In the course of filing these charges the State has dropped contempt charges filed earlier against NWIFC and all other tribal leaders EXCEPT FOR THE SKOKOMISH TRIBE.

It is interesting to note that during the Coho Season when the Puget Sound Gilnetters Association publicly announced that they would fish according to their own regulations, contrary to State Regulations, and proceeded to do so, no contempt charges were brought against them.

The State continues to harass the Tribe by flying over the reservation two and three times a day and contending that State Fisheries Officers should be deputized as federal marshals so that they could enforce on reservation. U.S. Attorney Stan Pitkin refused to deputize state fisheries officers, praising the efforts of tribal leaders in handling the situation.

Skokomish fishing Penalties:

1st offender: minimum \$25 or 5 days in jail

2nd offender: minimum \$50 or 15 days in jail plus all fishing privileges revoked for no less than 1 month

3rd offender: minimum \$150 or 60 days in jail. All fishing privileges revoked for the season. Any special fishing location forfeited.

NWIFC CLOSES FOR HOLIDAYS

The Northwest Indian Fisheries Commission Office will be closed for the holidays December 25, 1975 through January 2, 1976.





## Northwest Indian Fisheries Commission newsletter

February 10, 1976  
Vol. II No. 1

### SKOKOMISH FISHERMEN FACE MORE COURT CHARGES

Twelve Skokomish fishermen are scheduled to appear in Judge Boldt's court on February 12 to show cause why they should not be further penalized for fishing on-reservation during a federal court closure in December.

Nine of the twelve fishermen have already been convicted and fined once in tribal court for the same incident. The fishermen were all first offenders, and in accordance with Skokomish regulation they paid a fine of \$25 each for a first offense. Presiding over the cases in tribal court was the Honorable Bennett Cooper. Judge Cooper is a Bureau of Indian Affairs judge that has handled Skokomish cases for many years prior to the Boldt decision.

The February 12 show cause hearing was scheduled by Judge Boldt in December after he failed to find Skokomish tribal leaders in contempt of the federal restraining order against on-reservation fishing in the Skokomish River.

Meanwhile, the State is pressing charges in state court against three individual Skokomish fishermen for fishing during a limited two day chum season opened by the tribe and recommended by NWIFC. Federal court has heard contempt charges against Skokomish tribal leaders for this incident and refused to find them in contempt. The State dropped all contempt charges that were filed against NWIFC and other tribal leaders that authorized the same data gathering fishery.

Mason County District Court Judge Carol Fuller has requested full legal briefs on the matter and has scheduled a hearing on March 9th in Shelton. Skokomish Tribal Chairman Bill Smith contends that the individual fishermen, fishing under tribal regulations, should not be cited in state court for fishing illegally when the federal court did not find those tribal regulations to be in contempt. Smith contends that the state court is attempting to rehear what has already been decided in federal court. Smith said, "This type of action in state court is tantamount to judicial harassment."

### "CREDIT CARDS" PROPOSED FOR FISHERMEN

In the interest of accuracy, legality, and efficiency in counting fish, it has been suggested by both tribal and state officials that the use of imprinted card machines become mandatory for all licensed fishermen and buyers.

This plan would require Indian fishermen to use an imprinted plastic card similar to the one used by non-treaty fishermen. The Indian card would contain Indian identification numbers, possibly the BIA ID number and/or the treaty fishing number issued by the Northwest Indian Fisheries Commission. Buyers would be required to run the card through a machine which would imprint the name and number on the fish ticket. This would prevent buyers from merely marking "Indian" on the fish ticket. However, it does not avoid the problems of pre-dating and post-dating fish tickets to make illegal non-Indian catches look legal. Nor does it prevent the buyer from marking the fishing area as a different area from where the fish were actually caught. The Northwest Indian Fisheries Commission is investigating the possibility of issuing "credit cards" to Indian fishermen, however the commissioners maintain that state enforcement of state licenced buyers is the final answer to an accurate data collection system.

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FISHERMENS' LOANS AVAILABLE THROUGH INDIAN FINANCE ACT

The Indian Finance Act of 1974 (PL 93-262) authorized the appropriation of an additional \$50 million to the Indian Revolving Loan Funds which are administered through the Bureau of Indian Affairs. These funds are available to make loans to Indian Tribes and individuals for economic development projects and business ventures on or near Indian reservations and for educational purposes. The Act makes available an Indian Loan Guaranty and Insurance Fund which can be used to guarantee or insure loans made by private lenders to Indian Tribes or individual tribal members for up to 90 percent of the unpaid principal and interest due. \$20 million has been authorized for each fiscal year of 1976 and 1977 for this program. The Act also authorized the payment of an interest subsidy on those loans guaranteed and/or insured.

The Act also established the Indian Business Development Program under which non-reimbursable grants may be made to Indians for profit-making economic enterprises on or near Indian reservations. \$10 million is available for each fiscal year of 1976 and 1977. Grants of up to \$50 thousand can be made to Indians or Tribes to start or expand businesses for profit on or near reservations. The grantee must obtain at least 60 percent of the total financing for his business from some other source and must invest his own money in the business, if he is able to.

Indian fishermen who are interested in obtaining funding through this program should contact the Bureau of Indian Affairs, Everett Office, Credit Department, (206-258-2651).

BIOLOGISTS PREDICT SPORT CATCH OF 25,000

Fallacious statements by Game department officials on Indian netting of steelhead have caused public uproar this season --as usual. However, Game has yet to challenge Indian management in court. The fact is that Game doesn't know how many steelhead are being caught by sportsmen because their counting system is either unreliable or non-existent while the run is coming in. Larry Brown, Dept. of Game biologist, admitted at a meeting on January 23rd that there is a forty percent variance in the two systems used by Game in determining run size. If the punch card system is accurate, then the creel census is off by forty percent and visa versa.

Game did creel census on four rivers, the Puyallup, Green, Skagit, and Nisqually. On those particular rivers, Indians were catching considerably more fish than sportsmen. Based on data from those four rivers, Game came out with a public statement that "Indians are taking 90 percent of the steelhead". Game has not taken creel census on the numerous rivers that are not fished commercially by Indians. There are approximately 180 rivers in Western Washington and Indians fish on only twelve.

U.S. Fish and Wildlife Service and Tribal biologists projected at an official court advisory board meeting that sportsmen should be able to catch an additional 20,000 to 25,000 steelhead this season. The projection was based on a five year sport catch average in 39 rivers that are not fished commercially by Indians. It was predicted that sportsmen should be able to catch ten to fifteen thousand more steelhead in the Snohomish and Stilligumish Rivers and 9703 more steelhead in 37 other rivers not fished by Indians. All of these predictions were based on poor river conditions. Should conditions improve, sportsmen should have an even better chance to catch more fish.

The total off-reservation Indian catch through January 15 is 18,005. Several rivers have been closed by tribal fish committees. These include the Humptulips, Chehalis, Hoko, Pysht, Sekiu, Green, and Skagit rivers and Lake Washington.

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Area wide, the steelhead catch should be almost evenly divided, with the possibility that sportsmen will catch even greater numbers of steelhead than Indians.

Joint committees of tribal and state biologists have been established to collect data and monitor run progress in different areas. In spite of statements that Indian nets are "destroying" the runs, no conservation closures have been requested by the State Department of Game.

Game had originally requested that tribes close all rivers to steelhead fishing for three weeks to allow sportsmen to "catch up". However, biological reports showed such varied circumstances that NWIFC could not recommend a wholesale closure to tribes.

#### STATE WANTS TO SET QUOTAS FOR ON-RESERVATION COUNT

The Department of Fisheries is moving toward a new policy for planting hatchery salmon on reservations or near exclusive Indian fishing areas. The State is accusing Indians of counting off-reservation caught fish as on-reservation, and therefore not including those fish in the 50-50 split. According to State biologist Peter Bergman, the situation arises particularly where marine waters are on-reservation since reservation boundaries are more difficult to distinguish in marine areas.

Moos's solution is for tribes to set a pre-determined quota for reservation, ceremonial, and subsistence count. The State claims that unless they can be assured of accurate on and off reservation counts, they won't begin enhancing the stocks. Moos also threatens that if tribes don't agree the State "will have to move their hatcheries away from reservations."

In the Tulalip situation the Department of Fisheries is playing a game which resembles blackmail. If the tribe doesn't agree to count 1/3 of their on-reservation caught fish as off-reservation, then the State will take Tulalip to court to question their reservation boundaries. Moos has also indicated that the Department of Fisheries would quit the cooperative hatchery program that now exists with the tribe.

Hatchery stocks that would have returned to the Skokomish Reservation have already been moved from the George Adams Hatchery because of a zinc spill two miles away from the hatchery. According to inside sources, the Department of Fisheries started moving fish before they even knew what had been spilled. There has been no indication that they will be replaced.

One of the State's arguments for this kind of fish counting "deal" is that they don't want Indians to catch hatchery stocks that are paid for by "state taxpayers". The argument is weak, however, because hatchery stocks are merely replacing natural runs which have been destroyed by "state taxpayers" through industrialism, population growth, and mismanagement of resources by state agencies. As late as 1975, the State implemented a terminal area fishery to harvest surplus hatchery stock at the sacrifice of natural coho runs on several rivers traditionally fished by Indians.

The question of how to count hatchery stocks will be answered this spring by Judge Boldt when he hears Phase II of "U.S. v Washington". In Phase II, tribes will argue that hatchery fish must be included in the count to replace destroyed natural stocks.

Perhaps the word "enhancement" should be defined. The U.S. is currently negotiating with Canada a definition of enhancement which would regard it as a stocking process after destroyed runs have been replaced.

When the State talks about taxpayers money, they neglect to mention tribal and federal (the case was U.S. v WA) restocking programs which contribute to all fisheries. They also forget that Indians with treaty rights do pay State and Federal taxes.



# Northwest Indian Fisheries Commission newsletter

March 8, 1976  
Vol. II, No. 2

## GAME DEPARTMENT CLAIMS EQUITY PROBLEM ON SKAGIT

The Swinomish, Upper Skagit, and Sauk-Sulattle Tribes re-opened the Skagit River to commercial steelhead fishing last week after nearly a month long closure. However, before the nets were in the water, an emergency court advisory meeting was called at the request of the Game Department.

All biologists agree that there is no immediate conservation problem. The question is how to define a base for allocation, and it appears that Judge Boldt may have to answer it. The Game Department contends that fish are to be counted stream by stream and the Tribes maintain that the count should be area wide.

Guy McMinds, representative for NWIFC, and Mike Shockman, Game Dept., failed to reach agreement on the Skagit Allocation issue after two court advisory board meetings last week. Court Expert, Richard Whitney recommended to the court that the Tribes close the Skagit on the basis of equity.

According to Game statistics, Skagit River Tribes have caught 4,200 steelhead off-reservation, and Sportsmen have taken 1,350. The projected total available harvest is 12,500; and approximately 2,439 are left to harvest this season.

However, Forrest Kinley, Chairman NWIFC, and also Point Elliot Commissioner, pointed out that the Tribes have caught no fish on the Snohomish, Stillaguamish, and Samish Rivers, usual and accustomed areas which were reserved by the Tribes for sport fishing. He said that if the counting is done on a stream by stream basis, the Game Department must close sport fishing on those rivers while Tribes begin commercial fisheries to take their 50% of those rivers.

Both Federal and State biologists have requested more time to study the situation. U.S. Fish and Wildlife Service believes that there may be more fish than calculated by the State.

In the meantime, the Tribes have indicated that they will close the River when it becomes necessary for conservation. They will not close voluntarily for equity until a base has been defined for sharing. The Game Department contends that they have the power to enforce a closure for equity under the Order to Implement the Interim Plan. The Game Department indicated Monday that they would enforce a closure.

## SKOKOMISH SHOW CAUSE HEARING DELAYED

The show cause hearing for 12 Skokomish fishermen was recessed until March 22 when final argument will be heard. The fishermen are charged with fishing for Chum salmon illegally on reservation during a federal court closure in December. Judge Boldt heard initial argument and testimony on March 2 in Tacoma.

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The State is basing its charges on fish receiving tickets which indicate the names of particular Skokomish fishermen. State Attorney, Jim Johnson, is demanding that some form of restitution be made for the alleged violations. However, tribal attorney, Alan Stay, argued that the fish tickets do not prove that these individuals were fishing illegally because of the opportunities available to change names and dates on fish tickets.

It was found that one of the named defendants, Jim Johns, is not a member of the Skokomish Tribe even though the fish ticket was marked "Skokomish". Doc Watson, a local fish buyer, testified under Statesubpoena that his company often signs for the fisherman, that it is possible for a "partner" to sign for the fisherman, and that the "partners" frequently change. Alan Stay presented fish receiving tickets which did not show the Indian ID number and had the name of a person who could not be identified as a member of the Tribe. The fish tickets indicated that the same person was allowed to continually sell fish without an ID number.

The hearing was recessed in order to allow Judge Boldt time to consider whether or not the defendants may be required to testify. STOWN attorney, Alan Stay argued that Dennis Allen could not be required to testify on the grounds that he might incriminate himself and be subject to further prosecution in State and Tribal courts.

Once again, State Attorney, Jim Johnson told news reporters that the Tribe had destroyed the Skokomish River Chum run. Skokomish Chairman, William L. Smith, said, "There is no biological proof backing Johnson's accusations. Furthermore, if the taking of 150 salmon destroyed a run predicted to be 35,000, the State should examine their management policies in Puget Sound before the fish reach the reservation. This kind of state management is what led to the Boldt decision in the first place."

#### PUYALLUPS BEGIN REARING PROJECT

The Puyallup Tribe is incubating half a million salmon eggs to be released this Spring. Tribal biologist Paul Svoboda said that the Tribe obtained a quarter of a million surplus coho eggs from the Puyallup River Hatchery and a quarter of a million chum eggs from the Quilcene National Fish Hatchery. Svoboda says that when the eggs reach fry stage they will be held and fed for a month before releasing them. Approximately 125,000 Coho will be released in Hylebos Creek and 125,000 will be released in Clarks Creek. The Chum eggs which arrived last week are in incubators at Swan Creek where they will be released. Svoboda says he expects a good return rate on the Coho because the eggs are from the same river system. He estimated that from two to six thousand coho should return from this plant. The Puyallup biologist said that the chum survival rate could not be precisely predicted since the eggs are from a different river system, However, he indicated that with the extra month of feeding the chum should have a good chance for survival.

This is the first incubation project undertaken by the Tribe. Svoboda said, "We're delighted to have the eggs and we are looking forward to continuing enlarging the project."

ELWHAS REPORT VANDALISM

The Lower Elwha Band of Clallam Indians reports that their fishermen have lost several thousand dollars this year due to vandalism of nets in the Elwha River. Blanchard Matte, Lower Elwha Business Manager, said that two more nets were found February 26th on the river bank cut to shreds. Each net is worth approximately \$600 with added loss of the catch. According to the tribal spokesman the vandalism has persisted throughout the entire fishing season, both on and off reservation. The tribe is fishing only in the Elwha River at this time.

According to Matte, one method used by vandals is to cut Indian identification tags off the nets and then notify the State Game Department of unmarked nets. The Game Department, in turn, confiscates the unmarked nets. One Elwha fisherman caught two non-Indians removing his ID tags, but he was unable to get their names. Matte said that Indian fishermen are not only worried about net destruction, but they are also beginning to worry about their own safety.

Clallam County Sheriff, Harley Bishop, said that his department is investigating the matter. No arrests have been made, but two suspects are under consideration to date.

PROGRESS REPORT ON PHASE II

According to Colorado based NARF attorney, David Green, Phase II of "U.S. v. Washington" will be filed within the next month. Although plans are not finalized, it is not likely that tribes will request monetary compensation for past destruction of fisheries resources.

Future protection of the resource is the emphasis in Phase II. Tribes will also request Judge Boldt to settle the dispute of whether or not their rights include the harvesting of State hatchery fish.

The tribal contention is that the State has had the power to prevent destruction of the runs but has refused to do so. Over the past century the economic prosperity of the State through industrialization is inextricably interwoven with the decimation of the Northwest fishery resource.

In Phase II the tribes will request that they have authority to bar the State of Washington from taking any action that would further destroy or significantly damage the fishery resource available for taking by that tribe. In addition, the tribes will contend that they have the right to harvest state hatchery fish because these fish are merely replacing original natural runs that were destroyed by careless state management practices.

According to Bill Smith, NWIFC, "If the State is allowed to continue to destroy salmon runs through careless environmental practices, they will not only be destroying fish for all user groups, but they will also be interfering with federally reserved treaty rights just as if they were illegally arresting Indian fishermen or setting discriminatory regulations."

At this point, no one knows exactly when Phase II will be filed in court or how long litigation is expected to take. Those decisions will be made soon.

NWIFC OPENS NEW MARYSVILLE OFFICE

Point Elliot Coordinator, Helen Keeline, has moved into new office facilities in Marysville. The address is 9920 HWY 99 North, #5 in the "El Toro" Village Shopping Center. The new phone number is 659-8581.

Two new employees have been added to the Point Elliot staff. Linda Jones, from Tulalip, started working as Helen Keeline's Assistant last week. Linda has had experience as a legal secretary working for both Alan Stay and Mason Morisset. Connie McCluskey, also from Tulalip, the new Point Elliot Secretary, will be handling a fisherman's hotline during fishing season, making available the latest information on fishing regulations for Point Elliot fishermen. PLEASE NOTE HELEN KEELINE'S OFFICE PHONE NUMBER: 659-8581.

SKAGIT RIVER TRIBES FORM CO-OP

The Swinomish, Sauk-Suiattle, and Upper Skagit Tribes have joined together to form the Skagit System Cooperative for management of their fisheries. The three tribes will work together with the coordination assistance of NWIFC in formulating fishing regulations, enforcing them, and developing enhancement programs. The tribes have agreed to combine their federal boldt funding in order to accomplish the objectives of the co-op. The newly elected officers of the Skagit System Cooperative are Claude Wilbur (Swinomish), Chairman; Floyd Williams (Upper Skagit) Vice Chairman; and Merle Williams (Sauk-Suiattle), Treasurer, and Helen Keeline, Coordinator.

The Co-Op plans to hire within the next year a biologist to work exclusively on the Skagit River System three fisheries managers, several fisheries technicians, and a law enforcement staff. Claude Wilbur, Chairman of the newly formed Cooperative, feels that the new pact will enable the three Skagit River Tribes not only to manage fisheries harvest efficiently; but also, through joined forces, to begin sizeable enhancement programs.

1976 ADD-ON MONIES AVAILABLE FOR CONTRACTING

Early in December of 1975 a bill, totalling approximately \$4.1 million for a program aimed at implementing the Boldt decision, was approved by both the House and Senate Appropriations Committees.

According to Marshall Cutsforth, Bureau of Indian Affairs, Western Washington Agency, Natural Resources Contracting Officer, \$2,152,000.00 is now available for contracting with the Northwest Indian Fisheries Commission, the Small Tribes Organization of Western Washington and the individual Indian Tribes.

These funds are to be used to implement the court decision by financing the development of salmon and steelhead population indices, law enforcement, tribal rights protection, training and related coordination and support costs.

The balance of the total allocation has been made available to the U.S. Fish and Wildlife Service for contracting with the Washington State Departments of Fisheries and Game.



## Northwest Indian Fisheries Commission newsletter

March 26, 1976  
Vol. II, No. 3

### TRIBES SUE ON "BUY-BACK" REGULATIONS

The United States and several Western Washington Indian Tribes have filed a request for determination in Federal Court as to whether the State Department of Fisheries can prevent Treaty Indians from using commercial fishing vessels purchased through the "buy-back" program. Currently state regulations prohibit anyone from purchasing "buy-back" boats for commercial use in Washington, but the tribes contend that the regulations deny them of treaty fishing rights and are contrary to the intent of the Boldt Decision and the Order to Implement the Interim Plan. Judge Boldt is scheduled to hear the case on April 6th. The state has rescheduled the first buy back auction to Saturday, April 24 in Tacoma. Approximately 60 boats and gear will be auctioned off. Current regulations do allow fishermen to buy gear.

STOWW attorney, Tom Schlauser, said that the intent of the program was to reduce non-treaty gear in order to allow more opportunity for treaty fishing. He claims that the state regulations eliminate the availability of used boats to Indian fishermen.

"This is forcing Indians to waive their treaty fishing rights because they can't get the equipment that is most readily available and within their means", he said.

Schlauser is urging treaty fishermen who are interested in purchasing "buy-back" boats to inspect them. Sixty boats are located at Harbor Marina, 4224 Marine View Drive, which is at Browns Point, north of Tacoma. If you are interested in these boats please contact Tom Schlauser at STOWW. His phone number is 593-2776. He needs information from interested fishermen before April 6 to support the case in court.

### SKOKOMISH FISHERMEN ACQUITTED

The case against 12 Skokomish fishermen charged with illegal fishing during a federal court closure was dismissed for lack of evidence by Judge George H. Boldt. The 12 men were charged with illegally fishing for Chum Salmon on-reservation during a federal court restraining order in December. Tribal officers were acquitted of contempt charges stemming from the same incident earlier this year. It was found that tribal regulations closed the river and adequate steps were taken to enforce the closure. The Judge said that in order to find the men in contempt of the restraining order the evidence must be clear and convincing.

The state's primary evidence was fish receiving tickets from state buyers which indicated names of defendants. However, it was proven that some of the names were falsified, one person listed was not a tribal member, and the buyers were unable to identify some of the defendants. Judge Boldt made a strong recommendation to the state that they take steps to enforce at the fish buyers. He said that buyer enforcement was the quickest and best means of precluding fishing violations. The Judge said it was "ridiculous not to have adequate means of enforcing both treaty and non-treaty fishermen." He added, "and we'd better do something about the non-treaty violations. Please tell Mr. Moos to find a more effective means of enforcing."

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Tribal Chairman, Bill Smith, said that he was glad the incident was over, but he felt that the tribe had suffered greatly from the state's media campaign against the tribe. Smith said, "There were television crews filming nets in the river before we were even contacted by state enforcement officers, and it turned out that most of those nets were unfishable." Referring to accusations by state attorney Jim Johnson that the tribe had destroyed the Chum Run, Smith said, "There is no biological proof to support that statement. Furthermore, it is a malicious attempt to destroy the tribe's reputation."

Originally, the state had predicted a Chum run of 34,850. According to biological data gathered during the mid-part of the run this year the Chum were returning just at the established escapement goal of 11,500. The tribe has achieved spawning escapement goals every year for the past 5 years. Because of the low run this year, all Chum fishing in Puget Sound was closed. However, substantial illegal fishing by non-Indians occurred near Hood Canal Bridge throughout the Chum season.

Smith said, "I don't believe that Skokomish River fishing violations destroyed the run. If 140 fish caught at the end of the cycle was the deciding factor in making or breaking this run, I think the state should examine their management policies regarding the run before it reaches the spawning grounds."

#### SKAGIT TRIBES START ENHANCEMENT PROGRAM

A million and a half Coho yearlings are being transferred this week from the Samish River State Hatchery to tribal rearing pens owned by the Upper Skagit and Sauk-Sulattle Indian Tribes.

According to Harlan Sam, Upper Skagit Chairman, the tribes have prepared a natural rearing pond near Rockport on the Skagit River System. The Coho will be held and fed for one to three months before they are released into the Skagit System.

The biologists involved in the project include Ron Costello, Small Tribes Organization of Western Washington; Bill Finkbonner, U. S. Fish and Wildlife Service; and Russ Orell, State Department of Fisheries.

#### SQUAXINS REAR 300,000 SMOLTS

The Squaxin Island Tribe has obtained 300,000 Coho Smolts from the Department of Fisheries to feed and hold in tribal rearing pens until June 15. The Coho will then be released from the tribal facilities on Peal Passage, north of Budd Inlet.

Rick Harris, Squaxin Island Tribal Biologist, said that the tribe is also currently incubating 96,000 Chum eggs from Perry Creek and 50,000 Chum eggs from the Quilcene National Fish Hatchery.

Last year the Tribe released 650,000 Coho in a joint program with the state, 50,000 Coho that were purchased by the tribe and 250,000 Chum Salmon from the Quilcene National Fish Hatchery.

The Squaxin Tribe has had an active fisheries enhancement program since 1971.

TREATY FISHING WORKSHOP HELD AT QUINAULT

Joe DeLaCruz president of the Quinault Indian Nation, opened a 3 day treaty fishing workshop last week by telling the audience that Indian people will soon be managing all of their resources - not only fisheries. DeLaCruz said that "rip offs" are a thing of the past and he praised the Northwest Indian Fisheries Commission as a vehicle to pull fisheries management into perspective for Indian progress. Guy McMinds, Northwest Indian Fisheries Commission Quinault Treaty Commissioner added to the opening remarks by urging tribes to work as quickly as possible to attain self-regulatory status and get back to the essence of the Boldt decision.

The workshop at Quinault Lodge was organized by Boldt court expert, Dr. Richard Whitney. Dr. Whitney said that his goal in organizing the workshop was to achieve a better understanding between the legal, biological, and political factions involved in the Boldt case.

The agenda included lectures by several fisheries experts from the University of Washington College of Fisheries. The topics ranged from "Basic Biology of Salmon" by Steven C. Schroeder to "Theories of Salmon and Steelhead Aquaculture" by Dr. Ernest Brannon. Other speakers were Allan C. Hart on "High Seas Migrations of Washington Salmon"; Dr. Stephen B. Mathews on "Population Dynamics"; and Dr. Ole Mathisen on "Management of Salmon Fisheries." Several panel discussions were also held on various aspects of Boldt implementation.

The Northwest Indian Fisheries Commission would like to thank Dr. Whitney and the guest speakers for their contributions to a successful conference.

QUILEUTES SEEK INJUNCTION AGAINST STATE HATCHERY

A Court Advisory Board meeting was held on March 11 at the request of the Quileute Tribe to discuss the proposed construction of a State hatchery at Bear Springs on the Soleduck River system. The Tribe has asked for a federal court injunction to prevent the construction of a rearing pond for salmon and steelhead and prohibit the further taking of brood stock for this hatchery.

According to Bill Grubb, Quileute Fisheries Manager, State agencies have deliberately refused to discuss the project with the Tribe, but they have been collecting brood stock and construction plans for the hatchery are completed. The Tribe is concerned because they have an enhancement program of their own and they feel that it is essential for all managers to communicate and coordinate fisheries programs.

The Quileutes contend that they have not been able to find out who has authority over the project and whether it is under the direction of the Department of Fisheries or the Department of Game. State Fisheries Dept. Indian liaison, Ralph Rideout, denied WDF involvement in the project at first, but a State field worker admitted that the brood stocks were being taken for the proposed Bear Springs hatchery. Stocks were taken by hook and line during the native steelhead runs this year.

The Tribe's main objection to this project is that they have not seen qualified technical information to support it. The Tribe wants to know what affect this hatchery will have on native steelhead runs: whether a hatchery harvest would destroy them, and whether the native runs could survive on their own without repropagation. Grubb said, "We're not attacking repropagation, but we are attacking reckless repropagation. We want to see the biological information supporting this project."

(continued)

Interested sports groups have wanted a hatchery on the Upper Soleduck to bring massive numbers of steelhead to fishing areas closer to Port Angeles. Last year Mike Shockman, Dept. of Game, asked Quileute Fisheries about a Bear Springs hatchery and at that time the Tribe requested supporting biological data. Shockman agreed that nothing would be done without this data, but then he said that if anything did move forward it would be because of sport group pressure. "That was the last we heard about it until we discovered that brood stocks were being taken," said Grubb.

Court Expert, Dr. Richard Whitney, directed the State agencies and the Tribe to form a biological study group to discuss the matter. The group is composed of Bill Grubb, Quileute Fisheries Manager; Lloyd Finney, Dept. of Fisheries Biologist; and a representative from the Department of Game. The group is scheduled to meet March 29 at Quileute.

#### COMING EVENTS

March 30: Point Elliot Treaty Meeting, Tulalip Tribal Center

March 30: Legal briefs due on Whitney's "12 Questions"

April 5: Tentative court date on Whitney's "12 Questions"

April 6: Court hearing on "Buy-Back" regulations

April 10: Dept. of Fisheries Public Hearing on Troll Fishing Regulations

April 21: Governor's Salmon/Steelhead Advisory Board Meeting

April 24: Buy-Back Auction



## Northwest Indian Fisheries Commission newsletter

April 15, 1976  
Vol. II, No. 4

### TRIBAL OFFICIALS MEET IN SEATTLE

Treaty Indian Representatives met April 9 and 10 in Seattle to discuss immediate and long-term problems surrounding Boldt implementation. The meeting was called to share information and develop an immediate plan of action to ensure protection of Indian fishing rights.

Bill Smith, NWIFC Executive Director, flew back from congressional hearings in Washington D.C. to address the meeting. He expressed concern that even though the Boldt decision has been declared "Law of the Land", there is tough opposition at both state and federal levels.

Smith said, "Opposition to the decision is worse now than ever because the activities against Indians are covert." He said, "Things are not going OK. Ugly things are going on and they are getting worse." Smith urged treaty councils to become more involved with fisheries management and he told tribes that the battle can only be won by taking a united Indian stand on the issues.

#### -Buy-Back

Tribal attorneys were at the meeting to bring the audience up to date on a barrage of court activities. They encouraged Indians to purchase buy-back boats at the April 24th auction, but to notify attorneys before signing any documents.

#### -12 Questions

Regarding the "12 Questions" posed by Dr. Whitney, all agreed that more time and better procedures should have been required to ensure that tribes had full input on the answers. Mason Morissette, attorney for Lummi, Makah and Quileute Tribes said, "This is an Indian case, yet great activity is occurring without participation of the tribes. It must be recognized that an agreement with biologists is not an agreement with tribal councils."

#### -Court Advisory Board

Forrest Kinley, Chairman of NWIFC, discussed the problems involved with the court advisory board as it is now organized. He stressed the importance of defining the powers and procedures of the board, its chairman, and its members. Tribal attorneys have drafted a proposal for procedures and powers which is designed to protect tribal sovereignty, ensure fair play, and safeguard treaty rights to co-management and fishing. This proposal will be included in the Indian long range management plan.

#### -Long Range Management

In discussing the long range management plan, tribal leaders agreed that an attempt must be made to 1) assure more protection for native stocks than what the state is proposing; 2) not to become involved in state business of managing between non-treaty user groups; and 3) request more time to develop a comprehensive long range plan. It was generally agreed that court deadlines were not allowing enough time for development of a detailed plan for wise and effective management.

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**-Heckman's Transfer**

Several events occurred this year which prevented Tribes from meeting the court deadlines with a plan satisfactory to Tribes themselves.

One serious deterrent was the request by the Washington D.C. office Fish & Wildlife Service for Jim Heckman to spend two weeks in Washington D.C. while Tribes were trying to work on their management plan.

It is no small secret in Washington D.C. that Jim Heckman is considered a "stumbling block" by both state and federal factions who are opposed to the Boldt ruling. Heckman is program manager of Northwest Fisheries program in Tumwater (U.S. Fish and Wildlife Service) and has been the chief biological advisor to many of the tribes since 1962. In addition to providing biological evidence for "U.S. v. Washington", Heckman played a key role in securing approval and construction of major salmon hatchery facilities on the Quinault and Makah Reservations. His research on the effects of improper logging operations on Indian reservations have detailed the devastation of forests along with the destruction of watersheds and major fishery resources. These reports have had considerable impact regarding public policy and federal responsibilities.

The Washington D.C. Fish and Wildlife Service office has now decided to terminate the Northwest Fisheries Program. They have given Jim Heckman until May 3 to accept a transfer to the Washington D.C. office. Tribes will not accept this kind of political maneuvering and plan to protest termination of these services and the transfer of Jim Heckman. There is no question as to the reasoning behind this transfer. Tribes are seeking self regulatory status which requires biological assistance. Phase II of the Boldt decision is scheduled for litigation this spring. State challenges are made daily to tribal rights and the responses require biological advice. And most clearly evident, this is an election year.

**-BIA Responses**

BIA officials from both the Everett and Portland offices were at the meeting to answer questions regarding budget contracts and BIA enforcement plans for next year.

The response to most of the questions was: 1) to pass the buck; 2) say it can't be done; or 3) say we'll have a meeting on it next week.

Bureau officials however did express their sympathy to our problems. "It's a messy situation," said one. Most tribal representatives agreed to that and continued to wonder what the Bureau is doing to help.

Many tribes including the Skagit System Co-op and Point No Point Treaty Tribes have not yet received their '76 funding (NWIFC hasn't either). The BIA has refused to approve the joint budgets of those tribes that joined together for more effective use of their funding. The Bureau said the reason was because the co-ops hadn't been formed at the time of funding allocation. However, it is documented that the Point No Point Treaty Council has been organized since the foundation of the NWIF Commission. Furthermore, the tribes have been organized since the 1850's. Bureau officials said they would meet on the matter next week. Meanwhile tribes have hired fish managers, biologists, and enforcement officers with no funding to pay them. Some tribes have purchased boats and equipment expecting reimbursement that the BIA is now holding up.

Point Elliott Coordinator Helen Keeline presented Bureau enforcement officials with a plan for an effective BIA enforcement program this year. Although not totally unresponsive to Point Elliott requests, Bureau Enforcement Chief John Bushman said that some of the proposals were not possible this year because of funding problems.

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The two day meeting ended with a new schedule for meetings of tribal officials, attorneys, and biologists before the April 16th hearing on the long range management plan and court advisory board procedures.

BUY-BACK AUCTION SET FOR APRIL 24TH - PITKIN PLEDGES TO BACK INDIAN BUYERS

Judge Boldt declined to dismiss the United States and Indian suit against state buy-back regulations. However, he will not have heard the case before the 1st boat auction scheduled for April 24th. A date has not yet been set for the federal court hearing on the buy-back regulations.

U.S. Attorney Stan Pitkin has written a letter to all tribes stating that he will support and defend any treaty fishermen who wishes to purchase and use these buy-back boats.

S.T.O.W.W. Attorney, Tom Schlosser is encouraging interested treaty fishermen to bid on the boats at Saturday's auction regardless of the questionable court ruling. However, he has requested that all treaty fishermen contact him before signing any papers. He warned against signing anything that would waive treaty rights and allow state enforcement against treaty fishermen. Schlosser can be contacted at the Small Tribes Organization of Western Washington, (206) 593-2776. Be sure to contact him if you plan to bid on the boats.

The auction will begin at 10:00 am on April 24th, at the Harbor Marina in Tacoma, 4224 Marine View Drive.

POINT ELLIOTT TRIBES ADOPT NEW I.D. CARDS

The Point Elliott Tribes have been battling with the question of how to prevent falsification of fish receiving tickets. Last year's fishing season was a total disaster in terms of fish accounting, according to Helen Keeline, Point Elliott NWIFC Coordinator. She said that non-Indian fishermen often tried to sell fish under false Indian names and I.D. numbers.

This year the Point Elliott Tribes have decided to issue embossed fishing I.D. cards. Buyers will be required to run the I.D. cards through machines which will imprint I.D. information of the fish receiving tickets.

The Point Elliott Tribes agreed to issue two types of I.D. cards; a boat owner's permit and an operator's permit. The boat owner's permit will be embossed on one side for use on the buyer's imprint machine. All tribes agreed to include the following information on the embossed side of the card: 1) Point Elliott Treaty Indian Council Permit; 2) Boat owner's name; 3) Name of boat (if gear only - specify); 4) Description of type of fishing; 5) The year the permit is valid; 6) The tribe that issued the permit; 7) Tribal tax (what % is it?); 8) The gear marking code system used by the NWIFC will be used for identifying the Treaty Area, the tribe and fishermen (same as BIA number); 9) Expiration date of the card.

The reverse side of the card will contain a picture of the boat owner, a space for his signature and tribal authorization. This side will also include: address, height, sex, weight, color of eyes and hair. The card shall state "This commercial license good only for sale of fish."

The operator's permit will give only the description of the permittee, a picture of that person, a place for his signature and tribal authorization. Fish can be sold only with the boat owner's permit. This will tell the buyer who to credit for the fish and prevent illegal lease agreements. Permits will be issued only to authorized tribal fishermen who have met rules and regulations in fishing ordinances of their tribe.

Tribal fishermen will be able to obtain I.D. cards from their tribes this spring. Details will be forthcoming from treaty coordinators and the Northwest Indian Fisheries Commission.

STATE SUPREME COURT RULES ON PUYALLUP STEELHEAD

It was no surprise to Indians last week when the Washington State Supreme Court ruled against them in the Puyallup steelhead case. The state court upheld a ruling by Pierce County Superior Court Judge William L. Brown that the Puyallup Tribe is entitled only 45% of the native steelhead run, excluding from treaty harvest steelhead artificially propagated by the Department of Game.

Bill Smith, Executive Director NWIFC said, "State courts have consistently refused to recognize treaty fishing rights. That is why the United States and the tribes took the Boldt case to federal court in the first place." Gloria Bean, Puyallup Fisheries Manager, said the tribe is examining legal alternatives for federal court consideration of the issue.

Although the state says they will apply this ruling to all tribes and all rivers, tribal attorneys contend the ruling is only applicable to the Puyallup Tribe and steelhead.

The tribe has been battling with state agencies and state courts for several years. In 1968 the U.S. Supreme Court ruled in "Puyallup v. Washington" that the state could restrict Indian net fishing only when necessary for conservation. The federal court then remanded the case back to state courts to determine if their existing regulations were "necessary". In 1973 the tribe was back in U.S. Supreme Court for "Puyallup II". The high court held that Indians had the right to net steelhead commercially and then remanded the case back to Pierce County Superior Court where Judge Brown made his allocation decision in January 1974. Judge Boldt made his fishing rights decision in February 1974 and retained continuing jurisdiction over the case, realizing the reluctance of the state to recognize Indian treaty rights. In 1975 Judge Boldt enjoined Washington State from excluding hatchery produced steelhead from Indian treaty harvest on rivers other than the Puyallup, pending final determination of the Puyallup case in State Supreme Court. Now the door is open for Judge Boldt to make a ruling on the Puyallup case.

All of the tribes had planned to ask for a ruling on the total hatchery stock question in "Phase II" of the Boldt case which will be litigated this spring. Tribal spokesmen contend that the exclusion of hatchery stocks from tribal harvest is unfair because the state has allowed for the destruction of the native runs through industrial development.

Another important consideration in the hatchery - native question is the fact that state fisheries management programs allow for the destruction of native runs in order to accommodate the propagation and harvest of hatchery stocks. In addition, the state has already begun manipulating their hatchery stocks so that they do not return to reservations. Washington Fisheries agencies also contend that the tribes do not have "co-management" powers to enhance streams off the reservation but within usual and accustomed fishing areas.

It is not yet known what immediate plans the state has for attempting to enforce the latest state court decision. Tribal attorneys contend the decision is contrary not only to the Boldt decision, but also to several other federal court Indian fishing rights cases. One tribal attorney summed it up this way, "The State Supreme Court is wrong every time it looks at an Indian treaty case. I say this as a member of the bar with full understanding of what I'm saying."

HOH TRIBE SPONSORS LECTURE SERIES

The Hoh Tribe is sponsoring a lecture series entitled Topics In Fisheries. According to Tribal Biologist Rick Klinge, the purpose of the speakers program is to acquaint Indian people with a wide range of fisheries related issues.

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The sessions will be held at the Hoh Tribal Office at 7:00 pm on the 1st and 3rd Mondays of the month. The schedule is as follows:

April 19 Quinault Aquaculture Carry Feldman Quinault. Resource Development Program  
 May 3 The Boldt Decision Guy McMinds Quinault Resource Development Program  
 May 17 Activities of Washington Department of Fisheries on the Coast Bill Wood  
 Washington Department of Fisheries  
 June 7 Sport Fishing on the Washington Coast Bill Grubb Quileute Fisheries  
 June 21 (To be announced) Larry Lestelle Quinault Resource Development Program  
 July 5 Hoh Fisheries Program Rick Klinge Hoh Fisheries

TULALIPS ANNOUNCE FISH RELEASE

The Tulalips released 329,000 chinooks into Tulalip Bay this week, according to Bernie Gobin, Tribal Fisheries Director.

The Tribe obtained the fish from the Skagit State Hatchery and has been feeding them since January. According to Gobin this release will benefit not only tribal fishermen, but sportsmen as well. "It's sort of a good will gesture from the tribe to the sportsmen," he said.

The Tulalips are also feeding 700,000 coho which will be released in Tulalip Bay. In addition, the tribe expects another one million chinook to start feeding the first week in May.

According to Bernie Gobin, the Tulalips have reared and released over five million salmon in the past five years, including 2,969,000 silvers and 1,581,500 chinooks.

The Northwest Fisheries Program (U.S. Fish & Wildlife Service) has been providing biological assistance to the project. The tribe also employs two full time fisheries technicians, a biologist intern, and a fisheries director to manage their enhancement program.

NEXT ISSUE:

WHITNEYS 12 QUESTIONS AND ANSWERS

LONG RANGE MANAGEMENT

COMING EVENTS:

APRIL 16 - FEDERAL COURT HEARING ON LONG RANGE MANAGEMENT





# Northwest Indian Fisheries Commission newsletter

May 18, 1976  
Vol. II, No. 6

## INDIAN NAMES SUBMITTED FOR FEDERAL FISHERIES MANAGEMENT COUNCIL

As part of implementing the 200 mile limit legislation (Fishery Conservation and Management Act of 1976), the Department of Commerce is establishing eight Regional Fishery Management Councils with authority to develop and implement plans for specific fisheries.

The Pacific Fishery Management Council will involve the states of Washington, Oregon, California, and Idaho and will have authority over the fisheries in the Pacific Ocean seaward of those states. The council will have thirteen voting members: the principal state official with marine fishery management responsibility in each of the four states, the regional director of the National Marine Fisheries Service, and eight members appointed for three year terms by the Secretary of Commerce from lists submitted by the governors of the states.

Governor Evans has requested the Northwest Indian Fisheries Commission to submit names for possible nomination to the Regional Management Council. NWIFC has recommended Guy McMinds, Quinault Treaty Commissioner; Charles Peterson, Makah Treaty Commissioner; and William L. Smith, Executive Director, NWIFC, for positions on the council. Governor Evans must submit his nominations to the Secretary of Commerce by May 28th. Forrest Kinley, Chairman of NWIFC and Point Elliott Commissioner, declined nomination for the council by NWIFC. He said that he does not believe that Indians will receive fair representation on the Regional Council and he will campaign for an Indian Regional Council.

## "PHASE I-B" FILED IN BOLDT'S COURT

Western Washington Tribes have filed a request for determination in Federal Court on two major management questions in lieu of asking for a full scale "Phase II" trial. The request was filed in U.S. District Court on April 30. Indians are asking Judge Boldt to decide whether they have the right to harvest hatchery propagated fish and whether the tribes' treaty fishing rights include protection from impairment by acts of the state which significantly diminish fisheries resources.

NWIFC Executive Director, Bill Smith said that these questions must be answered before a long range fisheries management plan can be developed. He said, "We've been trying to develop a joint management plan with the state and they keep trying to apply the 'Puyallup III' decision to all rivers and all anadromous fish. We can't develop a plan without resolving this question. We've also got to find a way to protect ourselves from careless state actions such as the recent fish kill on the Columbia or intentional destruction of runs through other environmentally unsound activities."

The Indian argument on both questions will revolve around past destruction of fisheries resources. Tribal attorneys intend to show that state industrialization has radically diminished anadromous fish runs, and that Washington State agencies have had the power to prevent this destruction but have failed to do so. Fish spawning grounds have been destroyed to make room for cities, to accommodate logging projects, and to allow for other economic development which has benefited the State of Washington.

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The artificial propagation of fish was introduced because of the decimation of natural runs. Smith said, "We're not asking the State to rear and plant fish for Indians as compensation for past destruction, but once the decision has been made to release fish they should be available for everyone, just as the fish that we release benefit all user groups."

The tribes are asking that the state be required to notify the affected tribes, the NWIFC, and the federal government when they are considering an action which might significantly affect the fish habitat. Smith said that the tribes want to be involved in the planning process and they want to make sure that every alternative is considered before an action is taken that might further damage the fisheries resource. Indians are also asking that the state be required to obtain permission from the affected tribes before such a project is undertaken.

Tribal attorneys contend that unless Indian rights are protected from state actions which adversely affect the fish habitat, the state will be able to do indirectly what the federal court has said it cannot do directly -- interfere with the exercise of a federally reserved right to fish. Loss of fishing opportunity through state actions destroying fish habitat has the same effect as losses by state actions in the form of arrests and gear confiscation.

Tribal attorney, Tom Schlosser said that a pre-trial hearing will probably be held on the matter sometime in October.

#### IPSFC REGULATIONS - UNACCEPTABLE TO TRIBES

Tribal officials met with Rozanne Ridgeway, Deputy Assistant Secretary for Oceans and Fisheries Affairs (Dept. of State), last week to discuss the International Pacific Salmon Fishery Commission (IPSFC) regulations. According to tribal attorney Mason Morisset, the IPSFC regulations for Sockeye and Pink salmon and the interpretation of these regulations by NOAA are unacceptable to the tribes because they do not recognize treaty fishing rights under the Boldt Decision. According to the Fisheries Directors of the Lummi and Makah Tribes and the Program Manager of the Northwest Fisheries Program, U.S. Fish and Wildlife Service, none of the tribes will benefit significantly from the special provisions of the current regulations. The major Indian fishery in IPSFC waters is a gillnet fishery, one which must be conducted at night. When the IPSFC regulations are examined it is clear that any so-called "additional time" given to Indians is day light time not suitable for gill net fishing. Thus, Indian fishermen end up gill netting during exactly the same hours as all other gill netters. This clearly violates the mandate of the Boldt Decision.

The original request of the Lummi Tribe which called for open Indian fishing during the time that fishing was open for any gear under IPSFC regulations was based on the assumption that this would cover 24-hour periods for two to three consecutive days, thereby gaining at least one extra night for gill netting. However, the result given by current regulations as interpreted by NOAA does not allow any extra night fishing for gill netting. The tribal position is, and always has been, that to fully implement the Boldt Decision they must be granted substantial additional time (for example five nights a week gill netting, instead of just two under the International regulations). The tribes contend that regulations which allow substantial additional time for Indian fishing are consistent with the Sockeye convention so long as they do not disturb the basic 50-50 allocation between Canada and the United States and do not endanger conservation of the sockeye and pink salmon species.

Ms. Ridgeway was of little help in solving this problem. She said that the United States has exhausted all possible changes with Canada and that they are obligated to honor the regulations by the U.S.-Canada Treaty. Affected tribes intend to meet this week to consider possible legal action against the State Department and federal officials involved.

BUREAU HIRES PHOTOGRAPHER

The Bureau of Indian Affairs has contracted with Rocky-Marsh Public Relations Firm in Portland to develop a photo collection on Indian fishing for slide shows, media requests, and display purposes. Photographer David Davidson will be taking pictures of various fishing activities on and around the reservations for the next five months. So don't be suprised if sometime, somewhere, when you least expect it, someone walks up to you and says, "Smile the BIA wants your picture!"

MEDICINE CREEK MEETING SCHEDULED

NWIFC Commissioner, Calvin Peters has called a Medicine Creek Treaty meeting for May 27 at 11:00 am at the Olympia NWIFC Office. The agenda will be handed out at the meeting. Contact George Kalama, Medicine Creek Coordinator, if you have any questions: Phone-352-8030.

COURT FISHERIES ADVISORY BOARD PROCEDURES TO BE HEARD

A hearing has been scheduled for May 27, in Judge Boldt's Court to review procedures for the court fisheries advisory board. Tribal officials should now be meeting with their attorneys to provide input on the jurisdictional guidelines and procedures for the court advisory board.

PROGRESS REPORT - ROE HERRING FISHERY

The non-treaty Roe Herring fishery has been closed after a reported catch of 1,074 tons. The off-reservation treaty catch was 994 tons with an ongoing fishery on May 17th. The off-reservation allocation for treaty and non-treaty fisheries was 1,000 tons each. The on-reservation allocation for the Lummi Tribe was 500 tons. On May 17th the tribe had taken only 38 tons of roe herring on-reservation.

Melvin Lorenz, administrative assistant for Lummi Fisheries, said that the on-reservation fishery would continue seven days a week until further notice.



## Northwest Indian Fisheries Commission newsletter

June 9, 1976  
Vol. II, No. 7

### YAKIMAS PROTEST TROLL SEASON

At an informal court advisory board meeting in Olympia last Friday, the Yakima Indian Tribe denounced state courts for ignoring conservation needs on the Columbia River and bending to public pressure in allowing a troll fishing season to open two weeks earlier than advised by the State's own biologists.

Harris Teo, Chairman of the Yakima Tribal Fish and Game Committee, said, "If the state cannot control their own people to prevent destruction of the salmon runs, then we must seek another management system." Teo said the Yakima Tribe would explore every alternative through courts and otherwise to guarantee preservation of fish for the future.

He said, "The allocation issue is past. We are critically concerned with saving the fish at this point and trollers are not willing to conserve with the rest of us. Financial depression for Indians or non-Indians does not justify wiping out the salmon."

Yakima tribal officials were also critical of the Washington-Oregon-Idaho Compact which regulates Columbia River fishing. Under the Belloni decision of 1974 Columbia River tribes are guaranteed the right to harvest 50% of the salmon destined for their usual and accustomed fishing grounds. For the past three years the Yakima Tribe has been denied a spring chinook fishing season by the Compact for conservation reasons, while trollers, gillnetters, and sports fishermen have been allowed to continue fishing on the same Columbia River stocks in the marine waters and on the lower Columbia River. In 1976 the Compact has allowed a non-Indian harvest of 8700 spring chinook. To date the Indian fishery has harvested approximately 200 spring chinooks for commercial use and less than 1000 for ceremonial purposes. Tribal fishing has been closed on a conservation basis while non-Indian troll fishing continues.

Teo said, "Conservation must become a two way street. Both Indians and non-Indians must cooperate. Tribes cannot always be asked to cease fishing at the end of a run because over fishing by non-Indians has been allowed in other areas."

### LOWER ELWHA'S PROPOSE LAND CONSOLIDATION AND FLOOD CONTROL PROJECT

The Lower Elwha Tribe is seeking an \$800,000 grant from congress to undertake a land consolidation and flood control project.

The Tribe plans to purchase approximately 550 acres to accommodate construction of a flood control levee at Angeles Point. All of the major land owners have agreed to sell and support the project. The levee will stabilize the course of the Elwha River and reduce the annual flood hazard to reservation land from 90% to 1%. Without the project, several families both Indian and non-Indian, will continue to be forced to evacuate their flooded homes each year, and reservation land will remain unusable for home construction or other economic development.

The land consolidation and flood control project will enable the Lower Elwha Tribe to begin construction of new hatchery facilities with a \$500,000 grant from the Office of Native American Programs.

Through home construction, agricultural and fisheries development, the project is expected to lower the tribal unemployment rate from 15% to 11% and it will assure jobs for all heads of households within the tribe.

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PORT GAMBLE TRIBE RELEASES 200,000 CHUM SALMON

The Port Gamble Klallam Tribe released 200,000 chum salmon into Port Gamble Bay on May 27, according to Tribal Chairman Ron Charles. The salmon fingerlings were hatched at the Port Gamble Reservation fish rearing facility on Little Boston Creek. Charles said that this is the largest fish plant made by the tribe since the establishment of their propagation facilities in 1975. Last year the tribe planted 20,000 coho and 39,000 chinook. This fish release is the start of a much larger tribal enhancement program which will concentrate mainly on the propagation of chum salmon. With expanded and updated facilities next year, the tribe expects to be able to hatch and plant 2 million salmon.

POINT NO POINT TRIBES EXPANDING FISHERIES PROGRAMS

The Point No Point Treaty area has hired two new biologists to aid in the development and expansion of their fisheries management program.

Phil Mundy is the new Point No Point Treaty Area Biologist and Larry Rutter was recently hired by the Port Gamble Tribe as their new fisheries manager. Mundy is working out of the Northwest Indian Fisheries Commission Point No Point Treaty Office at Port Gamble and Rutter maintains an office at the Port Gamble Tribal Center.

Mundy is a PHD candidate with the University of Washington College of Fisheries, with a B.S. from the University of Maryland and a M.S. from the University of Alabama. Mundy has had extensive experience in salmon biology and bio-statistical analysis on fisheries projects in Massachusetts, Alaska, British Columbia, Alabama, Iceland and Washington State.

Mundy says that his main goal in Point No Point is to help the tribes attain a self-regulatory status and to rehabilitate the salmon runs in the tribes usual and accustomed fishing areas.

Rutter is a graduate of the University of Washington. He has worked on various fish and wildlife research projects, including work with the Coastal Tuna and Salmon Fisheries and Domsea Farms Salmon Aquaculture Program. Rutter is concentrating on a new Port Gamble Tribal Enhancement program which will eventually be producing 2 million chum salmon per year. Rutter says he also plans to establish an on-reservation shell fish industry.

COURT ADVISORY BOARD CONVENES ON MAKAH ISSUE

The Court Advisory Board was convened on June 4 at the request of the Makah Tribe to discuss state interference with fish buyers at Neah Bay. Buyers in the Makah usual and accustomed grounds were informed by the Department of Fisheries that it was illegal for them to purchase fish less than 28 inches long. The Makah Tribal regulations allowed fishermen to harvest fish at a minimum length of 22 inches. Because buyers were refusing to buy the smaller fish, the Tribal Government had been forced to buy 1200 pounds of fish for subsistence and welfare programs.

The tribe and the state were able to reach agreement on a minimum length of 24 inches for chinook salmon and 16 for coho which is the same limit for sport catches.

Steilacoom Tribal Office phone number has been changed to 272-0359 or 272-0350

TRIBES PLANT ONE MILLION COHO IN SKAGIT SYSTEM

The Upper Skagit and Suak-Suiattle Tribes announced that they have planted one million coho fingerlings this year in a joint project with the Department of Fisheries and the Small Tribes Organization of Western Washington.

The coho were reared in a natural pond that the tribes cleared and prepared for holding and feeding salmon and steelhead.

The fish were planted in the following locations: 150,000, Illabot Creek; 300,000, Newhalem Ponds; 100,000 Old Sauk Channel; 100,000 Upper Dam Creek; 150,000 Davis Slough; 100,000, Finney Creek; 100,000, Bacon Creek; 100,000, Clear Creek.

GOVERNOR NAMES INDIAN REPRESENTATIVES FOR REGIONAL BOARD

Guy McMinds, Northwest Indian Fisheries Commission Quinalt Treaty Commissioner, and Harris Teo, Chairman of the Yakima Fish & Game Committee, have been nominated by Governor Evans to serve on the Pacific Regional Fisheries Council. The Regional Council is being established to implement the Fishery Conservation and Management Act of 1976 (200 mile limit).

McMinds was one of three individuals whose names were submitted for the Regional Council. The other nominees were Jim Crutchfield and Don McKernan. Teo was named as an alternate.

The NWIFC is urging tribes to write letters of support to the Secretary of Commerce for these Indian Representatives. The Department of Commerce will make the final decision on who is selected to sit on the council.

The Pacific Regional Council will have an important function in Northwest Fisheries management and it is essential that Indians are represented on this board.

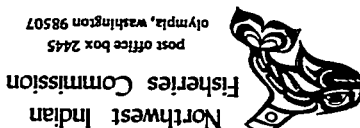
COURT ADVISORY BOARD PROCEDURES - PROGRESS REPORT

Tribal and state attorneys are still working on procedures for the court advisory board.

A federal court hearing was held on June 7, but Judge Boldt has not yet ruled on the matter.

The state and tribes cannot agree on whether or not the state shall have unilateral power to close Indian fisheries on an emergency basis for allocation and conservation reasons without first holding a court advisory board meeting.

Judge Boldt directed attorneys to meet again and attempt to resolve the conflict. Briefs must be submitted for review by the judge on June 14.

COMING EVENTS:

June 11th and 12th - The Columbia River Alliance meets in Lewiston, Idaho.

June 14th - Non-anadromous species meeting at the Sea-Tac Hilton, 10:00 am.

June 15th - The Medicine Creek Treaty Council will meet on June 15, at 9:00 am at the NWIFC office in Olympia. The agenda will be passed out at the meeting. If there are any questions regarding this meeting, contact George Kalama at 352-8030.

June 18th and 19th - The Bureau for Faculty Research and the Center for Pacific Northwest studies are jointly sponsoring a two-day conference entitled "Fisheries in Puget Sound: Public Good and Private Interest." The conference will be held at Western Washington State College in Arntzen Hall, June 18th and 19th, beginning at 9:00 each day. Among the topics to be discussed are: the fisheries as a resource; the economic and political implications of competition and control of the fisheries; Indian claims and the Boldt decision; and Canada and U.S. regional fisheries.

June 18th - KCTS, Channel 9, has scheduled a program on "The Boldt Decision and its impact on Northwest Fisheries" to be shown June 18, at 10:00 pm. Following the documentary there will be a live discussion on implementation of the Boldt decision. Participants will be: Donald W. Moos, Bill Lowman, Richard Whitney, and Guy McMinds.

June 19th - Boat Auction, Harbor Marina in Tacoma at 10:00 am.



# Northwest Indian Fisheries Commission newsletter

July 2, 1976  
Vol. II, No. 8

## NWIFC HIRES NEW BIOLOGICAL PROGRAMS DIRECTOR

James L. Heckman, Program Manager of the Northwest Fisheries Program, U.S. Fish and Wildlife Service, will accept a position with the Northwest Indian Fisheries Commission as Biological Programs Director.

Heckman, a twenty-five year veteran of U.S. Fish and Wildlife Service, has provided biological assistance to tribes and the U.S. government during litigation and implementation of the Boldt decision. Earlier this month he announced his resignation from the Fish and Wildlife Service.

Heckman has worked with Washington and Oregon tribes through Fish and Wildlife Service since 1962. He served for several years as Associate Regional Supervisor of the U.S. Fish and Wildlife Service division of Fishery Service, covering seven western states. Heckman said that he wants to work directly with tribes because he feels they have a unique and special interest in conservation of salmon and steelhead. He said, "They are particularly capable of playing a major role in efforts against activities detrimental to the natural environment. Indians have already made significant strides independently toward improvement of these valuable natural resources and they have consistently demonstrated their willingness to share the benefits of their efforts."

Heckman will begin work at the Olympia Northwest Indian Fisheries Commission Office on July 26. He said, "We will be making a special effort to coordinate the work of tribes and their biological staffs and that of state and federal fisheries agencies to form effective and comprehensive fisheries resource management."

William L. Smith, Executive Director of the Northwest Indian Fisheries Commission believes that Heckman's employment by the Commission is a "step in the right direction toward Indian self-regulation and involvement in co-managing the fishery." He said, "All Indians realize that our struggle for treaty fishing rights is fruitless if we do not, or cannot, protect the resource. We must have competent biological advice, and we must insist that our technical staff owe its total allegiance to the resource."

We feel fortunate to have Jim Heckman on our staff. He is the best person for the job and his employment with the Northwest Indian Fisheries Commission is an important move at a very critical time in our resource development."

## LUMMI PLANT FISH

The Lummi Tribe released 12,000 steelhead and 17,000 fall chinook from the Tribal sea pond into Lummi Bay on June 24, according to Forrest Kinley, Point Elliott Treaty Commissioner and Lummi Fisheries Director. The tribe also released 400,000 chum salmon on June 25. Approximately 25,000 chums were tagged as a part of the Lummi release and return program. Last month the tribe planted 718,000 coho. All of the fish were hatched at the Lummi Tribal Skookum Creek Hatchery.

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COURT UPDATE

Both state and tribal agencies agreed in court this week that it is too late to attempt to complete a joint long range management plan for this year since fishing has already begun. Judge Boldt ordered the Court Advisory Board to select a committee to work on a fisheries management plan for 1977. A first draft of the plan is to be submitted to tribes in November, and Judge Boldt will make a final ruling on the long range plan in January.

The fishing season is fully underway for this year and there are still no formal procedures and guidelines for the Court Advisory Board. The state came into court Monday with an entirely new proposal. Tribal attorneys attempted to prevent the new brief from being accepted by the court because of the late date and the failure of state attorneys to follow proper procedures. The Judge has not yet ruled on the Court Advisory Board procedures. The main disagreement is over whether or not the state should have the power to close an Indian Fishery without first holding a Court Advisory Board meeting.

Tribal attorneys have filed a motion for summary judgment on the Buy Back situation. A court hearing is scheduled for July 19.

TROLLERS HAMPER CONSERVATION EFFORTS

Washington State Trollers have successfully managed to continue fishing a month longer than originally proposed by Washington Department of Fisheries biologists, two weeks legally and two illegally. They have not only defied a federal court order to stop fishing, but they have also fished on weak Columbia River Chinook stocks.

This week in court Judge Boldt praised the Washington Department of Fisheries for their efforts in closing the troll fishery. He said, "This is the first time since litigation began that any state agency has done anything but obstruct the aim of U.S. v. Washington."

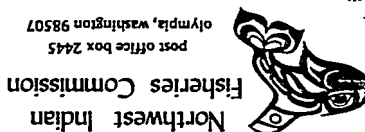
Unfortunately however, the courtroom stalling tactics of trollers and the states reversal in policy after the state Supreme Court ruling have defeated the original purpose of the intended June 15 to 30 closure. The fact remains that weak chinook runs which should have been protected were not. State biologists originally recommended a month long closure to protect these fish, but the state yielded to troller pressure and granted them an extra two weeks.

When Federal government along with the Columbia River Tribes filed for the injunction against continued fishing on the Columbia River run, they were concerned about future allocation problems but they were especially apprehensive about the conservation effects on the troll fishery. Harris Teo, Chairman of the Yakima Tribal Fish and Wildlife Committee said, "We've been denied a spring chinook fishery for two years, a summer chinook fishery for ten years, and a blue back fishery for eight years. We're afraid that the trend will continue under the current management policies and we'll soon be without a fall fishery."

Bill Smith, Northwest Indian Fisheries Commission Executive Director, said, "We find the troller defiance of a federal court order completely deplorable." Treaty Indians have traditionally been asked or forced to close their sound and river fisheries for conservation purposes after non-treaty fishermen have fished unrestricted on the same runs in marine areas. Smith said, "Indians fully understand the financial sacrifice involved with closing a fishery. We've been facing those conditions for years. However, the situation has reached the point through treaty recognition and because of the condition of the resource that all managers and user groups are going to have to share the conservation burden. The resource has diminished to the extent that Indians can no longer be the only group to close their fisheries and still guarantee returning runs."

The following is a chronology of events relating to the June troll fishery:

- April 10: State Department of Fisheries holds public hearing on 1976 troll regulations. WDF biologists recommend a total closure of the troll fishery during the month of June and a season from July 1 through September 15, stating that their recommendations apply to the "strictest interpretation of conservation."
- Trollers protested the proposed June closure saying it would mean financial ruin to them
- April 14: State adopts troll regulations, allowing fishery from June 1 through 15
- May 19: Trollers file suit in Thurston County District Court demanding fishery for entire month of June
- \*June 1: Visiting King County Superior Court Judge Lloyd Shorett enjoins state from enforcing closure during the last two weeks of June.
- \*June 11: Columbia River tribes file suit in Judge Belloni's court asking for injunction against all fishing on stock bound for their usual and accustomed areas. Belloni says he will wait until state Supreme Court ruling.
- \*June 15: State files appeal to Shorett's decision in state Supreme Court, Supreme Court upholds lower state court ruling  
Judge Belloni enjoins state from allowing fishery June 15-30
- \*June 16: State says they will defy federal court injunction
- \*June 18: Belloni dissolves original injunction, hears case, and issues new injunction, effective June 21.
- \*June 21: Moos negotiates with Judge saying that the state can't enforce; asks for federal enforcement.  
Judge Belloni stays injunction until written order is issued.
- \*June 22: Judge Belloni issues written order for State of Washington to close all non-Indian commercial troll fishing until July 1; gives Department of Fisheries employees authority to cite fishermen who defy the closure for contempt of court.
- \*June 24-30: Trollers fish in defiance of court order. Buyers continue to purchase illegally caught fish, contempt citations issued to 38 fishermen and 8 buyers.
- \*July 1: Show cause hearing for fishermen and buyers
- \* troll fishery is ongoing



COMING EVENTS:

- July 6:** *Medicine Creek Treaty Meeting; Northwest Indian Fisheries Commission Office 10:30 am contact George Kalama, Medicine Creek Coordinator - 352-8030.*
- July 10:** *The television documentary on the Boldt Decision that was recently shown on channel 9 will be broadcast on KVOS-TV in Bellingham at 2:30 pm and again at 6:30 pm. The show was produced by the Institute of Governmental Research at the University of Washington.*
- July 15:** *Washington Department of Fisheries public hearing on chinook regulations for Bellingham Bay and Skagit Bay 10:00 am; auditorium of General Administration Building.*
- July 19:** *Buy Back Hearing; Boldt Court*



## Northwest Indian Fisheries Commission newsletter

July 26, 1976  
Vol. II, No. 9

### BOLDT'S COURT - HATCHERY ISSUE

The Lummi Tribe took the State to court this month when the Washington Department of Fisheries attempted to enforce regulations for Skagit and Bellingham Bays, which excluded Indians from taking hatchery chinook salmon.

The case stems from the recent State Supreme Court ruling in Puyallup III, which denied the Puyallup Tribe the right to catch hatchery reared steelhead in the Puyallup River.

The State contends that since all treaties are similar, the Puyallup III decision should be applied to all tribes in the case area. The State also argued that during the Puyallup III case the Federal Government was involved as a plaintiff party, and therefore cannot be a plaintiff in the present trial, as both cases deal with the same issue.

James Waldo, U.S. Attorney, stated the Federal Governments role in the Puyallup III case. The United States was not involved as a plaintiff in Puyallup III, but they were obligated as a trustee to the tribes to give legal assistance. Therefore, there are no legal justifications for denying Federal involvement in this case.

Attorneys for the tribes and the Federal Government argued that Judge William Brown's Puyallup III Decision applied only to the Puyallup Tribe, the Puyallup River, and steelhead - not salmon. They asked that the State be enjoined from adopting regulations that would eliminate hatchery bred fish from the Indians harvest until the issue can be resolved in Phase II of the Boldt Decision, as it pertains to environmental aspects of Washington fisheries.

Judge Boldt gave the plaintiff tribes until July 23, 1976 to submit their findings of fact and conclusion to the court and the State has until July 29, 1976 to do the same. The tribes will then file a reply brief to the court by August 2, 1976. The Judge will make a ruling on or before August 10, 1976.

In the meantime, Boldt has continued the temporary restraining order he issued July 14 against the State Department of Fisheries regulation which limited the Indian share of chinook salmon on Bellingham and Skagit Bays to natural stocks until at least August 10, 1976

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POINT NO POINT HIRES CHIEF ENFORCEMENT OFFICER

The Point No Point Treaty Area (Skokomish, Lower Elwha, Port Gamble) has hired Rod Marrom to head their comprehensive fisheries enforcement program. Marrom, who was an officer on the Seattle Police Force and Chief of Security at Seattle Community College and The Evergreen State College, says that the treaty area is ahead of schedule in developing their new enforcement program. He expects a good enforcement effort in the treaty area this year in spite of "growing pains."

"We have good men who are enthusiastic and conscientious about their jobs," he said. There are six fisheries patrol officers in the Point No Point Treaty Area. Two officers are assigned to each tribal fishing area, but they are available to assist wherever the need arises. The officers are: Woody Star and Ben Ives for Port Gamble; Gilbert Cordova and Leon Martinez for Skokomish; and Danny Green and David Charles for Lower Elwha.

Marrom said the treaty area is in the process of purchasing enforcement equipment. The Port Gamble Tribe has already purchased a 21 foot marine patrol cruiser and the Skokomish Tribe has one on order. Within the next couple of months the Point No Point area will be equipped with one marine and one river boat for each tribe.

One of the prime treaty area enforcement goals is to develop a good communications system. Marrom said, "We've got a mountain range between Port Gamble and Lower Elwha and just plain distance separating the Skokomish." Funding is not available for a big radio receiving station, but the tribal enforcement agency has been able to set up radio communications with the Jefferson and Mason County Sheriffs' Departments. Citizen Band radios will be used locally at Port Gamble. All of the patrol boats will be equipped with VHF radios. The Point No Point enforcement office phone at Port Gamble (206-297-3422) will be monitored 24 hours a day.

Marrom would like to see a good communications system built up between all tribal patrols so that they can share common problems and assist each other. "I'm confident that this will happen, but it takes time," he said. The Point No Point area has already made a cooperative enforcement agreement with the Squaxin Island Tribe in the Medicine Creek Treaty Area. Officers will also be working with the BIA and the Coast Guard.

"We're out there to help," said Marrom. "Right now we're getting to know our fishermen and I think some hostilities against enforcement have already been tempered. We'll arrest if we have to and we're confident that tribal courts will support us. But we also want tribal fishermen to know that we're out there to give life saving assistance."

The tribal enforcement duties as far as illegal non-Indian fishing is concerned will be to advise and document with photographs, if necessary, and to report violators to the appropriate authorities. "We realize the frustration Indian fishermen met with last year and we're just as anxious to see justice done as they are."

As far as violence goes, Marrom says he doesn't like to make mountains out of mole hills, but he won't rule out any possibilities either. He said, "The potential exists and we will be out there to protect Indian fishermen. We won't hesitate to bring in other agencies to evaluate the situation. I've always felt that digression is the better part of valor."

Marrom feels that there will be a lot of trial before things are running smoothly on the waters in Indian country. Right now the Point No Point Enforcement Program will concentrate on communications, training, and gearing up. Marrom said, "We're progressing carefully - that way we'll be more effective and make fewer mistakes. By working together we've already accomplished a lot."

GOVERNOR'S COMMITTEE MEETS

The Governor's Salmon/Steelhead Advisory Committee met at the Golden Carriage in Olympia on July 21.

The Department of Fisheries is proposing to pass regulations which would give one agency control over collection of fisheries research material and construction and operation of hatcheries. According to Donald Moos, "Fish planting in the state of Washington is the authority of the state." He said that if the statute which grants Washington Department of Fisheries that authority is wrong, then it should be challenged in court. Dr. Whitney agrees that "somebody needs to be responsible." He feels that it should be a body representing the Departments of Game and Fisheries and the tribes. Moos agrees that the tribes should have equal input, "as well as the guys who have never had any input - the guys that harvest the fish." Although the state says that they would consult with tribes, the actual regulations do not provide for it. In the meantime, the state is contending that tribes have no right to harvest hatchery fish.

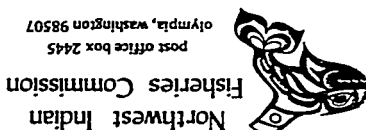
The Department of Fisheries recently adopted an emergency regulation which allows non-Indians to fish with treaty Indians "so that the skills of tribal fishermen can be improved." Non-treaty fishermen must have their applications submitted to WDF by the tribe, and the permit is only good for thirty days. Forrest Kinley objected to the proposal because it leaves the door open for charter boat fishing which the majority of the tribes are opposed to. Kinley was also concerned that the tribes were not informed of the action before it was adopted as a state regulation. A committee was formed to study the methods by which a non-Indian could instruct an Indian in fishing techniques. The committee is composed of Forrest Kinley, NWIFC; Paul Anderson, Purse Seiners Association; and Bruce Gruett, WDF.

Jim Johnson, WDF attorney, reported that Washington Public Power Supply System has agreed to pay for four hatchery rearing ponds at the Priest Rapids hatchery as mitigation for the fish kill on the Columbia River which destroyed one million chinook. Johnson said the rearing ponds benefit all the fishermen who suffered a loss from the fish kill. At the same time however, the state is trying to prevent Indians from harvesting hatchery salmon.

Rolland Hatchel, WDF enforcement, informed committee members of the WDF policy on collecting tribal regulations. He said that from now on if a regulation has not been filed with the Department of Fisheries, then they consider the area closed. The regulations should be either hand delivered or mailed to the Washington Department of Fisheries (attention: Patrol Section). According to Hatchel, the department can no longer accept verbal notification of regulations.

Some tribes have agreed to put Indian patrolmen on WDF patrol boats this year for joint enforcement. Bruce Gruett, WDF enforcement said that they are trying to pick areas where it will work and show non-believers that it can be successful.

Donald Moos announced that the Department of Fisheries will be hiring 10 to 15 new patrolmen and the department welcomes Indian applicants.



STEELHEAD QUESTIONS

In accordance with a court order of April 16, Dr. Whitney has compiled and submitted to all parties a list of questions pertaining to steelhead management. There are two pages of questions covering a broad spectrum. The question categories are: Sharing; Geographical Boundaries; Opportunity to share 50-50; Ceremonial and Subsistence; Test Fisheries and Non-Commercial; Stocks of Fish; Catch Reporting; Exchange of Steelhead for Salmon; and General Management. A meeting will be held on July 29, at 9:30 a.m. in Judge Boldt's courtroom for the purpose of determining where there is agreement between state and tribal entities on the questions and for the establishment of a working group to develop answers for joint submission to the court. The court has set a deadline of August 20 for submission of agreed upon answers and August 25 for filing with the court of answers to questions not agreed upon. A court hearing is scheduled for September 8 for a ruling on the Steelhead Questions. Another deadline of October 10, has been set for submission of a joint steelhead management plan for 1976-77 season.

NWIFC MOVES TO NEW OFFICE

With the addition of Jim Heckman and a biological staff, the NWIFC office in Olympia was running out of room.

We've relocated to a bigger office in the same business complex. The office is still on Black Lake Boulevard, 12th Court S.W. The mailing address is still P.O. Box 2445, Olympia, WA 98507. Our telephone number is still the same also.



## Northwest Indian Fisheries Commission newsletter

August 23, 1976  
Vol. II, No. 10

### TRIBES BATTLE IPSFC FOR TREATY RIGHTS

The International Pacific Salmon Fisheries Commission (IPSFC) regulations have been made unnecessarily complicated this year because of the deliberate attempt by United States IPSFC Commissioners to undermine Indian fishing rights. The IPSFC is the international board which regulates sockeye and pink salmon fishing in U.S. - Canada treaty waters. There are three representatives from Canada and three from the United States. The U.S. Commissioners are Donald Moos, Director of the Washington Department of Fisheries; Donald Johnson, Regional Director of the National Marine Fisheries Service (under the Department of Commerce); and William Saletic, Peter Pan Seafoods.

The United States and Canada divide the Fraser River sockeye and pink salmon harvest in half, according to an international treaty between the two nations. Treaty Indians in the United States are entitled to the opportunity to catch one half of the American share under the 1974 Boldt decision which recognized and upheld treaties made between the U.S. and sovereign Northwest Indian tribes. There are about 250 Indian boats that fish in the designated IPSFC controlled waters. Tribes have asked for more fishing time than non-Indians in order to be able to compete with the larger fleets and to have a full opportunity to catch their treaty share of the available harvest.

Indians have been limited to fishing only three days per week while non-Indian trollers and sport fishermen have been fishing seven days per week. The Northwest Indian Fisheries Commission returned to Judge Boldt's court on August 18 for the third time this year to ask for a full five days of fishing per week for treaty Indians.

The total American harvest of sockeye this year is 1,126,687. Non-Indians have taken 1,076,528 or 96 percent of the American share and Indians have harvested 50,154 or approximately 4 percent of the American share. NWIFC contends that the current IPSFC regulations are discriminatory and deny Indians a fair opportunity to harvest their fifty percent share.

The U.S. IPSFC Commissioners have continually used the excuse that additional time for tribes would "strain international relations." However, last year Canadian Indians caught over 200,000 sockeye, and it was considered an incidental catch. No mention was made of straining international relations.

Judge Boldt has given the State Department until Wednesday (August 25) to decide what position they will take on the IPSFC issue. Federal attorneys said in court last week that the issue affects other areas of international relations, and the State Department had not yet advised them of a position.

United States IPSFC Commissioners have acted in direct opposition to the Boldt decision throughout the sockeye season. The "extra time" originally granted to Indians was during daylight hours. This time was essentially meaningless to most Indian fishermen who gillnet at night. However, tribes later discovered that under IPSFC regulations they were entitled to fish anytime that non-Indians were fishing, regardless of gear type. This entitled tribes to seven days of fishing per week, considering the seven day non-Indian troll fishery west of the Bonilla Point-Tatoosh line. Apparently this was an oversight by the IPSFC because they tried to bypass the "all gear" regulation by relinquishing control west of the Bonilla Point-Tatoosh line. Consequently, Indians

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would only be able to fish during the same time than non-Indian Americans were net fishing. Judge Boldt issued a temporary restraining order against United States IPSFC Commissioners and the State of Washington to allow for a five day per week Indian fishery. He later modified that to three days per week in order to avoid what U.S. IPSFC Commissioners termed a strain on international relations.

Judge Boldt's final decision in court on Wednesday will have little effect on actual sockeye fishing this year, since fishermen say that most of the sockeye have already passed through their usual and accustomed fishing grounds.

Charles Peterson and Bill Smith plan to attend IPSFC talks in Washington D.C. and Canada this week to try to convince the U.S. that they have a treaty obligation to Northwest Indian Tribes as well as to Canada.

#### PARTIES REACH COMPROMISE

When trollers refused to comply with Judge Belloni's restraining order this year, it was predicted that other problems would arise, and they did. Contrary to earlier promises made by state attorneys and to the advice of their own biologists, the Columbia River Compact adopted a 10 day Lower Columbia River gillnet season. Biologists had recommended a 5 day season. At the request of the United States Government and the Columbia River Tribes, Judge Belloni enjoined non-Indians from fishing the last 5 days of the season. However, Thurston County Superior Court Judge Jerry Alexander and Oregon Circuit Judge Thomas Edison proceeded to enjoin state agencies from enforcing Belloni's order. A compromise was finally reached, allowing gillnetters 2 extra nights of fishing. This will reduce the available share of fish to Columbia River tribes to about 35 percent of the total available harvest.

Belloni has repeatedly asked the Columbia River Compact to devise a fisheries management plan that will guarantee Indians their 50% treaty fishing opportunity. He commented that the states do, indeed, have a plan that works very well, but it doesn't provide for Indian treaty rights.

#### BOLDT ENJOINS STATE/TRIBES ALLOWED HATCHERY FISH

Judge Boldt has enjoined the State Departments of Fisheries and Game from prohibiting Indian harvest of hatchery stocks in all areas at least until the "hatchery issue" has been fully considered in Phase II of U.S. v. Washington. Phase II is scheduled to be heard in January, 1977.

The preliminary injunction was necessary at this time because the Washington State Departments of Fisheries and Game were attempting to set regulations this year to prevent Indians from harvesting certain hatchery stocks. For example, the expected return of chinook in Bellingham Bay is 87,737. However, by State calculations excluding hatchery stocks, treaty tribes would be allowed only 7,918 chinook.

In Skagit Bay the Department of Fisheries was proposing that tribes be entitled to only 39 percent of the available chinook harvest.

From the Indian view, the WDF latest actions regarding Bellingham and Skagit Bay chinook regulations are only a part of a broader plan to drastically reduce, if not totally eliminate, the Indian harvest and the Indian right to co-manage the fisheries.

The WDF recently sent out proposals for the 1976 coho fishing regulations. In those recommendations the WDF is advocating the sacrifice of some natural stocks in order to accommodate the harvest of returning hatchery fish. Destroying natural runs to allow for

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a complete harvest of surplus hatchery stocks has been a WDF policy in past years also. What justification does the State have in first destroying natural stocks and then attempting to prevent tribes from fishing on hatchery stocks? The WDF is also advocating a plan that would give them complete control over all enhancement activities in the state. According to their plan, WDF would decide where and when hatchery plants would be made, giving them veto power over any fish plants not consistent with their overall plan. They are also seeking control over collection of all research materials, whereby they would be able to block projects which might be beneficial to tribes or which might dispell their own statistics.

By now everyone knows that vast numbers of salmon and steelhead have been destroyed and that in many cases, enhancement stock is only replacing past destruction. Some enhancement projects have developed runs where there were none before, but there are also streams which once had runs that no longer exist. There is no doubt that the state has benefited from the logging industry, dam building and fishing that has diminished once plentiful fish runs. If tax payers are really "paying" for Indian harvests, it is not because they haven't received something in return.

However, it is a misconception to believe that Washington's Department of Fisheries and Game are the only agencies enhancing the fishery. Indian Tribes planted over 16 million salmon and steelhead in 1975 and over 17 million in 1976. In addition, tribes have been able to secure two new federal fish hatcheries in the past 10 years, valued at seven million dollars for the new Makah hatchery and 2.8 million for the Quinault hatchery. An attempt by Southern Puget Sound tribes to build a 14 million dollar hatchery was vigorously opposed and blocked by the State. Had this project not been precluded, the new hatchery would have more than doubled the output of the largest state hatchery in Western Washington, utilizing the resources of the Skokomish and Nisqually Tribes with secured federal funding. The Lummi hatchery produces over 100,000 pounds of salmon and steelhead fry each year. With the advent of the Boldt decision, several tribes have begun new enhancement programs which will benefit all user groups, as past Indian fish plants have contributed to every-one's fishery.

It appears to Indians that the State does have a predetermined plan to negate the Boldt decision, and that is by manipulation of the returning stocks of fish and prohibiting Indians from harvesting those that are artificially propagated.

#### COMING EVENTS

- August 25 - IPSFC hearing; Boldt's Court - 9:30 am
- August 26 - Steelhead Meeting for Biologists; Boldt's Court - 9:30 am
- August 27 - Case Area Meeting; Tyee Motor Inn-Skokomish Room - 9:30-4:30
- August 28-29 - Makah Days; Neah Bay



# Northwest Indian Fisheries Commission newsletter

September 15, 1976  
Vol. II, No. 11

## BOLDT'S COURT - EQUITABLE ADJUSTMENT GRANTED

Federal District Judge George Boldt has taken another bold step toward equalizing the fishing pressure between Indians and non-Indians in Puget Sound. In a decision handed down in Tacoma on September 4, Boldt gave treaty fishermen one additional week of "Indian Only"--fishing time on the Fall Coho salmon runs. The seven day extension will help compensate some Indian mariners--who were able to harvest only about 7 percent of the U.S. portion of the sockeye salmon run earlier this year. Attorneys for Northwest Indian Tribes joined with legal counsel for the United States in requesting a three week postponement of the non-Indian fishing season---but the court chose to follow guidelines suggested by advisor Dr. Richard Whitney---in the adoption of the 1 week delay.

The court directive carries with it two specific details. They are:

1) The approval of a request by the Makah Tribe to permit Makah fishermen to harvest coho in waters outside of their usual and accustomed places during the 1976 coho fishery only. (Makah grounds are too far north to provide a reasonable coho fishery at this late date--and the Tulalip Tribe has invited the Makahs to share their grounds).

2) The court's Fisheries Advisory Board has been given the power to resolve all future disputes between state and tribal officials over the on-reservation catch reports and any "additional matters" associated with the 1976 coho fishery.

Judge Boldt commended the Washington State Department of Fisheries for helping to increase the salmon catch percentage for Indians from 1% in 1974 to almost 7% in 1976, and called for the improvement to continue. Boldt reminded all of the citizens of Washington that his 1974 fishing decision was the "law of the land"---and that it "must be obeyed". He then turned to direct a warning to the non-Indian fishermen in the courtroom. He told the group that when any substantial, illegal fishing activity by non-Indians is varified to the court on any given day (during the upcoming coho fishery) 20,000 additional fish, per day, will automatically be added to the non-Indian catch reports.

The decision followed two days of legal debate aimed at setting precedent for the entire equitable adjustment issue. Attorneys for the State Department of Fisheries argued that the blame for a low sockeye harvest by treaty fishermen should rest with the Indian Tribes themselves, for not fully exercising the right to fish...and with the United States Government for not providing the proper opportunity for Indians to fish...within IPSFC guidelines. Tribal attorneys countered that reasoning with a reminder to the court that the days allotted by the Washington Department of Fisheries for Indian fishing---were, for the most part, "daytime only" openings. This blocked Indian gillnetters---who rely on a nighttime fishery.

As he gave his verbal decision on the case---Judge Boldt said that he wanted to review the issues somewhat slowly--to allow time for the parties involved to resolve some matters on their own. The judge indicated that he "intends" to lessen the friction during the next sockeye fishery--by allowing Indians to harvest for five full days. He instructed the Court Advisory Board to "closely monitor" daily catches of coho salmon.

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STEELHEAD QUESTIONS - HOW TO MANAGE?

State and Tribal biologists have spent several weeks trying to agree on answers to a set of twenty-seven questions on how the steelhead season should be managed. The parties have been able to agree on some of the less controversial questions, but they continue to disagree on the major issues: 1) how should equitable adjustment be made if one party (treaty or non-treaty) is not provided the opportunity to take fifty percent of the harvestable numbers?; 2) should sharing be determined on a calendar year, brood year, or other basis?; 3) What constitutes "opportunity" for both sport and Indian fishermen?

Most of the questions are inter-related, and at this writing, are still pending in federal court.

The tribes believe that equitable adjustment should be granted to any party that is denied their share of the harvest due to overfishing of the other party. This adjustment should be equal to the number of fish not taken by the deprived party and it should be granted the following calendar year. The numbers of fish available to any off-reservation fishery would be based on joint pre-season harvest predictions and agreed upon in-season adjustments. However, the tribes also contend that if one party consistently under fishes its share by choice or inability to provide the necessary fishing power, the other party may increase its catch to take the surplus harvestable fish. In this case, the surplus fish would not be subject to equitable adjustment. The tribes would like to see allocation of steelhead based on the calendar year, and biological management based on individual runs.

According to the tribes, "opportunity" should be defined as the presence of a harvestable surplus of fish to be taken by the fishery for steelhead. If the steelhead are present in the appropriate percentage for either fishery, then opportunity exists. Again, the number of fish present should be determined by the joint pre-season harvest.

Judge Boldt is expected to make a final ruling on these and other steelhead management questions this week.

TRIBES SEEK TO HALT ILLEGAL NON-INDIAN FISHING

Motions were filed in U.S. District Court in Tacoma on September 10th, in an attempt to halt illegal salmon fishing in Puget Sound. In filing the two separate requests for temporary restraining orders--attorneys for the Northwest Indian Fisheries Commission are asking Federal Judge George Boldt to halt the enforcement of any state court orders that are not in compliance with a September 6th federal order--giving Treaty Indians exclusive fishing rights in northwest waters until September 19th. The motions, which also seek to limit the number of fish caught by illegal non-Indian fishermen, are in response to action taken by Whatcom County Superior Court Judge Leslie Lee, on September 7th. As he did in 1975--Lee threw out a State Fisheries Department order closing non-Indian coho fishing in Bellingham and Samish Bays. As well, the state judge dismissed claims and charges against almost 20 non-Indian commercial fishermen. The order--and fines--were issued by state enforcement officials in compliance with Judge Boldt's higher ruling. Until the matter is resolved between the state and federal courts--non-Indian fishing activities continue in Puget Sound....in defiance of federal law.

THE NORTHWEST INDIAN FISHERIES COMMISSION HAS A NEW MAILING ADDRESS:

2625 PARKMONT LANE S.W.  
BUILDING C  
OLYMPIA, WASHINGTON 98502

TRIBES OBJECT TO STATE RESEARCH AND RELEASE PERMITS

The Washington Department of Fisheries recently issued an emergency regulation which prohibits all groups "including Indian tribes and federal agencies" from conducting any scientific research or release of any food fish or shellfish without first obtaining a permit from the Department of Fisheries.

A public hearing is scheduled for Friday, September 17, at 10:00 am in the General Administration Building in Olympia. The matter has been challenged by several northwest Indian tribes and is pending in Judge Boldt's Court.

The tribes are opposed to the regulation because: 1) It is in direct conflict with the edict of co-management issued by the U.S. District Court in 1974 because it gives the state veto power over tribal activities; 2) it is contrary to tribal self-regulation; 3) it will be extremely difficult, if not impossible, for tribal biologists to apply thirty days in advance for each research or enhancement activity; 4) the "red tape" involved in implementing such a regulation could cause delay in important data gathering at critical points in fish runs; and 5) the regulation is not "reasonable and necessary to prevent demonstrable harm to the actual conservation of the fish" and therefore, it is an illegal attempt by Washington Department of Fisheries to wield authority over tribal fishing activities.

LaCLAIR TO JOIN NWIFC STAFF

Leo J. LaClair, 34, will join the staff of NWIFC on October 1st to assume the duties of Deputy Director. LaClair comes to the Commission from the Small Tribes Organization of Western Washington where he has been executive director since 1974.

A graduate of Central Washington State College in 1964, LaClair attended UCLA and received his law degree from the University of Washington in 1972.

LaClair was active in early Northwest Indian fishing rights activities and was instrumental in drafting the original constitution of the Northwest Indian Fisheries Commission. LaClair was also a member of the research committee, working on the book The Uncommon Controversy.

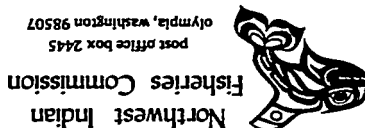
Leo has been active in several national Indian efforts in recent years including: The American Friends Service Committee; Vista Training Program; and the University of Utah Indian Community Action Project. Leo is currently the Chairman of the Muckleshoot Tribal Council and remains active in tribal affairs.

BUY-BACK ISSUE "ON HOLD"

The ongoing legal battle between the Northwest Treaty Tribes and the State of Washington regarding the federally funded "Buy-Back" Program is at a standstill. The program, which seeks to reduce the number of commercial fishing vessels in Washington, prohibits treaty and non-treaty fishermen from using "Buy-Back" boats for commercial fishing in state waters.

Several northwest tribes have challenged that action in federal court, calling it a denial of treaty rights, and requesting that a clearance be issued to allow Indian fishermen to purchase the vessels--and continue to fish commercially in their "usual and accustomed" places. However, Federal Judge George Boldt has delayed ruling on the issue--by asking both sides to submit their arguments--in writing--to the court. According to Tribal Attorney Tom Schlosser, the "finding of fact" and "conclusions of law" along with a supportive brief, were filed late in August. Both sides are waiting for a response.

The next "Buy-Back" auction will be held Saturday, October 2nd, at 10:00 am, at Harbor Marina, 4224 Marine View Drive - near Fife in Tacoma. According to state officials between 40 and 50 vessels will be offered for sale. A total of 59 boats were sold at the first auction, with 52 clearing the boards at the second sale. Approximately three more auctions are planned in the future, with about 50 boats offered each time. The state hopes to be able to re-fund the program beyond its completion date of December 1977.



INSTRUCTOR PERMITS ISSUED

With the recent emergency creation of non-Indian "instructor" permits by the State Department of Fisheries, the opportunity to view joint Indian/non-Indian fishing ventures on Puget Sound has rapidly increased. As of September 9th, the state has issued 26 instructor permits—mostly to members of the Muckleshoot Tribe. The thirty day permits became available on July 20th, and are intended to "expand the ability of some treaty Indian fishermen through the use of non-Indian instructors". The permits seek to benefit those treaty Indians who might like to fish commercially, but are not familiar with or need some brushup on modern fishing techniques.

The "instructor" issue is not one on which all northwest tribes agree. Attorneys for the Lummi and Makah Nations have filed motions for preliminary injunctions against the emergency order, with Federal District Judge George Boldt. The motion states that the "instructor" regulation allows non-treaty fishermen to utilize their gear during treaty fishing time under the guise of acting as "instructors" to the treaty fishermen.

The motion to halt the state from issuing these permits is currently pending before the court.

CALENDAR OF EVENTS:

- September 17 - Department of Fisheries, public hearing; emergency regulation #76-74, obtaining permits for research and enhancement activities. General Administration Building, Olympia, 10:00 am.
- September 30, 31, & October 1 & 2 - Northwest Affiliated Tribes meeting in Spokane.
- October 12 & 13 - Communications Seminar - Kah-Nee-Ta Resort in Warm Springs, Oregon.

Several important issues came before Judge George Boldt as the NWIFC "Newsletter" went to press. The following is a summary and update of court action.

#### INSTRUCTOR PERMITS

The motion as filed by the Lummi and Makah Tribes for preliminary injunction was denied. The final decision on the matter was deferred by the court until Judge Boldt's return to the State on October 27th.

#### RESEARCH PERMITS

Tribal attorneys sought a temporary injunction to stop the state from requiring permits to conduct fishing research in State waters. The judge ruled that those tribes that qualify as "self-regulating" under court qualifications would be exempt from the permits. At present, the Yakima and Quinault Tribes qualify. All others must apply to the State before conducting research.

#### TEMPORARY RESTRAINING ORDERS-COHO SEASON

Judge Boldt did not have sufficient time to hear this argument before he left for temporary reassignment in the East. The matter was been assigned to the Master of the court--for immediate attention. Judge Boldt will confer on the decision while in the East. The Master will hear the arguments.

#### BUY-BACK ISSUE

Still on hold. No determination yet.

#### STEELHEAD

Judge Boldt completed rulings on the steelhead management questions on September 14. In major areas of concern, he ruled as follows: 1) Equitable adjustment - Equitable adjustment should not occur in steelhead fisheries. The real question is not adjustment but rather proper management to insure that neither party pre-empts the opportunity of the other; 2) Catch allocation - Sharing opportunity must be determined on a cycle basis for rational management decisions. Winter cycle will be November 1 - April, summer cycle will be May 1 - October. Sharing for the 1976-77 steelhead run year will be based on a continuous 12 month catch reporting system which will begin November 1, 1976 to October 31, 1977. Tribes are entitled to a share of the summer run but are encouraged to add those numbers to the winter harvest, and refrain from fishing on the summer run; 3) Opportunity - Opportunity is defined for both groups as the presence of a harvestable surplus of fish to be taken by the fishery for steelhead. If the steelhead are present in the appropriate percentages for either fishery then opportunity exists. Numbers of fish will be determined by pre-season harvest predictions after meaningful consultations with the affected tribes and any agreed upon or court ordered in-season adjustments. Management of fishing power is required to insure that an equal opportunity exists for the sports fishery; 4) Reservation Share - to be determined on a tribe by tribe basis. The tribal estimate shall be presumed accurate until determined otherwise.



# Northwest Indian Fisheries Commission newsletter

October 1, 1976  
Vol. II, No. 12

## TRIBES SEEK BETTER ENFORCEMENT

Northwest Indian Fisheries Commission officials met with State and Federal enforcement officers last week, to discuss illegal fishing activity in Puget Sound. Treaty Indian fishing interests were represented at the Tacoma meeting by NWIFC Commissioners: Cal Peters and Guy McMinds; George Kalama, Medicine Creek Treaty Coordinator; and Brian Topping, Steilacoom Business Manager. The four reported various non-Indian illegal fishing acts to Bruce Bruett, Department of Fisheries, and Wayne Lewis, National Marine Fisheries Commission. Both of the government enforcement executives told the Indian representatives that their "Hands Were Tied" in regard to the enforcement of the 1974 Boldt Decision--- and any subsequent rulings by the Federal District Court. The pair disclosed that their agencies have the power to enforce "State and Federal Regulations and Statutes Only." According to them, The Boldt decision is a federal court order and does not appear as a legal regulation or statute...it cannot then be the basis for any direct criminal arrests.

Gruett began his comments with a listing of recent arrests by state officers. During the week of September 19 through 25 - about 20 fishermen were interruted during fishing operations. These netters were in violation of state statutes - and were referred to the jurisdiction of the county prosecutors. However, only a handful of the elected county officials will fully prosecute the violators.

At the request of Guy McMinds - a Court Fisheries Advisory Board meeting was convened for the purpose of wording an enforcement recommendation to the court. Technical Advisor, Dr. Richard Whitney helped both sides reach agreement on the following wording: "The Courts Advisory Board recognized a fisheries enforcement problem...as it relates to the State Department of Fisheries authority to enforce regulations for the allocation of fish. We recommend that the court take some timely action to provide a solution."

As the meeting ended, Indian representatives talked of gathering more information from Tribal attorneys. They hope to uncover an alternate method of enforcing the Boldt Decision.

## CASE AREA MEETING

NWIFC member tribes held a case area meeting on September 22, near Tacoma. Commission members voted unanimously to close the fall coho fishery in area 9, 10, and 11 for conservation reasons. According to Biological Programs Director, Jim Heckman, this years coho run is from 1/3 to 1/2 below the number originally predicted. The evaluation is based on reported coho catches in area 2<sup>a</sup> - at the head of the run. It was also decided that the main coho harvest should take place in terminal areas: 7b, 7c, 11a, 12d, 13a, 10a, 8 and 8c. All tribes have reserved the right to re-open the fishery if the run size increases or a "double peak" run occurs.

In regard to other NWIFC business, The Commission heard a report from Vice-Chairman, Charles Peterson on his recent trip to Washington D.C., Peterson--accompanied by Administrative Assistant Mark Peterson, sat in on talks concerning the 200 mile limit and the organization of the regional councils formed to support the new U.S. fishing boundaru. The 200 mile limit bill goes into effect in March of 1977.



CASE AREA MEETING (CONT)

-2-

Commission members also discussed NWIFC hiring practices. It was noted that the election of Commissioners for each treaty area is to be held in March. It is the responsibility of the individual treaty tribe councils to notify the NWIFC of the outcome of the elections.

HIGH COURT TO HEAR GILLNETTERS REQUEST

The Washington State Supreme Court will convene on September 15, to hear arguments concerning commercial coho salmon regulations. The Puget Sound Gillnetters Association will go before the High State Court to seek a writ of mandamus that would compel the Washington State Department of Fisheries to base its commercial coho salmon regulations solely on conservation principles. Attorneys for the gillnet fishermen will argue that existing state law allows the regulation of fish for conservation reasons only. If the High Court agrees, State fisheries officials would be blocked in their effort to regulate the State fishery in line with the 1974 decision by Federal Judge George Boldt. That decision seeks to limit non-Indian fishing activity so that Treaty Tribe fishermen can have a fair chance at netting an equal share of the salmon runs.

Attorneys for several Northwest Treaty Tribes are currently trying to decide what (if anything) to do about the action. The tribes are not a party to the case--but according to S.T.O.W.W. Attorney Alan Stay, the Indian side has two choices:

- 1) File a writ to inform the court that other Federal actions are pending in regard to the fishing issue. Follow this information with a request that the court "throw out" the case. (The State Supreme Court is usually a "court of referral" and rarely hears original actions like this one).
- 2) Inform the court that they should indeed hear and rule on the issue. Follow this information with evidence in support of the states jurisdiction in fishery allocation, and request that the court deny the gillnetters writ

An approval of the gillnetters request by the court would stop the state from allocating fish specifically to Indians - and would place Federal and State Courts in direct conflict. A denial of the mandamus writ by the court would allow the Indian allocations to continue - and could halt the interference by State Superior Courts of the enforcement of the Boldt Decision.

TRIBES ASK FOR PAYMENT OF ATTORNEYS FEES

All Northwest Indian Tribes that were involved in U.S. v. Washington are attempting, via new proceedings now before Judge Boldt, to regain their legal costs and fees expended in the case. Dave Getches of the Native American Rights Fund and Tribal Attorney Mason Horisset are leading an attempt that would have the court direct the State of Washington to underwrite the costs of defending Indian treaty rights. Briefs on the case have already been filed. The State must respond by October 21. A portion of the total costs listed thus far in the case stands at over \$38,000.00. If granted, the decision would set an important precedent within Indian fishing rights.

BUY-BACK LITIGATION ON REAR BURNER

With the States third sale of commercial fishing vessels set for October 2, Buy-Back litigation now pending before Judge George Boldt has yet to be heard. The Buy-Back Program is federally funded, and seeks to reduce the number of commercial fishing vessels in Washington waters. Commercial "Treaty Indian" fishermen will not buy the boats if they cannot be used commercially. The tribes are trying to change the situation by challenging the entire action in Federal Court. However, Judge Boldt is hearing another case in Boston, Massachusetts, and will return next month. The case is on hold until then.

PUBLIC HEARINGS ON THE HORIZON

The Washington State Department of Fisheries has announced two public hearings for the month of October. They are:

- 1) Wednesday, October 13, 1976 - 10:00 am. Auditorium of the General Administration Building - Olympia. The hearings are to consider the regulation proposal for the all-citizen commercial chum salmon fishery for the time period October 17 - November 13.
- 2) Friday, October 15, 1976 - 1:00 pm. Room 431 House Office Building - Olympia. The hearing is to consider the permanent adoption of regulations dealing with non-Indian instructors, and their involvement during Treaty Indian fishing operations.

ILLEGAL NON-INDIAN FISHING DOCUMENTED

Several Tribal fisheries patrolmen and fishermen testified to cases of illegal non-Indian fishing before Federal Court Master Robert Cooper on September 29. Tribal attorneys were attempting to document cases of illegal non-Indian fishing in accordance with Judge Boldt's September 6 ruling. That ruling stated that for every documented incident of illegal non-Indian fishing, Indians would be allocated an additional 20,000 fish. Judge Cooper will continue to take testimony on illegal fishing activities on October 4, at 9:30 am in Tacoma. This case was assigned to the Federal Court Master because Judge Boldt was out of town.

NWIFC GETS COMPUTER TERMINAL

NWIFC has expanded its biological program with the recent installation of a computer terminal. The small "typewriter sized" machine is formally called a "portable remote terminal" - and provides staff biologists direct access to information held at the University of Washington Computer Center in Seattle. NWIFC will use the tool as an access to the Washington State Department of Fisheries Soft Data System (formally termed the Auxiliary Fish Catch Record System). Biologists will now be able to keep up to date records on salmon catch data within the Washington State fishery.

PACIFIC FISHERIES COUNCIL BEGINS ORGANIZING

The Pacific Regional Fisheries Management Council will hold its first regular business meetings at the National Marine Fisheries Service, Northwest Fisheries Center in Seattle on October 12 - 15. The proposed agenda includes the election of officers, organization of the council, practices and procedures, fisheries management plans, and review of foreign fishing applications. The meetings are open to the public. However, seating is limited and will be granted on a first come, first-serve basis. Meeting schedules are as follows: October 12, 1:30 pm - 5:00 pm; October 13, 9:00 am - 5:00 pm; October 14, 9:00 am - 5:00 pm; and October 15, 9:00 - 12:00 pm.

NWIFC ATTENDS 200 MILE LIMIT CONFERENCE

Makah Treaty Commissioner Charles Peterson and NWIFC Administrative Assistant Mark Peterson recently attended a national conference in Washington D.C. on implementation of the "Fishery Conservation and Management Act of 1976" (200 mile limit). The act calls for the establishment of eight regional fisheries management councils to manage fishing activities within the newly established 200 mile zone. The purpose of the conference was to advise and orient these new management councils of their responsibilities under the act. The Pacific Regional Fisheries Management Council will most directly affect Northwest Treaty Fishermen. The Council consists of thirteen voting members, none of which are tribal representatives.



# Northwest Indian Fisheries Commission newsletter

October 19, 1976  
Vol. II, No. 13

## CHUM OPENING DELAYED UNTIL OCTOBER 21st

After a series of federal court advisory board meetings, the Washington Department of Fisheries agreed to delay a state chum opening in central Puget sound until October 21. The opening was originally planned for October 18. The NWIFC requested a week long delay in opening for both Indian and non-Indian fisheries in mixed stock areas (primarily areas 10 and 11) in order to protect native coho runs still present in those areas. Small Tribes Of Western Washington biologist Lars Mobernd explained to the court advisory board that approximately seven percent of the coho run (native stock) will pass through areas 10 and 11 during the week of October 18-25. He said that coho escapement goals have not been achieved and that illegal fishing has impacted the coho spawning chances this year. Recent test data shows that substantial numbers of coho are still traveling through mixed stock areas. Some biologists believe that runs are arriving about one week later than usual this year, based on run timing for the past 25 years.

## PENALTY CLAUSE - WHAT IS SUBSTANTIAL?

Judge Boldt's order of September 6 allocates an additional 20,000 fish to treaty tribes for every day of documented substantial illegal fishing by non-Indians. This "penalty clause" was designed to help the Department of Fisheries in their enforcement efforts. Tribal police do not have the authority to arrest non-Indians, however they have been documenting cases of illegal non-Indian fishing with much difficulty and considerable risk. At a recent court advisory board meeting, tribes presented evidence showing at least seven days of substantial illegal non-Indian fishing -- about 140,000 fish according to the penalty clause. However, Washington Department of Fisheries attorney James Johnson would not agree that "substantial" illegal non-Indian fishing occurred on any of the seven days. The tribal evidence shows the name and numbers of five to fifteen non-Indian boats fishing illegally on each of the seven days listed. The issue is "on hold" until Judge Boldt returns from Boston. Unfortunately for Indian fishermen, the chum run is the last salmon run of the season and it will be well underway by the time the judge returns.

## PUGET SOUND GILLNETTER'S ASSOCIATION v. WASHINGTON DEPARTMENT OF FISHERIES

In a Washington State Supreme Court hearing October 15, Chief Justice Charles F. Stafford said that the conflict between the Puget Sound Gillnetter's Association and the Department of Fisheries was really a conflict between state and federal courts. The gillnetter's association is suing the Department of Fisheries, contending that the state can only regulate for conservation purposes--not allocation. Attorneys for several northwest tribes have requested to appear Amicus Curiae because the suit challenges the ability of the Department of Fisheries to comply with the Boldt decision. The Boldt decision, a federal court ruling, orders the state to regulate not only for conservation, but also in a manner which will guarantee treaty tribes the opportunity to catch fifty percent of the harvestable fish. Stafford ordered a hearing on November 9, 1976, before all of the Supreme Court Justices, stating that the issue is too important to be heard by only a partial Supreme Court panel.

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MEEDS LEGISLATION

Representative Lloyd Meeds has introduced a resolution to congress which would establish an 11-person commission to "examine the effect of N.W. Indian off-reservation treaty fishing rights." Introductory clauses in the resolution call the fishing situation "completely unworkable and injurious to the entire fishing resource." The commission would include: two members from the Department of Interior, one appointed by the commissioner of Indian Affairs and the other by the Director of U.S. Fish and Wildlife Service; one member from the Department of Commerce appointed by the Administrator of NOAA; one person from Washington state appointed by the governor and one person from Oregon State, appointed by its governor; six other members to be appointed jointly by the Secretary of Commerce and the Secretary of Interior including: A) one representative from the commercial salmon industry; B) one representative from steelhead sport fishermen; C) one from sport salmon interests; D) two from affected Indian tribes; and E) one knowledgeable fisheries scientist. The group would study: 1) Phasing in Indian fishing rights as outlined in the Boldt decision depending upon tribal fishing capability; 2) The substitution, buy-out, or trade off of Indian rights to steelhead; 3) Unification of management and/or enforcement exploring the possibilities of: a) the creation of a special commission to manage and enforce regulations for all anadromous fisheries; b) assumption of total jurisdiction over such fisheries by state agencies; c) assumption of total jurisdiction by the federal government; and d) delegation of management authority to the Pacific Regional Fishery Management Council; and F) The feasibility and cost of enhancement programs.

STEELEHAD PLANNING UNDERWAY

Tribal biologists met with Game Department officials in a court advisory board meeting on October 8 to begin developing a steelhead management plan for the 1976-77 season. The meeting was preliminary, with most people still entangled in the salmon season. A small study group of biologists was assigned to develop a plan. This year biologists hope to be able to collect data needed for the establishment of steelhead escapement goals. Dr. Whitney reminded tribes to submit their on-reservation catch estimates as soon as possible. There was concern expressed by tribal biologists that they had not been consulted by Washington Department of Game in the development of run size predictions, as required by the Boldt decision. The Department of Game has estimated that this years steelhead runs will be 25% below the 1975-76 runs. According to WDG, in some areas harvestable numbers were determined from predicted run sizes based on the expected survival rate of hatchery stocks. In other areas harvestable numbers were determined by adjusting historical harvest averages downward by 39%.

PLEASE NOTE THE FOLLOWING MEETINGS:

OCTOBER 18-22: National Congress of American Indians, Salt Lake City, Utah

OCTOBER 20, 21, & 22: The Marine Fishery Advisory Committee (MAFAC) will meet at the National Marine Fisheries Northwest Fisheries Center, 2725 Montlake Boulevard, East, Seattle. This is the coordinating committee of the National Marine Fisheries Service concerning extended jurisdiction (200 mile limit) and related problems. Agenda items include discussions on 200 mile limit legislation and a report on the Regional Fisheries Management Councils; the schedule is as follows: October 20, 1:30-5:30; October 21, 8:30-4:30; October 22, 8:30-12:00.

OCTOBER 25: HOLIDAY, NWIFC OFFICES WILL BE CLOSED

OCTOBER 29: Washington Department of Fisheries hearing on commercial fishing regulations dealing with bottomfish, baitfish, and shellfish; 10:00 am in the Olympic Room at the Seattle Center.

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MEETINGS (CONT)

NOVEMBER 9: WASHINGTON STATE SUPREME COURT will hear Puget Sound Gillnetters Association v. Washington Department of Fisheries; Temple of Justice, Olympia (at approximately 3:30 pm).

NOVEMBER 18: Pacific Regional Management Council public hearing on preliminary fisheries management plan and environmental impact statement; National Marine Fisheries Northwest Fisheries Center, 2725 Montlake Boulevard, East Seattle.

NOVEMBER 21-23: Pacific Regional Fisheries Management Council meeting; Beginning at 1:30 Sunday; San Francisco, California.

PLEASE LET US KNOW IF YOU WANT TO BE ON OUR MAILING LIST. CALL DEBBIE RICHEY-352-8030.

PACIFIC REGIONAL COUNCIL MEETS

The Pacific Regional Fisheries Management Council, a group charged with carrying out the terms of the Fishery Conservation and Management Act, extending U.S. fisheries jurisdiction to 200 nautical miles, held its' first regular business meeting in Seattle last week. On the agenda of this four day conference was; review of Council organization, practices and procedures, fishery management plans and applications for foreign fishery permits. The Pacific Council consists of 13 voting members and 5 non-voting members, none of which are Indians or specifically represent Indian interests. The newly elected chairman of the Council is John McKean, former director of the Oregon Fish and Game Commission; the vice-chairman is Charles Fullerton. Also on the Council are: Don Moos, Washington Department of Fisheries; John R. Donaldson, Oregon; Joseph C. Greenley, Idaho; John J. Royal, California; James A. Crutchfield, University of Washington; Herman McDevitt, Idaho; Vernon J. Smith, California; Gilbert A. Hunter, California; George J. Easley, Oregon; Representative John Martinis, Washington; Donald R. Johnson, NMFS; Frederic Vincent, U.S. Fish & Wildlife Service; Vice Admiral A.C. Wagner, Coast Guard; Kathryn Clark-Bourne, U.S. State Department; John P. Harville, Pacific Marine Fisheries Council; Charles H. Mecham, Alaska.

In respect to its' organization the Pacific Council acted to select four candidates for the position of executive director and established three support groups. James Heckman, biological programs director, NWIFC, was appointed to serve on an "Interim Working Team" charged with the development of a preliminary ocean salmon management plan. This work team was deemed "interim" until such time as another group, the Scientific and Statistical Committee, a high-ranking group of blue-ribbon scientists and professionals from a variety of disciplines, can convene and make their recommendations regarding composition known to the Council. Another group, the Advisory Panel, consisting of ten representatives of the commercial fishing industry, eight representatives from sport fishing groups, one consumer representative and two Indian representatives (one from the NWIFC and one from the Columbia River Tribes) will provide user group input to the Council vis a vis the development of management plans by the Work Team.

Naming of an executive director and the Indian representatives to the Advisory Panel will occur at the November meeting of the Pacific Council being held in San Francisco the 21st through the 23rd. Other items on the agenda for that meeting are review of the preliminary salmon management plan and the corresponding environmental impact statement.



## Northwest Indian Fisheries Commission newsletter

November 16, 1976  
Vol. II No. 14

### STATE SUPREME COURT: P.S.G.A. v. MOOS

Tribal attorney Mason Morisset appeared before the Washington State Supreme Court on November 9, on behalf of several Northwest Tribes. As a "friend of the court" in the case between the Puget Sound Gillnetters Association and the Department of Fisheries, Morisset told the court that they should not decide the case without a thorough examination of the facts. Tribal attorneys contend that the Supreme court has not been presented with an adequate statement of facts. The gillnetters are asking the court to enjoin fisheries from enforcing regulations for purposes other than conservation. They contend that the Department of Fisheries cannot regulate for allocation purposes. They also maintain that treaty rights do not include hatchery fish. State attorney, Jim Johnson told the court that the state should be able to allocate fish, but that he had no argument on the hatchery question.

Charles Yates, attorney for Puget Sound Gillnetters Association, told the court that the Boldt decision is not the "Law of the Land" and that only the United States Supreme Court can make a final decision on the issue.

In their amicus brief, tribal attorneys accused gillnetters of attempting to ramrod a fishing rights case through the state court without testimony, exhibits, evidence, or full participation of the affected parties. They noted that the U.S. v. Washington transcript now runs to some 71 volumes and 14,000 pages. More than 350 exhibits were introduced and initial litigation took three years to complete.

Tribal attorneys told the court that it would be impossible to make a decision on the hatchery issue without a full investigation into the history of the development of artificial runs and the destruction of natural runs. They said that the Federal District Court has retained continuing jurisdiction over the matter and that it should be the court to make the decision.

There is a dangerous potential for the State court to rule in direct conflict of Judge Boldt's Federal Court decision. Tribal attorneys and the U.S. Justice Department contend that the Federal court has superior authority in the matter. Chief Justice Charles F. Stafford acknowledged the dangerous potential for a Brown v. Board of Education situation, however, no indication was given as to when and if the Washington Supreme Court will decide on the matter.

### COMMISSION REVIEWING WASHINGTON DEPARTMENT OF FISHERIES ENHANCEMENT PLAN

The Northwest Indian Fisheries Commission is preparing a comprehensive review of the proposed Washington Department of Fisheries Enhancement Plan and Working Paper 18 prepared by the consulting firm of Kramer, Chin, and Mayo. The enhancement plan is the WDF short range plan for Puget Sound, the Washington coast, and the Columbia River. Kramer, Chin and Mayo is under contract with the Washington Department of Fisheries to evaluate the state plans.

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COMMISSION REVIEWING WDF ENHANCEMENT PLAN (CONT)

Northwest Indian Fisheries Commission biologist, Michele Anderson has asked for input from all tribal biologists and fisheries managers. The completed NWIFC review will be presented to the Salmon Enhancement Review Committee and WDF after tribal biologists and fisheries managers have had an opportunity to review it.

The Salmon Enhancement Review Committee was appointed to advise Kramer, Chin, and Mayo. It is composed of representatives from state, tribal, commercial and sport fishing interests. The Indian representatives are Forrest Kinley, Chairman of the Northwest Indian Fisheries Commission, and Guy McMinds, Quinault Treaty Commissioner.

TEACHERS GROUP TO STUDY BOLDT DECISION

The Northwest Indian Fisheries Commission Public Relations Department is working with the Shelton Public School District's Title IV Educational and Cultural Improvement program to develop a curriculum program on Indian Fishing Rights for use by school teachers. Yvonne Peterson, Shelton Indian Instructional Services Coordinator, and Debby Shawver, NWIFC Public Relations Director, are piloting the project. They have formed a core group of Indian educators from eight Western Washington School Districts to work on the project. The districts represented include Seattle, Tacoma, S. Kitsap, Highline, Hoquiam, Aberdeen, Olympia, and Auburn. This core group of Native American teachers will study the issues and develop background information in multi-media form. They will also formulate teaching techniques for covering the Indian fishing rights issue in the classroom. When complete, this information will be made available to all public schools through Indian education staffs and social studies departments. The project was designed to fit the need of all teachers to provide accurate information on a very complex topic. It is hoped that the project will particularly benefit Native American students in the Washington public school system by increasing teacher and student understanding of the issue.

FISHERIES LAW ENFORCEMENT POSITION OPEN

The Port Gamble Klallam Tribe has a position open for a Fisheries Law Enforcement Patrolman. Salary will be between \$800 and \$900, depending on qualifications. This position will be filled on December 1, 1976, and applications should be filed at the Point No Point Treaty Council Office before November 19, 1976. Qualifications are as follows: 1) Applicant must be 21 years of age or older. In good physical condition, able to pass the minimum physical requirements and medical exam. 2) Applicant must be a high school graduate or have a G.E.D. equivalent. 3) Previous law enforcement experience required, preferably with reservation police. Completion of basic law enforcement schooling desirable. 4) Experience in handling power boats up to 30' desirable. 5) Applicant must have a satisfactory driving record and a valid Washington Drivers License. 6) Applicant must have no Felony Convictions or any Misdemeanors involving firearm violations, felonious assault, theft or excessive use of alcohol or other drugs. No convictions during past year. 7) The ability to communicate with both Indians and Non-Indians and relating to the Tribal Government and the community as a whole.

For further information contact: Rod Marrow, Point No Point Treaty Council, Law Enforcement, P.O. Box 146, Kingston, Washington 98346. Phone: (206) 297-3422

NEW GAME REGULATIONS

The Department of Game has adopted a new regulation which allows non-members of a tribe to take game fish on-reservation with permission of the tribe and then take that catch off-reservation provided it is properly tagged for identification. The regulation grew out of litigation for the Colville Tribe (Colville v. State) in which it was held that Indian tribes have exclusive jurisdiction over non-Indians after they leave the reservation with fish in their possession unless they also have a state license. The regulation is as follows:

WAC 232-12-490 POSSESSION OF GAME OFF AN INDIAN RESERVATION LEGALLY POSSESSED ON RESERVATION. (1) An Indian who has lawfully acquired possession of any game animals, game birds, fur-bearing animals, or game fish, from within an Indian reservation may possess the same outside said reservation for his personal use only: Provided, That such game animals, game birds, fur bearing animals or game fish shall, before leaving the reservation, be tagged or marked for identification by a wildlife agent or departmentally authorized agent.

(2) Any person who has lawfully acquired possession of any game fish under a tribally authorized fishing ordinance or program, from within an Indian reservation, may possess the same outside said reservation for his personal use only: Provided, That such game fish shall, before leaving the reservation, be tagged or marked for identification by a wildlife agent or departmentally authorized agent, or such person shall have in his possession off the reservation a permit form identifying the fish being possessed and signed by a wildlife agent or departmentally authorized agent.

CALENDAR OF COMING EVENTS:

- November 21-23: Pacific Regional Fisheries Management Council Meeting - San Francisco, California
- November 25-26: NWIFC will be closed for Thanksgiving Holiday





# Northwest Indian Fisheries Commission newsletter

February 3, 1977  
Vol. III, No. 1

## INDIANS SAY NO TO TRADE OFF

Northwest Tribal leaders met with congressman Lloyd Meeds on January 26, to discuss his legislative proposals on treaty fishing. The Washington Congressional Delegation has suggested a two year moratorium on treaty fishing while a 13 member commission (with 2 Indian representatives) studies the issue. The bill to establish the commission, HR 1, was introduced by Meeds last month.

The consensus of tribes represented at the meeting was that under no circumstances would they be willing to sell or trade their treaty fishing right. As one tribal representative said, "You do not sell a way of life. It's a piece of your soul."

Some tribes indicated that they might consider management alternatives which could create more fish for everyone and, possibly, reserve some rivers for exclusive sport fishing. This decision would have to be made by each tribe because some are totally dependent upon steelhead for winter survival.

Tribes were absolutely opposed to the suggestion of a two year moratorium on treaty fishing. Tribal fisheries development has advanced too far for such a closure and to stop fishing now would destroy everything that the tribes have worked for in the three years since the Boldt decision.

Levi Hamilton, Vice-Chairman of the Muckleshoot Tribal Council explained to Meeds that the fishing right is a treaty decreed right -- not a court decreed right as the proposed legislation insinuates. He also pointed out that tribes are not to be considered merely a user group of the resource as are gillnetters, sportsmen and other non-Indian fishermen. Those factions are represented by the State of Washington and they purchase the privilege to fish through state licenses. Tribes are governments and co-equal managers of the fish resource with the state. Hamilton also pointed out that throughout legal history, tribes have been considered dependent sovereigns by the United States Government. Furthermore, tribes are to have exclusive control of their destiny when it comes to internal affairs.

Leo LaClair, deputy director of the Northwest Indian Fisheries Commission, accused Meeds of quarterbacking a barrage of legislation aimed against tribes to pressure them into giving up their treaty fishing rights. Meeds bristled at this, but repeatedly told the group that legislative action on the issue was eminent and they should act now to ease the pressure.

Stan Jones, chairman of the Tulalip tribal fish committee said that a moratorium on treaty fishing equals welfare to the Indian. He, along with several others, suggested that any money being considered to compensate Indians for not fishing should be used for enhancement.

Indians also asked Meeds what congress could do for non-Indian gillnetters instead of giving them the Indian share of fish? Guy McMinds, Quinault

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Treaty commissioner, pointed out that poor fisheries management, not Indians, has caused the problem of too many fishermen and not enough fish. Why should Indians be required to bear the burden of state over-licensing of non-Indian fishermen?

The Yakima Indian Nation pressed upon Meeds the significance of breaking treaties. Harris Teo, chairman of Yakima Fish and Wildlife Committee pointed out that congress must take into account the "morality of breaking solemn promises of treaties which under our constitution are the Supreme Law of the Land." He further asked, "What power does congress have to take private property of one group of citizens and give it to another -- especially when the transfer concerns racial and majority considerations?"

#### A LETTER TO MEEDS

The following was written to congressman Lloyd Meeds from Ann Stever, Chairman, Pacific Northwest Regional Office, American Friends Service Committee - 814 N.E. 40th, Seattle, WA 98105.

Dear Mr. Meeds:

It is with great sadness that I read of your proposal that Congress consider a two year moratorium of Indian Treaty rights. Your reasoning that this suspension of guaranteed property rights is necessary to "prevent bloodshed" seems to me to propose that we should placate those who violently object to minority group's rights. I am sure you will remember that when the Indian people were harrassed for years as they attempted to exercise their rights to fish, there was little outcry to prevent violence.

The property rights of Indian Tribes are guaranteed by treaties. Treaties are guaranteed by Article VI of the United States Constitution which every Congressperson swears to uphold. It should never be forgotten that "on treaties rests the honor of the nation." Are we to forget honor whenever commercial interests are inconvenienced?

To temporarily suspend treaty rights for whatever reason, is an extremely dangerous practice. The suspension of civil rights is the hallmark of totalitarian regimes. History has shown that restoration of suspended rights is the exception rather than the rule.

Compensating Indians for fish legally theirs, but not caught because of suspended treaty rights, has a multitude of problems, practical and philosophical. Practically how would you compensate for the full 50% allocated by the Boldt decision? However, I feel the philosophical problem is far greater than the practical. Would you have people paid to give up a right? Should we pay black children who attend segregated schools and thus lose earning power, and ignore their rights to an equal education? Can you translate "rights" into money at any time? The rights are far more important than any economic benefit derived from them.

It should not be forgotten that the failure of the salmon resource is the result of years of non-Indian mismanagement and greed. For too long the State of Washington ignored its obligation to restrict unlimited fishing and preserve the resource. The Indian Tribes have been and are still being used as the scapegoat to mask the true dangers to the salmon: commercial

fishery which is too large, poor logging practices, and industrial pollution to our waterways. It is time that these culprits be challenged and not the Indian Tribes which, in 1976, two years after the Boldt decision, caught 16% of the salmon.

It is my sincere hope that you will reconsider such a dangerous proposal and will seek rather to work on the basic causes of the problems that beset fisheries in the Northwest.

#### YAKIMAS ADDRESS MEEDS

The following is an excerpt from testimony given by Harris Teo, Chairman, Yakima Fish and Wildlife Committee, at a meeting with congressman, Lloyd Meeds on January 26, at the Tulalip Tribal Center:

When it comes to considering the proposition of whether under HR 1, the Indian fisheries can be taken or purchased, the question must be asked "By passing the morality of breaking the solemn promises of treaties which under our Constitution are the Supreme Law of the Land, what power does Congress have to take private property of one group of citizens and give it to another group of citizens?" This question is very appropriate considering the transfer is so clearly based on racial and majority considerations. It may be a dangerous question to ask, because quite often when you ask someone what strength they have -- they may be tempted to show you. We hope in the spirit of communication on this serious matter, that impulse will be resisted by Congress and its members.

The place of Indian Tribes and Nations in our Federal Scheme of things is a special area. They are dependent sovereigns who were to have, as regards their internal affairs, exclusive control of their destiny and their territorial reserved areas and rights except as modified by the applicable treaty.

The reading of Chancellor Kent's opinion in Goodell v. Jackson, 20 John 693 (N.Y. 1823) and Chief Justice Marshall's opinions in Johnson v. McIntosh, 8 Wheat 543, 5 L. ed. 681 (1823), Cherokee Nation v. Georgia, 5 Pet. L. 8 L. ed. 25 (1831) and Worcester v. Georgia, 6 Pet. 515, 8 L. ed. 483 (1823) together with the discussion of the status of Indians justice in Story's Commentaries on the Constitution, Vol. III Sec 1101 and in Chancellor Kent's Commentaries on American Law (Vol. III, p. 382, 386), cannot lead anyone to other than the conclusion that at the time of the formation of our union, the Indian Nations or Tribes took their place in our scheme of government as dependent sovereigns, and as regards their internal affairs and reserved rights were to have the exclusive control of their destiny.

Our Supreme Court continues to follow this rule of Law, (for example, see McClanahan V. Arizona Tax Commission, 411, U.S. 164, 36 L. ed. 129, 93 Sup. Ct. 1257 (1973).

The Yakima Nation's Treaty contains these promises and guarantees. Article 3 of the Treaty of the Yakimas (12 Stat. 951), expressly provides that the fishing rights with which we are concerned are reserved to the Yakima Nation. The courts of this nation have quantified and determined the extent of these reserved rights. The Yakima Nation has not given its consent to be subject to federal laws except as to matters within the commerce clause (Article 1, Sec. 8 C. 3) of the United States Constitution. Matters regarding the administration of resources held in trust by the United States, or matters based on the dependency of this Nation on the United States. (See United States v. Kagama, 118 U.S. 375, 6 S. Ct. 1109, 30 L.ed 228 (1803) cited with approval

in McClanahan, Supra).

Article 8 of the Treaty with the Yakimas, as compared with other concurrently executed treaties (See for example, Article 6 of the Treaty with the Tribes of Middle Oregon 12 Stat. 951) provides that the Yakima Nation is not subject to Federal legislation as regards its reserved rights. The treaty minutes clearly articulate the promises of the United States that the Yakimas were to be governed by their own laws.

We, of course, do not dispute the power of the Congress to take property for fair and just compensation for the governmental purposes of the United States. What we are disputing is the power of Congress to take property when it is exercising the power to acquire property for a state or for the private purposes of another group of citizens of the United States. It is most clear under the law that the right of eminent domain is a sovereign right that exists only to take private property for its own public use and not for those of another. (See for example, Kohl v. United States, 9L. U.S. 367). Read as you might with all liberality Article 1, Sec. 7 of the Constitution, you will not find one hint that Congress would have the power among these enumerated powers to take the private property fishing interests involved for the purposes suggested in HR 1.

#### TRIBES UNITED IN SUPPORT FOR HECKMAN

Member tribes of the Northwest Indian Fisheries Commission, the Yakima Indian Nation, and the Colville Confederated Tribes of the Colville Reservation met with Governor Dixy Lee Ray's staff on January 25, to unanimously endorse Jim Heckman as their choice for Director of the Department of Fisheries.

Heckman, 49, formerly with United States Fish and Wildlife Service, is currently Biological Programs Director of the Northwest Indian Fisheries Commission. He spent twenty-five years with U.S. Fish and Wildlife Service, serving for several years as Associate Regional Supervisor of Fisheries for seven western states and Project Leader of the Northwest Fisheries Program in Olympia.

In naming Heckman as their candidate, the tribes outlined the qualifications they felt important for the position. The Director should be an individual who: A) Is sensitive to the Indian right to self-determination and recognizes tribal fisheries management needs and objectives; B) Will be willing to uphold the law of the land by positively demonstrating respect for the decision in U.S. v. Washington and working toward its implementation for the benefit of all citizens in the State; C) Will clearly recognize and work with Indian people as co-managers of the fisheries resource; D) Will pursue a course, making full utilization of Washington State resources to maximize economic, cultural, and recreational benefits of the fisheries resources; E) Is willing to assist Indians in presenting the true image of Indians in their relationship to the salmon resource, portraying in a positive manner the continuing effort of Indians to honor and protect the resource and their recent enhancement efforts; F) Be sensitive to Indian leaderships' concern for and long experience in stewardship of the fishery resources. In this respect, the Director should be willing to select and endorse members of the Indian community for advisory boards and key positions in appropriate fishery commissions and management organizations; G) Must develop the enforcement capability of the State of Washington to protect Indian treaty fishing; and H) Must have the fortitude to hold strongly the interests of fishery resources and withstand the adverse and selfish interests that would diminish it.

BUY-BACK-INDIANS MAY BID

The next boat buy-back auction, originally scheduled for February 26, has been postponed until late March. No date has been set.

This time treaty Indians may buy the boats for commercial use due to a Federal Court order issued by Judge Boldt in December. The Judge declared the State's restriction against commercial use of buy-back boats by treaty Indians illegal. He noted that the state legislature had passed the buy-back legislation after finding an over abundance of non-Indian commercial gear in use. However, the legislature did not find an over abundance of treaty Indian gear. The court found that the state's restriction impaired the fishing rights of treaty Indians and that there was no conservation purpose for this regulation against treaty Indians.

Approximately eighty treaty fishermen are interested in purchasing boats through the buy-back program. Under the State's former regulations, treaty Indians were effectively prevented from purchasing used fishing boats on the open market. Most used boats were being sold to the state through the buy-back program at prices often higher than the worth of the boats. The prices of all other used boats sky-rocketed. Increased employment of Indians has been one of the goals of implementing the Boldt decision. However, treaty fishermen have been unable to obtain boats to fish with. Boldt's latest ruling should ease this situation.

Former Director of the Washington Department of Fisheries, Donald Moos, said that the ruling is "not inconsistent with gear limitation goals of the buy-back program." But Representative, John Martinis, Everett Democrat, has introduced a bill that would end the buy-back program. He said he introduced the bill because he is against treaty Indians purchase of buy-back boats for commercial use. Failing to acknowledge the need for equalizing fishing opportunity between treaty and non-treaty fishermen, Martinis said, "This amounts to the state subsidizing new fishermen when we are trying to reduce the pressure on salmon." The buy-back program is federally funded with \$3.5 million from the Department of Commerce.

GENERAL ANNOUNCEMENTS

- \*Any tribal police chief interested in giving input into a law enforcement academy to be held at the Skagit Valley Community College, Mr. Vernon, in April should contact Bruce Haley, Chief of Police at the Skagit System Tribal Police Station. Responses may be made by either calling: (206) 466-3423 or 466-3184, or by writing to: Box 368, Reservation Road, LaConner, Washington 98257
- \*Point Elliott Treaty Office now has a new address and Coordinator, Linda Jones, P.O. Box 3825, Totem Beach Road, Marysville, WA 98270. Phone: (206) 659-8581.
- \*February 14, is President's Day. The Northwest Indian Fisheries Commission will be closed.

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Fisheries Commission  
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#### MANAGEMENT PRINCIPLES EXCHANGED

Northwest Indian Fisheries Commission biologists have been working with tribal biologists and fish committees in the past month to develop a set of fisheries management principles to be used as guidelines for both state and tribal salmon harvest plans. In general, the principles deal with escapement goals, run size predictions and sharing formulas.

On February 1, state and tribal representatives met in a Court Advisory Board meeting to exchange management principles. A working team of eight biologists (four state and four tribal) was established to combine the two sets of principles into Joint Management Guidelines which will govern the harvest management plans of both the state and the tribes. The Court Advisory Board will reconvene on February 11, to review progress of the committee. A tentative due date has been set for May 1, 1977.



# Northwest Indian Fisheries Commission newsletter

March 23, 1977  
Vol. III, No. 2

## NWIFC SEES THREE NEW COMMISSIONERS

Western Washington Treaty Councils elected three new NWIFC Commissioners this month in the first elections since the establishment of the Northwest Indian Fisheries Commission. The new Commissioners are Marvin Wilbur, Point Elliott; William (Billy) Frank, Jr., Medicine Creek; and John Ides, Makah. Guy McMinds retained his position as Quinault Treaty Commissioner. Ron Charles, Point No Point Commissioner is up for re-election next week.

### Point Elliott.....

Forrest Kinley, who has served as Chairman of the Commission and as Point Elliott Commissioner, did not run for re-election. He said that it was time for a change in the Commission and that even though he was "retiring" he will continue to fully support the Commission. Kinley has been one of the driving forces behind the formation and organization of the Commission and he says he believes it is a sign of strength that new people can become involved and that elections can take place according to the treaty area constitutions.

Marvin Wilbur is the man who will replace Kinley as Point Elliott Commissioner, but his role as Commissioner will be somewhat different than Kinley's because of the newly drafted Point Elliott Treaty Council Constitution. As a pioneer in the Commission, Kinley defined his own role as Commissioner as well as following the wishes of the Treaty Council. He was often criticized for taking too much power into his own hands, an accusation hard to avoid for a man of Kinley's energy. It seems likely that Wilbur will be more closely controlled by the Treaty Council. This is specifically spelled out by the new constitution, and is strengthened by the elections of officers within the Treaty Council. On March 15, the Treaty Council elected Chet Irgens from Suquamish to preside as Chairman; Bernie Gobin from Tulalip as Vice Chairman; and Floyd Williams from Upper Skagit as Secretary-Treasurer.

Marvin Wilbur, 38, is a Swinomish Indian. He is currently serving on the Swinomish Tribal Senate and he is Executive Director of the Tribe, conducting tribal business on many fronts. Wilbur says he is not a fisherman although he has fished in the past. He is a strong believer in treaty fishing rights however and he recalls participating in fish-ins on the Skagit River in the early '60's. Wilbur believes that the key to full implementation of the Boldt Decision is good communication between all parties: between Tribes themselves, and between Tribes and state agencies.

Wilbur is not new to treaty area fisheries operations. He has been the Swinomish representative on the Skagit System Cooperative, an organization which he is very pleased with. The "Co-op" is composed of the three Tribes on the Skagit River. They have pooled their resources for fisheries management and have come a long way in reaching agreements on equitable allocation of the fish on the river. They have saved money as well. Wilbur says that he can see this kind of cooperative developing between other Tribes in Point Elliott and he is a firm believer in this approach. (Point No Point Tribes have also formed a fisheries co-op; these are the only two so far).

As Commissioner, Wilbur plans to work toward providing more information to the Tribes, Treaty Council, and the fishermen. He believes that a uniform set of regulations for all treaty area fishermen and a coordinated, law enforcement effort essential for a well regulated Indian fishery and he plans to continue the efforts already started toward these ends.

#### Makah.....

The Makah Treaty Area is unique in many ways. It has only one tribe within the treaty boundaries; it has an ocean fishery and a coastal river fishery, but it also has an inner Strait fishery. It is the one Treaty Area that has actually lost fishing time since the Boldt Decision because of complications in the IPSFC controlled fishery. It is also the one Treaty Area with a \$10 million hatchery under construction.

In October, Charles Peterson resigned as Makah Commissioner. He was one of the original NWIFC founders and he has been a steady force in the organization ever since. Peterson had to deal with the International Pacific Salmon Fisheries Commission and the Pacific Regional Council as well as State and Federal agencies in working for full recognition of Makah and other Indian Treaty Rights. He has undoubtedly made some inroads with these groups which should ease the task of his successor. Peterson plans to return to fishing this season.

John Ides is the new Makah Treaty Commissioner. Fifty-four year old Ides is also the new Makah Tribal Council Chairman. Ides fished commercially on the high seas for twenty years and he testified in the U.S. v Washington trial, so he's no stranger to the fishing situation. Ides has taken a year's leave of absence from the U.S. Air Force to serve as Tribal Chairman and Commissioner. He sees his role as one of direct involvement in the protection of treaty fishing rights. He points out the uniqueness of the Makah situation, but he is very aware of the mutual problems of all tribes. Ides takes a strong stand on tribal unity and he sees the Commission as a vital key to fully implementing the Boldt Decision. He also believes that the top priority of every tribe should be to gain self-regulatory status.

#### Medicine Creek.....

Billy Frank is not the kind of Commissioner you'll see attending most tribal conventions nor will he often be found in his office. Instead, it's likely he'll be in the field talking to the fishermen and surveying the fish habitat. Frank is no newcomer to fishing. Son of the man who insisted on land instead of money, Billy Frank Jr. has lived, fished, and fought at Frank's Landing all his life. As a fisherman on the Nisqually during the early 60's, Frank was arrested several times for his active participation in the many fish-ins at the Landing. Today as Medicine Creek Treaty Commissioner, he says:

"The fighting, that is, the fish-ins and demonstrations, is over now, I hope. My past is in the past; I'm looking forward to what will happen in the next ten years as far as development of the resource is concerned. Now we have to sit down and be reasonable. The State is a reality we must deal with for the sake of the people and the resource. I hope that the Governor of this state will appoint a Director of Fisheries who can and will work with Indian people.

Frank's main concern is for the resource. He wants to see the fish habitat saved and restored, where possible; and he is calling for extensive enhancement programs. "We're fighting for nothing right now. Let's build up the runs before we build up our fleets; and let's educate all people as to what they are doing to the environment."



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It won't happen overnight. Frank is careful to point out this fact. "We're looking ten years down the road and we really won't know how effective our programs are until then. It will take money and restraint on the part of all fishermen".

Billy Frank is on the Nisqually Tribal Council this year and he also serves as Tribal Fisheries Manager. He succeeds Calvin Peters (Squaxin Island) as Medicine Creek Treaty Commissioner by a unanimous vote of the Treaty Council. Peters did not seek another term.

The Treaty Council also elected alternate NWIFC delegates who are Gloria Bean, Puyallup; Bryan Johnson, Squaxin Island; and Brian Topping, Steilacoom.

#### PHASE II

Tribal and Federal preparations for Phase II appear to be on schedule. Biologists for NWIFC, S.T.O.W.W., and U.S. Fish and Wildlife Service are working on their assignments and should have their initial reports completed by mid-Summer. Fisheries Assistance (U.S.F.W.S.) has established a team of four biologists headed by Chris Dlugokenski to work on Phase II. The U.S. will retain Barbara Lane to assist with anthropological-historical research. The Department of Interior has added an additional attorney, Mike Drafs, who will work full time on Phase II out of his Portland Office.

#### JOINT MANAGEMENT PLAN

The Management Development Team appointed by the Court Advisory Board has reached initial understandings concerning joint management principles. The agreement is currently being reviewed by the Tribes and will be filed with the Court the first week in April. The "initial understandings" are very general agreements on certain technical principles. More joint meetings between State and Tribal team members will be held to develop more detailed agreements. A team of Tribal and State representatives will be selected in April to start negotiating on policy differences with regard to the management plan. State and Tribal fisheries managers are aiming toward a May 1 deadline for a comprehensive fisheries management plan.

#### PUYALLUP III

The United States has filed an amicus brief in support of the position taken by the Puyallup Tribe that the State has no jurisdiction over on-reservation fishing and that the Supreme Court should only hear that issue. Amicus briefs have also been filed by certain Washington Tribes, the N.W. Steelheaders, and the Purse Seine Vessel Owners. Puyallup III was tentatively scheduled for oral argument in late April. However, the State Attorney General has requested a different date due to a time schedule conflict.

#### BUY BACK AUCTION

The date of the next buy-back auction is still unconfirmed. However, fishermen may be included on the Auctioneer's mailing list by writing to: Maynard's Auctioneers, Inc. P. O. Box 21434, Seattle, Wash. 98111. An illustrated catalogue of the vessels for sale can be ordered at a cost of \$2.00 from Maynards. Price lists of past sales are also available.

#### CASE AREA MEETING

A NWIFC Case Area Meeting is scheduled for April 1, 1977. It will be held at the Lummi Community Center, Bellingham, Washington and will begin at 1:00 p.m.

Northwest Indian  
Fisheries Commission  
2525 parkmont lane  
building c  
olympia, washington 98502



#### BILL SMITH RESIGNS

William L. Smith will resign as Executive Director of the Northwest Indian Fisheries Commission on May 31. He announced his plans at an NWIFC meeting on March 3 at Neah Bay, stating that he is resigning for personal reasons. His future plans include "going fishing" and spending "a little more time on myself".

Smith, 30, was hired in 1974 when the Commission was still operating out of hotel rooms across Western Washington. Today, largely due to the direction of Bill Smith, the Commission maintains a central office in Olympia and field offices in all of the Treaty Areas with a total staff of eighteen. Smith has been influential in the development of the treaty council concept, the field coordinators, the tribal fisheries cooperatives, and the development of a biological staff as the base for the Commission. The Commission will meet next week to discuss Smith's replacement.

#### TELEVISION INTERVIEW

Bill Smith, Leo LaClair, and Ron Charles will discuss the positive aspects of the Boldt Decision on Channel 11's Sunday Night Program, "Probe". The program will air at 8:00 p.m. on April 3.

May 9, 1977  
Vol. III, No. 3

#### NWIFC WINS 1976 ENVIRONMENTAL EXCELLENCE AWARD

The Washington State Ecological Commission has presented the Northwest Indian Fisheries Commission and its member tribes with a 1976 Environmental Excellence Award for their on-going efforts to maintain and enhance the fisheries resource in Washington State. Governor Dixy Lee Ray presented the award to NWIFC Executive Director Bill Smith at an Olympia Chamber of Commerce Luncheon on April 28.

The Environmental Excellence Awards are presented annually by the Ecological Commission to those individuals, organizations and industries that have shown exceptional concern and leadership in their efforts to maintain and enhance Washington's environmental quality.

#### NWIFC FORMS ALLIANCE WITH COLUMBIA RIVER TRIBES

The Northwest Indian Fisheries Commission and the Columbia River Inter-Tribal Fisheries Commission formed a formal alliance to work on Northwest Indian fisheries problems at a joint meeting on April 15 in Olympia.

The Northwest Indian Fisheries Commission is composed of the nineteen tribes in the Boldt case area and the Columbia River Inter-Tribal Fisheries Commission is composed of the Yakima Nation, the Confederated Tribes of the Umatilla Reservation, the Confederated Tribes of the Warm Springs Reservation, and the Nez Perce Tribe. The Columbia River Tribes have treaty fishing rights on the Columbia under the Belloni decision. The new Fisheries Alliance will work together on funding, management plans, enhancement programs, and general fisheries issues.

#### FISHERIES ALLIANCE COMMENTS ON EXECUTIVE TASK FORCE

Harris Teo, Chairman of the Columbia River Inter-Tribal Fisheries Commission, and Bill Smith, Executive Director of the Northwest Indian Fisheries Commission, issued a joint statement on April 15 regarding President Carter's newly formed Executive Task Force on Northwest Fishing:

The Northwest Indian Fisheries Alliance will cooperate fully with the Executive Task Force to explore the alternatives for ensuring a well managed fishery in the Northwest. We're glad to see the opportunity to express our views to a high level executive committee on a controversy that has existed for over a hundred years. We have been requesting a study of this kind for the past ten years.

It should be made clear that this does not mean a re-negotiation of treaty rights or the federal court decisions. The Department of Interior has already stated this. We are looking forward to negotiating on other points, however.

As Tribal Governments, we are most anxious to sit down together with other governments to solve our fisheries problems. We are also anxious to work with the State if they can uphold their management responsibilities to allocate the resource.

As a final point, we feel that this Task Force must preserve its executive integrity without compromising to political interests.

#### WATER LAW SHORT COURSE

A short course on Indian water rights will be given May 15-18 at KAH-NEE-TA Vacation Resort, Warm Springs, Oregon. Lee Lamb, from Ft. Collins, Colorado, will conduct the course.

The cost is \$75 for the course and \$99 room and board (double occupancy) or \$129 (single occupancy).

For further information, contact:

Dale Long, Executive Director  
Columbia River Inter-Tribal Fish Commission  
1425 N.E. Irving  
P.O. Box 3785  
Portland, Oregon 99208

#### U.S. TREATIES: A NORTHWEST PERSPECTIVE

Fifteen social studies teachers are currently pilot testing the teaching guide, "U.S. Treaties: A Northwest Perspective", in Junior and Senior High Schools throughout western Washington. The guide was developed by a committee of Indian educators, co-chaired by NWIFC's PR Director, Debby Shawver, and Shelton High School's Indian Education Coordinator, Yvonne Peterson.

The teaching guide introduces teachers to materials and outlines an organized method of using them to teach concepts of tribal government and treaties, focusing eventually on the Northwest treaty fishing issue.

The pilot teachers were introduced to the materials at a day long workshop on March 18 at Shelton High School. The workshop was sponsored by the Shelton High School Indian Club and the keynote speaker was Leo LaClair, Deputy Director of the Northwest Indian Fisheries Commission.

"U.S. Treaties: A Northwest Perspective" is in a preliminary stage. The material will be revised after initial testing, according to recommendations made by pilot teachers. Then another test will take place in schools throughout the state. The material will also be checked by experts in valuing processes, social studies curriculum, and legal issues. The goal of the curriculum development committee is to publish the guide and distribute it statewide by next fall.

1977 HARVEST MANAGEMENT PLAN

The development of this year's salmon management plan is well underway. The technical team appointed by the Court Advisory Board has completed an initial set of Joint Management Guidelines which will govern the harvest management plans of both the state and the tribes in the upcoming season. The Court Advisory Board convened on April 12 and accepted the Technical Team's report. Copies are available from the Northwest Indian Fisheries Commission, WDF, and Dr. Whitney, Chairman of the Court Advisory Board.

At the April 12 meeting, the Advisory Board delegates appointed members of a Policy Development Team to continue the work on policy matters. The members of the policy team are NWIFC Commissioners, John Ides, Guy McMinds, Bill Frank, Ron Charles, and Marvin Wilbur; Bill Smith, Leo LaClair, Jim Heckman, NWIFC; Peter Bergman, Sam Wright, Duane Phinney, Lloyd Phinney, Washington Department of Fisheries; Gary Garrison, Game Department; and Craig Johnson, Office of the Governor.

On April 15, the Policy Development Team met in Olympia. It was agreed that there are two conditions that must be met in order for meaningful arrangements to be made for sharing fish runs. These are: 1) proper ocean fishing regulations must be adopted this year in the fishing area within 200 miles; and 2) the state must be able to allocate shares and enforce the necessary regulations.

COMMISSION ELECTS OFFICERS; HIRES DIRECTOR

Bill Frank, Medicine Creek Commissioner, was elected Chairman of the Northwest Indian Fisheries Commission at a meeting on May 6 in Olympia. Frank is a Nisqually Tribal Council Member and also serves as Nisqually Tribal Fisheries Manager.

Other newly elected officers are John Ides, Makah, NWIFC Vice Chairman; and Marvin Wilbur, Point Elliot, NWIFC Secretary-Treasurer.

The Northwest Indian Fisheries Commission also hired Jim Heckman to fill the position of Executive Director, vacated by Bill Smith. Heckman has been working for the Commission since last July as Director of Biological Programs. Prior to his employment at the Commission Heckman spent twenty-five years with U.S. Fish and Wildlife Service. He was a key witness for the federal government in U.S. v Washington litigation in his position as Program Manager of the Northwest Fisheries Program in Tumwater. Heckman also served for several years as Associate Regional Supervisor of the U.S. Fish and Wildlife Service division of Fishery Service, covering seven western states.



## Northwest Indian Fisheries Commission newsletter

August 8, 1977  
Vol. III, No. 5

### PUGET SOUND FISHERY: BACK IN COURT

Puget Sound Tribes and the Federal Government will ask Judge Boldt to remove one-half of the returning Puget Sound salmon from State jurisdiction so that Treaty Indians may exercise their treaty fishing rights in accordance with final decision No. 1 in U.S. v. Washington. A hearing has been scheduled for August 8 in U.S. District Court in Tacoma at 9:30 AM.

NWIFC Executive Director Jim Heckman said that the Tribes had no alternative but to return to court after the State Department of Fisheries adopted 1977 Puget Sound regulations which totally ignore the Boldt decision and the fisheries management plan developed jointly by State and tribal representative. The State regulations make no provisions for a fifty-fifty allocation of salmon as called for in the Boldt decision. The Department says it is bound by the recent State Supreme Court ruling (Gillnetters' v. Moos) which prevents them from allocating fish between citizens.

### STATE HEARING SET FOR GRAYS HARBOR REGULATIONS

The State Department of Fisheries will hold a public hearing on August 9 to discuss proposed commercial gill net fishery regulations for the 1977 fall season in Grays Harbor and Willapa Bay. The hearing will be held in Aberdeen at the Weatherwax High School in the Miller Auditorium at 7:00 PM.

### BOLDT RULES ON LAKE WASHINGTON SOCKEYE

It was as if the Boldt decision never happened this year when the State Department of Fisheries opened a sport fishery for sockeye on Lake Washington and closed the lake to Indian gill netters. For the first time in several years, Lake Washington had a large surplus of about 61,000 harvestable sockeye salmon. There was clearly no conservation problem this year. The State issued regulations for a sport fishery, but said that there was a State statute against commercial fishing in the lake, and therefore, a Treaty Indian fishery would be prohibited.

Boldt issued a temporary restraining order against the State following a hearing on July 21 and the Tribes were able to commence fishing that same night.

### TRIBES, STATE FILE JOINT MANAGEMENT PLAN

After months of negotiation between State and tribal representatives, a Joint Fisheries Management Plan for Puget Sound has been filed by the Fisheries Advisory Board with the Federal court as ordered by Boldt on December 15, 1976.

Immediately after the State Supreme Court decision (Gillnetters' v. Moos) this summer, there had been some question as to whether the Department of Fisheries would continue negotiations.

The Department cancelled some of the scheduled work meetings after the decision but then resumed negotiations until a final plan was completed. The negotiating team was able to reach a compromise on almost every issue except allocation. A hearing will be held early in August to decide on areas of disagreement and allow for additional comment. However, whether or not the State will abide by the plan once it is finalized by the court is questionable. Already, the Department of Fisheries has proposed several sets of regulations contrary to the plan.

#### IPSFC FISHERY

The number of sockeye and pink salmon returning to the Fraser River each year is greater than the number of all salmon returning to Puget Sound streams, and this year for the first time since the Boldt decision, Indians have been allowed extra fishing time to harvest some of these fish. The season isn't over yet, and there have been some problems with the International Pacific Salmon Fisheries Commission, but this has been a good fishery in comparison to past years.

As of July 29, Treaty Indian fishermen have harvested 223,900 sockeye or about 21 percent of the United States catch of the Fraser River run. Under the 1974 Boldt decision, Treaty Indians are entitled to the opportunity to harvest fifty percent of the U.S. share. However, last year, the Tribes experienced their best year of record with a harvest of only seven percent. This has been largely due to the IPSFC steadfast refusal to recognize Treaty Indian fishing rights by allowing Treaty Indians extra fishing time. Indian fishermen need this extra time in order to compete with the larger non-Indian fleets.

This year the United States tried to correct the imbalance. The U.S. negotiated with Canada, proposing that the IPSFC provide extra fishing time for Treaty Indians, but the IPSFC wouldn't waiver. No one knows what the actual vote was because the meetings are closed, but when the recommendations for 1977 IPSFC regulations were made no consideration was given to Treaty Indians.

It is the job of the IPSFC to recommend regulations. It is then up to the United States and Canadian governments to approve and adopt those regulations.

This year, the Department of State approved IPSFC regulations for non-Indian fishermen only and separate regulations of the Department of Interior were adopted for Treaty Indians. The Department of Interior regulations incorporated those of the Tribes, thereby honoring tribal authority to regulate their own fisheries. The regulations allow for one extra day each week for Indian fishermen.

The National Marine Fisheries Service, U.S. Fish and Wildlife Service, and U.S. Coast Guard are enforcing the regulations this year because the State has been left "powerless" to allocate fish between citizens since the State Supreme Court decision (Gillnetters' v. Moos).

The court test in the matter came when the Purse Seine Vessel Owners Association and the Puget Sound Gillnetters' Association attempted to get a restraining order against the State Department regulations in U.S. District Court in Seattle. The commercial groups claimed that the IPSFC had exclusive authority to set regulations in convention waters and that the State Department could not set independent regulations for Indians.

Chief U.S. District Court Judge Walter T. McGovern denied the injunction and wrote, "Treaty Indians are entitled to an opportunity to catch up to fifty percent of this area's harvestable fish. It appears that the Government of the United States in granting additional fishing opportunities here to Treaty Indians is endeavoring to abide by its Treaty obligations." He also said that the IPSFC does not have authority to direct the domestic allocation of the fishery allotted to the United States. He wrote, "How the latter nation (United States) divides its share of the fishery amongst its citizens is the business and responsibility of the Government of the United States and not of a commission composed in half by citizens of another nation."

Fishing regulations have been changed on an emergency basis throughout the season in order to allow for spawning escapement and to equalize the catch between Canada and the United States. For the current status of Treaty Indian regulations, call the Northwest Indian Fisheries Commission hot line number: Toll Free 1-800-562-6142.

#### NWIFC CALLS FOR REPLACEMENT OF IPSFC COMMISSIONERS

The Northwest Indian Fisheries Commission is seeking the replacement of the United States representatives to the International Pacific Salmon Fisheries Commission and requesting that at least one Treaty Indian representative be appointed. A delegation of Treaty Indian representatives, including Jim Heckman, Bernard Gobin, John Ides, and Forrest Kinley, flew to Washington, D.C. last month to ask the Presidential Task Force to take action on this and other IPSFC-related matters.

The International Pacific Salmon Fisheries Commission has openly opposed additional Treaty Indian fishing time in convention waters and has continually blocked Treaty Indian attempts to exercise their rights in accordance with the Boldt decision. This public opposition has been exhibited in numerous press releases and public statements by IPSFC Commissioners. The result has been increasing tension in a potentially explosive fishing situation. The open opposition of IPSFC Commissioners to the U.S. accommodation of the India fisheries in 1977 is an assumption of authority beyond that granted by the respective governments of the United States and Canada. This was clearly stated in U.S. District Court Judge Walter T. McGovern's decision this summer. The record of the U.S. Commissioners in regard to their open opposition to U.S. policies clearly points to the need for their replacement as soon as possible.

The Northwest Indian Fisheries Commission has urged that at least one Treaty Indian representative be appointed to the IPSFC immediately in order to ensure fair representation. The Indian delegates to Washington, D.C. recommended that Charles Peterson, Makah, be appointed to serve as the Treaty Indian representative on the IPSFC. The name of Forrest Kinley, Lummi was also submitted as an alternate to Peterson.

Treaty Tribes are also concerned that immediate and direct access to IPSFC technical data has been denied to them. Under the framework and operating procedures of the IPSFC, time is of the essence in making decisions regarding emergency regulations. Under the present procedure, the Department of Interior representative is not able to attend IPSFC meetings. He is dependen



upon a second-hand report from a Department of Commerce representative. The Tribes do not believe that the National Marine Fisheries Service (under the Department of Commerce) is supportive of their interests and they are concerned that a representative of that agency is presently their only access to the IPSFC data. NWIFC suggested that either Mr. Fred Olney, the Department of Interior representative, be permitted direct access to IPSFC data or that a technical team approach be developed with representation from the Departments of Commerce and Interior and the Treaty Tribes.

The Indian fisheries representatives told the Task Force that the various Federal agencies should be commended for their work in the 1977 IPSFC fishery. The Department of Interior regulations have resulted in a significant increase in the Treaty Indian harvest. However, they also asked the Task Force to continually remind local Federal representatives of the United States policy in honoring Treaty Indian rights because they have forgotten this on too many occasions in the past.

#### POINT ELLIOTT ADOPTS CONSTITUTION

The Point Elliott Treaty Council, with the nine member Tribes, has adopted and ratified its constitution. According to the Point Elliott Constitution the purpose of the Treaty Council is to: (1) promote the proper management, protection, conservation, and enhancement of the resource in unison, without conflict, for the benefit of all Indians in Puget Sound; (2) to propose, adopt, and enforce in-common fishing regulations in areas where tribal usual and accustomed fishing grounds overlap; (3) to assist member Tribes in coordinating good enforcement procedures; and (4) to elect a commissioner to represent Point Elliott on the Northwest Indian Fisheries Commission.

Membership on the Treaty Council will be open to any Tribe within the Point Elliott Treaty Area that is recognized by the U.S. District Court in U.S. v. Washington as having permanent Treaty fishing rights. The constitution also provides for elections of officers and the Northwest Indian Fisheries Commissioner on the second Wednesday in March of every year. Regular meetings of the council will be held on the second Wednesday of each month.

Aside from the usual voting procedures and description of officers' duties, the Point Elliott Constitution lays out procedures for the adoption and enforcement of in-common fishing regulations in the Point Elliott Treaty Area. These regulations are set for Tribes which have overlapping usual and accustomed fishing areas, and once established by the Treaty Council, are binding of the member Tribes. The constitution also calls for the development of a Point Elliott judicial system to be used by all of the member Tribes.

Tribes represented on the Point Elliott Treaty Council are: Lummi, Muckle-shoot, Nooksack, Sauk-Suiattle, Stillaguamish, Suquamish, Swinomish, Tulalip, and Upper Skagit.

#### 1977 TRIBAL FISH RELEASES

According to a survey recently completed by NWIFC biologist, Gary Graves, eighteen Tribes have fish production operations underway and will release over 26 million salmon and steelhead this year. Graves said that proposed facilities expansions and increased production will more than double these numbers for 1978.

NEW NWIFC MAKAH COORDINATOR

Jesse Ides has been appointed as Makah Treaty Area Coordinator for the Northwest Indian Fisheries Commission. Ides has been working in Makah fisheries enforcement for the past year. In his new capacity he will act as liaison between the Makah Tribal Council, the fishermen, and NWIFC.

COMMISSION TAKES STAND ON CHERRY POINT

The Northwest Indian Fisheries Commission strongly opposes the construction of a supertanker port at Cherry Point or any other location in the Boldt Case Area where the fisheries habitat would be endangered.

At a public hearing before the Washington Energy Facilities Site Evaluation Council on June 23, NWIFC Biologist Gary Graves delivered the position of the Commission and affected Tribes. He told the Site Evaluation Council that further development of Cherry Point would cause irreparable damage to the valuable fisheries resources.

The Cherry Point area is a prime herring spawning ground as shown by biological surveys conducted by the Washington Department of Fisheries and the U.S. Fish and Wildlife Service. The area is also valuable habitat for crabs, shellfish, and juvenile salmon. Large numbers of Indian and non-Indian fishermen are dependent upon herring roe, crab, and salmon fisheries in the Cherry Point area.

Graves said that the development of piers, bulkheads, and docks and dredging and filling activities would destroy the valuable fisheries spawning and rearing environment. He said that increased barge and freighter traffic will disrupt fisheries and increase the hazards of pollution damage from oil spills.

Others testifying against the proposed oil port included a staff member from the State Legislature, and representatives from ecological groups such as the Audobon Society, Protect Our Waters, Coalition Against Oil Pollution, and No-Oil Port.

CHURCH RESOLUTION SUPPORTS TREATIES

In June, the Church Council of Greater Seattle adopted a strong resolution in support of Indian Treaty rights. The resolution states, in part:

The Church Council of Greater Seattle affirms its support of treaties signed by Indian Tribes and the U.S. Government. The U.S. Constitution (Article VI, Section 2) guarantees that treaties are the Supreme Law of the Land. Treaties are the promise of a nation and on them rests the honor of a nation. Recognizing the need to address the current climate of anti-treaty rights sentiment among certain groups, in the nation, the Church Council deplors the suggestion that the abrogation of treaties is the way to resolve conflicts arising from court decisions affirming these treaties and calls upon member churches throughout the nation to affirm and support the Indian treaties and the rights of tribes to the jurisdiction over their lands, the lands reserved by the tribes for their exclusive use.

According to Jessie Kennear, Exec. Administrator for the Church Council, the resolution has been sent to all Seattle pastors for study and action this summer.



## Northwest Indian Fisheries Commission newsletter

September 12, 1977  
VOL. III, No. 6

### BOLDT TAKES CONTROL OF PUGET SOUND FISHERY

After several lengthy court hearings last month, Judge Boldt took control of the 1977 Puget Sound salmon fishery because, he said, the state is either "unable or unwilling" to ensure a treaty allocation of the harvest. Boldt removed the treaty share of the harvest from state jurisdiction and enjoined both the Department of Fisheries and the Thurston County Superior Court from interfering with the allocation of the salmon runs this year.

The allocation question was bounced back and forth between state and federal courts until Judge Boldt enjoined Thurston County Superior Court Judge Frank Baker from preventing WDF compliance with Boldt's allocation orders. Baker had enjoined WDF from following an August 10 Boldt order, basing his decision on the 1977 Washington State Supreme Court decision in Puget Sound Gillnetters Association v. Moos. That decision ruled that the Department of Fisheries does not have statutory power to allocate fish between citizens. Gordon Sandison, WDF Director, chose to follow the orders of the state court, and then narrowly missed a contempt citation in Federal Court by complying with Boldt's order at the last minute. The change in regulations had no practical effect, however, because the state did not attempt to enforce.

Boldt surprised treaty tribes by following the recommendation of the Federal Fisheries Task Force to reduce the treaty allocation purportedly to provide "economic relief" to in-Sound non-Indian gillnetters.

The Task Force informed treaty tribes of their intended recommendation by mail-o-gram on the day before the request was to be made in Federal Court. The mail-o-gram said, in part, "This request we have made to the court has only come after soul searching. We are acutely aware from our discussions with you of the right of tribes to insist upon being provided their full treaty rights. We, however, believe that the complete fulfillment in 1977 of these rights may be detrimental to the evolution of a management regime and enhancement program which meets the needs of all parties concerned."

Tribal attorneys reacted in opposition to the U.S. proposal, demanding to see facts justifying the need for and the specifics of the "economic relief" being requested for non-Indian fishermen. Attorneys argued that it has been four years since the decision and there is no good reason why it cannot and should not be fully implemented this year. They also argued that the proposed reduction in the treaty allocation would only supply the non-Indian fishery with about 100,000 fish, an insignificant number compared to an expected non-Indian harvest of 3.9 million salmon this year. However, it is a significant number of fish for those small northern and southern Puget Sound Tribes that have not yet enjoyed a major fishery. The tribes feel that the beneficiaries of this treaty reduction will be the part-time non-Indian fishermen who have other jobs. These are about the only non-Indian fishermen who do not travel to northern Puget Sound and Alaska to make their season.

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Nevertheless, Boldt chose to follow the Task Force recommendation. The allocation plan provides for approximately 45 percent of the total coho run to treaty fishermen and 55 percent to non-treaty fishermen. To accomplish this, he allocated 60 percent of the coho run returning to all Puget Sound areas, except Bellingham Bay, to treaty fishermen and 40 percent to non-treaty fishermen. The run returning to Bellingham Bay was allocated 50 percent to both treaty and non-treaty fisheries. The chum allocation will be fifty-fifty, however, for both coho and chum the on-reservation, ceremonial, and subsistence fish will be included in the treaty share of the allocation. This plan is for one year only. The court placed a heavier burden on North Sound Tribes in the coho sharing formula, reasoning that they have benefited from fishing on sockeye and pink salmon runs which the South Sound Tribes have not. The coho allocation by area, based on pre-season predictions of run size, is as follows:

| <u>Area</u>             | <u>Treaty</u> | <u>Non-Treaty</u> |                          |
|-------------------------|---------------|-------------------|--------------------------|
|                         |               | <u>Net</u>        | <u>Troll &amp; Sport</u> |
| Strait of Juan de Fuca  | 22,500        | 15,500            | 12,000                   |
| Hood Canal              | 36,400        | 24,200            | 19,000                   |
| Bellingham Bay          | 49,000        | 49,000            | 24,000                   |
| Skagit                  | 12,000        | 7,600             | 13,000                   |
| South Sound             | 231,000       | 154,000           | 100,000                  |
| Snohomish-Stillaguamish | 57,000        | 38,500            | 39,000                   |
| Total                   | 407,900       | 288,800           | 207,000                  |

495,800

Enforcement of the allocation plan will be similar to the method used by Judge Belloni on the Columbia River. The court will serve direct orders to non-Indian fishermen who are fishing contrary to regulations drafted under Boldt's allocation orders. If the fishermen continue to fish illegally, they will be served with orders to show cause why they should not be held in contempt of Federal Court. The National Marine Fisheries Service, the Coast Guard, and the U.S. Marshall Service will be enforcing the fishery. This method of enforcement has become necessary because Washington State Courts will not convict non-Indian fishermen who refuse to obey Boldt's orders, again, basing their actions on the Washington State Supreme Court decision in Puget Sound Gillnetters Association v. Moos.

#### ENFORCEMENT PHONE NUMBER

Wayne Lewis, National Marine Fisheries Service, will coordinate enforcement activities this season. Should you see illegal fishing, contact him at 442-7676.

#### TRIBES REACT TO TASK FORCE

Tribal attitudes toward the Federal Task Force have cooled considerably since the Task Force interference in U.S. v. Washington litigation which resulted in

a reduced salmon share for treaty fishermen. In a September 2 letter to President Carter, Bill Frank, Chairman of the Northwest Indian Fisheries Commission, said that the U.S. proposal to diminish treaty rights without legislation is viewed as a dangerous move, threatening any continued effective relationship between the Federal Task Force and the tribes.

According to Frank, the Northwest Indian Fisheries Commission has had a growing concern about the overall goals and procedures of the Task Force. He said that the Task Force has not taken into consideration the jurisdictions and responsibilities of the Tribes and the state in overall management of the resource, nor in the joint management efforts of these groups.

Frank said, "Before we continue to deal with the Task Force, we want to make sure that they plan to fully implement the Boldt decision and not attempt to abrogate or diminish treaty rights according to popular political whims."

#### COURT ADOPTS JOINT MANAGEMENT PLAN

Among several orders issued on August 31, Judge Boldt adopted the Puget Sound Joint Management Plan which tribal and state representatives have been working on for months. The plan was developed in compliance with a Federal court order of December 15, 1976, directing the state and tribes to establish guidelines for management of the salmon and steelhead resource. Included in the management plan are agreements between fisheries managers as to how run size predictions and spawning escapement goals should be established.

The Joint Management Plan will remain in effect for five years with annual reviews by joint tribal-state committees. Both sides consider the plan to be a "compromise plan". Neither party got exactly what they wanted in all areas, but it is one of the first signs of real progress in the concept of joint state-tribal management.

#### STATE'S MOTION TO MODIFY DECISION NO. 1

The State of Washington has asked Judge Boldt to modify several aspects of Final Decision No. 1 in the "light" of recent State Supreme Court decisions, Federal jurisdiction over some fisheries, and Puyallup III. The State filed a motion on August 8 asking the Judge to: (1) relieve the state of any affirmative burden to accomplish the sharing formula in Final Decision No. 1, (2) exclude all hatchery fish from the treaty share; (3) include on-reservation catch in the treaty 50 percent; (4) exclude ocean interceptions from the calculation, thereby reducing the Indian share, and (5) exclude all fish caught in the IPSFC sockeye and pink fishery from the sharing formula.

The state claims that they are unable to carry out the allocation formula mandated by the Boldt decision because they are bound by State Supreme Court rulings which say that the WDF cannot allocate fish between citizens. The state wants exclusion of the Fraser River sockeye and pink and ocean-caught fish from the sharing formula because the Federal Government has jurisdiction over these fish through the IPSFC and the 200-mile limit legislation.

Boldt has requested that both sides provide him with more written briefing on the state's request, including memoranda on the appropriateness of the motion under certain Federal procedural rules. The Judge will determine whether a hearing is warranted after submission of further written briefs.

PHASE II DISCOVERY SCHEDULE SET

A hearing has been scheduled in Boldt's court for September 28 at 9:30 AM to deal with certain discovery matters and pending motions concerning Phase II of U.S. v. Washington.



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# Northwest Indian Fisheries Commission newsletter

October 10, 1977  
Vol. III, No. 7

## BOLDT'S COURT

It has become almost impossible to keep tabs on the running battle between State and Federal Courts in the Washington fish controversy.

On Saturday, October 7, from a courtroom in San Francisco, Judge Boldt took total control over the fishery and avoided a direct confrontation with the Washington State Supreme Court. Boldt was out of town hearing another case last Thursday, when State Supreme Court Justice Charles Wright issued an order directing WDF Director Gordon Sandison to ignore Boldt's orders.

On September 27 Boldt issued a preliminary injunction continuing his control over the treaty share of Puget Sound coho and ordering the state to issue non-Indian regulations which would protect the treaty share of the harvest. He further ordered the state to continue assisting the Federal Court in enforcement, a responsibility the state has attempted to be relieved of all season.

Boldt's October 7 order gives him control of the entire fishery, both treaty and non-treaty. This relieves the state of any "allocation" responsibilities, thereby reducing the prospects for conflict with the State Supreme Court which has insisted all year that the Department of Fisheries does not have the authority to allocate fish between citizens. Now the state will issue regulations only for "conservation" purposes. (There has been a growing concern that the state is abusing the conservation definition to control Indian fisheries.)

U. S. Attorney Ronald Sim had asked Judge Boldt to place a restraining order against the State Supreme Court. Boldt declined this time, but said that if it becomes necessary to protect treaty fishing rights in this manner, he would enjoin the State's high Court. The State Supreme Court is scheduled to hold another hearing on Judge Wright's decision this week. If Boldt does issue such an order, it would be the first time that a Federal District Court has ever enjoined a State Supreme Court.

Boldt's latest order requires the State to continue to assist the National Marine Fisheries Service, the U. S. Marshal's Service, and the Coast Guard in serving copies of Boldt's order to the fishermen and issuing contempt of court citations to those fishermen who continue to fish illegally.

In spite of Boldt's orders, non-Indians have been fishing illegally all over Puget Sound, in some cases taking advantage of communication delays since Sandison's announcement that he would open areas in compliance with the State Court decision and in other cases in blatant defiance of Boldt's orders. Undoubtedly, the treaty share will be greatly reduced as a result of this illegal fishing.

INDIAN PLAN DUE OCTOBER 15

The Task Force Coordinating Committee, the Indian group organized to work with the President's Task Force, is currently developing an Indian proposal for smoothing implementation of the Boldt decision. This will mean negotiations with the Task Force in several areas and probably will result in some interim compromise on the part of Treaty Tribes. It is too early to determine the exact nature of the negotiations, and individual tribes will have different needs which must be represented in a joint tribal plan. The coordinating committee hopes to have a draft plan by October 15. The Task Force is scheduled to make its final report in mid-November. The Washington Congressional delegation has already drafted legislation that would do everything from abrogate treaties to place management in a federal agency. If the delegation is not satisfied with Task Force proposals, it has threatened to introduce such legislation in January. At a tribal coordinating committee on September 30, all agreed that time is short, and that Tribal Councils must become immediately and fully involved in making policy decisions regarding their treaty rights. The Committee also agreed that the approach must be unified while considering individual tribal needs if it is to be successful. A technical team of biologists and attorneys has been appointed to review the biological and legal aspects of such a plan, and the coordinating committee is working to mobilize tribal councils within the next week.

CATCH MONITORING

The NWIFC and its member tribes are developing a catch monitoring program which will help to eliminate errors in catch reporting and will allow tribes the capability to process and analyze tribal fishery data in an on-going program during and after the fishing season. NWIFC and the tribes have received a \$120,000 grant from U. S. Fish and Wildlife Service for the projects and the tribes will provide approximately \$161,000.

The program will provide the necessary personnel and computer equipment to allow each tribe to edit and code all tribal fish tickets prior to initial entry of data into the Washington Department of Fisheries catch monitoring system. This will allow for direct involvement of tribal fisheries personnel in preparing the fish ticket for data entry, and should reduce the errors that occur with the current methods. The biggest problems have been errors in reporting catch area, date landed, and numbers of fish caught. While vigorous educational and law enforcement efforts at the levels of buyer and fisherman should help alleviate these problems, direct involvement of tribal biologists in analyzing the information should greatly increase the accuracy of the catch reports. This is essential especially for long term management which requires an accurate historical data base if it is to be effective.

The catch monitoring program will include a master computer file of all tribal catch data and tribes will be able to access the data and generate summary catch reports.

The overall effectiveness of the data processing service of WDF will be improved at no additional cost to the state.



GERARD MEETS WITH NWIFC

Forrest Gerard, Assistant Secretary of Interior for Indian Affairs, and Vincent Little, Portland Area BIA Director, met with NWIFC last Friday to discuss Task Force activities.

Gerard was recently appointed to the Federal Task Force on fisheries and this was his first meeting with tribal representatives in the northwest. Gerard said he planned to "defend the treaty right all the way down the line." He also said that, given the political climate today, it is essential that lines of communication remain open and that tribes be "realists" about the current situation.

Most of the meeting was spent briefing Gerard on details of the current fishery situation and tribal needs for a long term resolution of the controversy.

CONTEMPT HEARINGS

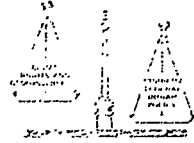
Judge Boldt held hearings for five non-Indian fishermen on September 26 and 27 to show cause why they should not be held in contempt of court for fishing contrary to Boldt's temporary restraining order. The hearings have been continued until October 18 in order to give defense attorneys more time to prepare.

A spokesman for the National Marine Fisheries Service said that NMFS has issued twenty-five contempt citations since Boldt's first temporary restraining order and served approximately 245 Boldt orders on non-Indian fishermen.

U. S. - CANADA TALKS

Indian involvement in negotiations between the United State and Canada has increased this year as the two countries begin talking about fisheries management agreements. Indian representatives, Bernard Gobin (Point Elliott), Guy McMinds (Quinault), Charles Peterson (Makah), Jim Heckman (NWIFC), and Sue Hvalsoe (Dept. of Interior), participated in U. S. - Canada talks held in Seattle last week. The negotiations centered around the establishment of limitations on the interception of native stocks by foreign countries. Both the United States and Canada have implemented 200-mile fisheries limits which will result in new agreements between the two countries about the management of the fisheries. Tribal representation is especially important when the discussion turns to prospective management of the Fraser River sockeye salmon run, a vital run for both United States Indian and non-Indian fishermen. The tribal representatives will continue to participate in U. S. - Canada negotiations over the next few months.

**INTERSTATE CONGRESS  
for  
EQUAL RIGHTS AND RESPONSIBILITIES, INC.**



**STATEMENT OF HOWARD GRAY  
INTERSTATE CONGRESS ON EQUAL RIGHTS  
AND RESPONSIBILITIES**

**BEFORE THE U. S. COMMISSION ON CIVIL RIGHTS IN  
SEATTLE, WASHINGTON**

My name is Howard Gray. I reside at 9001 - 22nd Avenue N.W. in Seattle, Washington. I have resided in Seattle for the past forty-one years and have produced outdoor documentary films for over 25 years. As an independent producer I have documented the Pacific Salmon for the Washington State Department of Fisheries. In this capacity I have been able to witness the gradual depletion of our once great runs.

I served 18 years on the International Pacific Salmon Fisheries Commission. By international treaty this commission was formed to insure the proper escapement and division of catch of the Sockeye Salmon.

Judge Boldt, with his infamous decision, has not only ignored the rights of non-Indian citizens whose livelihood is dependent upon our Salmon resource, but has defied our Fisheries department and our Washington State Supreme Court.

While on a speaking engagement in Montana in early 1975 I was made aware of many injustices brought on by Indian Tribal Jurisdiction problems relating to land and water.

In February of 1976 representatives from 10 Western States met in Salt Lake City and formed the "Interstate Congress for Equal Rights and Responsibilities." As of this date over 18

STATEMENT OF HOWARD GRAY  
Page Two

States have organizations belonging to ICERR.

Most of the media releases seem to indicate that the confrontation is a disagreement between Indian and non-Indian. This interpretation badly misses the mark. The question at hand concerns the erosion of the United States Constitutional rights and civil liberties of Indians and non-Indian alike.

Attempts to rectify the injustics visited upon the ancestors of one segment of our citizenry by sponsoring policies which can only result in heaping indignities and injustices upon another segment I submit must be calssified as regression not worthy of our enlightened "Human Rights" policy so passionately advanced by our present administration.

As one of the founders of ICERR and a Board Member representing the State of Washington I wish, at this time, to bring to your attention certain facts relating to the injustices that are being cast upon our citizens.

In addition my own remarks I am submitting documents from other sources that, in my opinion, are pertinent to the problems now facing us.

Exhibit # 1 is a statement prepared by Blair K. Richendifer, Chairman of the Board of Directors of the Interstate Congress for Equal Rights and Responsibilities. It presents a detailed analysis of the evolution of Indian jurisdiction.

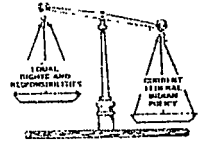
Exhibit # 2 is a statement prepared by Betty Morris a resident of the Quinault Reservation. It details the abuses heaped upon Elmer Milner, a non-Indian residing within the reservation.

EXHIBIT # 1

INTERSTATE CONGRESS  
for  
EQUAL RIGHTS AND RESPONSIBILITIES, INC.

Executive Secretary  
422 Main Street  
Winner, South Dakota 57580  
(605) 842-2500

OCTOBER 20, 1977



TO: THE UNITED STATES COMMISSION ON CIVIL RIGHTS  
FROM: BLAIR K. RICHENDIPER, CHAIRMAN OF THE BOARD  
GENTLEMEN:

I AM SORRY I CANNOT BE WITH YOU TODAY, HOWEVER, I WOULD LIKE TO SUBMIT TO YOU THE INDIAN RESERVATION JURISDICTION QUESTION FROM THE PERSPECTIVE OF NON-TRIBAL MEMBERS<sup>1/</sup> LIVING ON OR NEAR INDIAN RESERVATIONS.

SPACE AND TIME PRECLUDES AN ANALYSIS OF THE HISTORICAL BACKGROUND OF THE LEGISLATIVE ENACTMENTS AND THEIR CONSTRUCTION BY THE FEDERAL COURTS IN THE EVOLUTION OF FEDERAL INDIAN JURISDICTION TO ITS PRESENT STATE

THE HISTORY OF THE FEDERAL INDIAN JURISDICTION IS A RECORD OF CONTRADICTION AND PROLONGED FAILURE. FROM RECOGNITION OF TRIBES AS QUASI-SOVEREIGN NATIONS TO EXTINGUISHMENT OF ALL VESTIGES OF TRIBAL GOVERNMENT, TO LIMITED TRIBAL GOVERNMENT POWERS, TO TERMINATION OF BOTH TRIBAL GOVERNMENTS AND SPECIAL INDIVIDUAL INDIAN RIGHTS, AND NOW TO PROPOSALS OF SOVEREIGN NATION STATUS.

FROM SEPARATION TO ISOLATION TO ASSIMILATION AND ACCULTURATION BACK TO SEPARATISM AND ISOLATION, WITH ALL THE VARIATIONS IN-BETWEEN; FROM ENCOURAGING TRIBAL GOVERNMENT, TO DISCOURAGING IT, AND THEN TO ENCOURAGING IT AGAIN UNDER THE INDIAN REORGANIZATION ACT OF 1934 AND

<sup>1/</sup> It would be improper to use the term non-Indian because many citizens with greater degrees of Indian blood than enrolled members are precluded from membership because of enrollment requirements. See for example, Confederated Salish and Kootenai Tribes v. Moe, 425 U.S. 463-480 (1976)

THE PRESENT INDIAN SELF-DETERMINATION POLICY.<sup>2/</sup> THE CYCLE APPEARS TO HAVE GONE FULL CIRCLE.

AN UNDERSTANDING OF THE SOCIAL, POLITICAL AND ECONOMIC REALITIES, PAST AND PRESENT, AND THE CIRCUMSTANCES OF THE EMIGRATION OF SETTLERS AS THESE RELATE TO RESERVATION LANDS IS NECESSARY TO AN APPRECIATION OF THE ALARM WITH WHICH MANY NOW VIEW THE FEDERAL INDIAN POLICY.

MY SUBJECT ADDRESSES THE CONSTITUTIONAL RIGHTS OF THOSE FORGOTTEN CITIZENS, NUMBERING IN TENS OF THOUSANDS, WHOSE CIVIL RIGHTS ARE PRESENTLY ENCROACHED UPON, AND EVEN THREATENED WITH FUTURE EXTINCTION AS A RESULT OF THE VICISSITUDES OF THE OSCILLATING INDIAN POLICY. TYPICALLY, THEY ARE SMALL FARMERS, RANCHERS, HOMEOWNERS, BUSINESSMEN, AND PROFESSIONAL PEOPLE SUCH AS FOUND IN ANY OTHER SECTION OF RURAL AMERICA. THEY ARE OF ALL NATIONALITIES, AND OF ALL POLITICAL AND RELIGIOUS PERSUASIONS. THEIR LAND IMPROVEMENTS, HOMES, CHURCHES, BUSINESSES, SCHOOLS, ROADS, GOVERNMENTAL INSTITUTIONS, ALL BEAR SILENT TESTIMONY TO THE FAITH WHICH THEY AND THEIR ANCESTORS BEFORE THEM, STORED IN THE REPRESENTATIONS MADE TO THEM BY THEIR FEDERAL GOVERNMENT.

THEY ARE THE CITIZENS WHO WERE INVITED, INDEED URGED, BY THE UNITED STATES TO COME UPON THE RESERVATIONS TO ASSIST IN THE

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<sup>2/</sup> Act of January 4, 1975, P.L. 93-638

<sup>3/</sup> See for example, Act of April 23, 1904, 33 Stat. 302

CIVILIZATION, ACCULTURATION, AND ASSIMILATION POLICIES DURING THE ALLOTMENT PERIOD OF THE FEDERAL INDIAN POLICY.<sup>4/</sup>

SIGNIFICANTLY, THEY ARE OCCUPYING THE RESERVATION AREAS UNDER THE SAME SOURCE OF POWER AND AUTHORITY AS ARE OUR FELLOW INDIAN CITIZENS -- NAMELY, THE PLENARY POWER OF THE UNITED STATES CONGRESS.<sup>5/</sup>

THEY ARE THE CITIZENS AND DESCENDANTS OF CITIZENS WHO ALMOST THREE-QUARTERS OF A CENTURY AGO, WITH THE ENCOURAGEMENT OF THE UNITED STATES, ESTABLISHED, AND FUNDED THROUGH THEIR TAXES, THE COUNTIES, CITIES, TOWNS, SCHOOL DISTRICTS AND OTHER GOVERNMENTAL UNITS WITHIN THE ORIGINAL RESERVATIONS FOR THE BENEFIT AND PROTECTION OF ALL CITIZENS, INCLUDING TRIBAL MEMBERS.

THEIR GOVERNMENTS ARE NOW THREATENED WITH ARBITRARY EXTINGUISHMENT -- TO BE USURPED AND DISPLACED, IF YOU WILL, BY INDIAN TRIBAL GOVERNMENTS. THIS IS PROPOSED TO BE ACHIEVED UNDER THE AUTHORITY OF FEDERAL FIAT.

CITIZENS WHO DO NOT HAVE THE PROPER DEGREE OF INDIAN ANCESTRY SEEMINGLY WOULD BE DISENFRANCHISED AND REDUCED TO THE STATUS OF ALIENS, INTRUDERS -- OUTSIDE THE AMBIT OF THE PROTECTION OF EITHER THEIR RESPECTIVE STATE OR FEDERAL GOVERNMENT.<sup>6/</sup>

<sup>4/</sup> See Seymour v. Superintendent, 368 U.S. 351 (1962); Also Exhibit 1 attached hereto.

<sup>5/</sup> Lone Wolf v. Hitchcock, 187 U.S. 553 (1903)

<sup>6/</sup> See for example, American Indian Policy Review Commission Report of March 16, 1977.

THROUGHOUT THE FRANTIC FRENZY OF THEIR DIALOGUE, THE PROPONENTS OF "INDIAN SOVEREIGNTY" DISPLAY AN IMMODERATE TENDENCY TO OVER-ACCENTUATE THE FIDUCIARY OBLIGATIONS WHICH THE UNITED STATES GOVERNMENT HAS AS TRUSTEE TO INDIAN TRIBES BECAUSE OF REAL OR FANCIED INJUSTICES SUFFERED BY THEIR ANCESTORS.<sup>7/</sup>

THERE IS A RELATED TENDENCY, OF EQUAL PROPORTION, TO IGNORE, OR AT BEST MINIMIZE, THE FACT THAT THE UNITED STATES GOVERNMENT HAS A LIKE FIDUCIARY OBLIGATION AS TRUSTEE TO ALL CITIZENS AND THEIR RIGHTS.

THUS, ATTEMPTS TO RECTIFY THE INJUSTICES VISITED UPON THE ANCESTORS OF ONE SEGMENT OF OUR CITIZENRY BY SPONSORING POLICIES WHICH CAN ONLY RESULT IN HEAPING INDIGNITIES AND INJUSTICES UPON ANOTHER SEGMENT, I SUBMIT, MUST BE CLASSIFIED AS REGRESSION, NOT WORTHY OF OUR ENLIGHTENED "HUMAN RIGHTS" POLICY SO PASSIONATELY ADVANCED BY OUR PRESENT ADMINISTRATION.<sup>8/</sup>

NON-MEMBERS HAVE NO QUARREL WITH THE FACT THAT THE SOVEREIGN NATION POLICY MAY BE MOST BENEFICIAL AND DESIRABLE FOR THOSE RESERVATIONS WHERE THE TRIBE STILL EXISTS AS A DISTINCT AUTONOMOUS ETHNIC AND CULTURAL COMMUNAL TYPE COMMUNITY; WHERE THE NON-MEMBER IS VIRTUALLY EXCLUDED AND THE POPULATION IS MADE UP ENTIRELY OF TRIBAL MEMBERS; AND THE LANDS ARE OWNED IN TRUST BY THE TRIBE OR TRIBAL

<sup>7/</sup> A tendency which would ultimately be most inimical to our Indian citizens, See Federal Indian Affairs, p.

<sup>8/</sup> For example, President Carter's United Nations Speech of March 15, 1977.

MEMBERS. HOWEVER, EVEN THIS WOULD BE OBJECTIONABLE IF THE SOVEREIGNTY WOULD TEND TO INTERFERE WITH TRAFFIC AND SERVICES OVER SUCH STATE OR PRIVATE ROADS AND UTILITIES CONSTRUCTED AND MAINTAINED WITHIN THE ORIGINAL RESERVATION BOUNDARIES.

HOWEVER, EXCLUDING THOSE CLOSED RESERVATIONS WITHIN THE STATES OF ARIZONA AND NEW MEXICO, A LARGE MAJORITY OF THE TOTAL RESERVATION INDIAN POPULATION LIVES WITHIN RESERVATIONS WHICH WERE, AT THE TURN OF THE CENTURY, SUBDIVIDED INTO INDIVIDUAL ALLOTMENTS,<sup>9/</sup> AND THE SURPLUS LANDS SOLD FOR THE INDIANS' BENEFIT UNDER THE HOMESTEAD, TOWNSITE, AND PUBLIC LAND LAWS OF THE UNITED STATES.<sup>10/</sup>

<sup>9/</sup> General Allotment Act of 1887, 24 Stat. 389

<sup>10/</sup> Research reveals that at the time of the last census, 477,458 Indians lived within Federal Indian areas. Of this total, 329,861 resided within the States of Alaska, Arizona, New Mexico and Oklahoma. Significantly, there are no reservations within the States of Alaska and Oklahoma. The major concentrations of Indians living within the States of Arizona and New Mexico reside within closed reservations wherein non-Indians are generally excluded. There are a total of some 118 Federal Indian Reservations in the remaining States West of the Mississippi, with a total in-residence Indian population of 130,566. Of the 118 reservations West of the Mississippi, only 8 had a total in-residence Indian population in excess of 3,000. Of these 8, only the Turtle Mountain Reservation in North Dakota does not appear to have been opened up under the Surplus Land Sales Acts. Of the remaining reservations, only 34 have in-resident populations in excess of 1,000 Indian persons. At least 25 of these reservations, having an Indian population of more than 80,000 in-residence, were "opened" under Surplus Sales Legislation. Most of the remaining 93 reservations were allotted; subsequently, individual Indians secured Fee Patents and many of these allotments were ultimately conveyed to non-member ownership. These statistics tend to point out two relevant points: First, that over 60% or some 80,000 of the Indian population residing within reservations (outside of New Mexico and Arizona) reside within reservations which have non-member homesteaders and settlers authorized to be there under specific Congressional enactment; Second, the remaining 40% or 50,000 Indians occupy the remaining 93 reservations. Thus, it is seen that the Indian population of these remaining reservations would average just over 500 Indians per reservation. These reservations have not avoided State involvement. Most, if not all, have highways, streets, utilities, and other facilities constructed and maintained by State taxes. Sources: Klien, Encyclopedia of the American Indian, 2nd Ed., Vol 1 (1973), p. 147-195; Taylor, The States and Their Indian Citizens, U.S. Dept. of Interior, Bureau of Indian Affairs (1972) p. 176-177; Federal and State Indian Reservations, pp. 131, 180, 189, 191, 193, 197-98, 316, 317-18, 330, 335, 339, 343, 359, 387, 393-94, 415-16.



IN MY OWN STATE OF MONTANA, AS A RESULT OF THE "OPENING" OF RESERVATIONS, THERE ARE NEARLY 50% MORE NON-MEMBERS LIVING WITHIN THE ORIGINAL BOUNDARIES OF ITS SEVEN INDIAN RESERVATIONS THAN THERE ARE TRIBAL MEMBERS. <sup>11/</sup>

TYPICALLY, ON OPEN RESERVATIONS, THE FEDERAL INDIAN JURISDICTIONAL POLICY AT PRESENT, AND WITHOUT THE IMPLEMENTATION OF THE NEW REVOLUTIONARY SOVEREIGN NATION PROPOSALS, HAS DONE EXACTLY WHAT GOVERNMENT AND LAW IS USUALLY EXPECTED TO PREVENT.

IT HAS BEEN THE CAUSE OF THE POLARIZATION OF THE RESERVATION POPULATION. IT HAS ARBITRARILY CREATED TWO DISTINCT CLASSES OF CITIZENS WITH UNRELATED AND OPPOSING GOVERNMENTS, EACH COMPETING FOR DOMINANCE WITHIN THE SAME TERRITORIAL AREA. IT HAS CREATED JEALOUSY AND FRICTION BETWEEN THESE CLASSES AND THEIR GOVERNMENTS WHERE LITTLE HAD PREVIOUSLY EXISTED. <sup>12/</sup>

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<sup>11/</sup> In the State of South Dakota, if the Court of the United States should decide in the pending Rosebud case that the lands opened to homesteading and settlement were not extinguished from the reservation boundaries, the non-member population on the South Dakota Reservations will far exceed the Indian population. See Rosebud Sioux Tribes v. Kneip, U.S. Ct. Docket No. 75-562.

<sup>12/</sup> Although jurisdiction questions within the reservation are still evolving through literally hundreds of Federal Court cases now in progress, it can be stated generally, where the States have not exercised P.L. 280 privileges, as follows:

- a. States, and their governmental units, absent governing Acts of congress, are unable to exercise any civil jurisdiction over tribal members on the reservation if the State action infringes upon the right of reservation Indians to make their own laws and be governed by them. Thus, internal affairs of Indians remain exclusively within whatever Tribal government exists. Williams v. Lee, 358 U.S. 217 (1959)
- b. Reservations, as originally created, and no matter how extensively the Indian land title has been diminished, cannot be extinguished without a showing of the clear intent of Congress to do so. Seymour v. Superintendent, 368 U.S. 351(1959)

(Footnote <sup>12/</sup> continued on page 7)

THE OPEN RESERVATIONS ARE AGONIZED WITH UNSOLVED LEGAL MATTERS.

JURISDICTION OVER PERSONS AND PROPERTY IS AN IMPOSSIBLE TANGLE.

TITLES TO LANDS ARE LITERALLY SCARRED WITH UNANSWERED QUESTIONS.

AMERICAN CITIZENS, TRIBAL MEMBERS AND NON-MEMBERS ALIKE, ARE BEING

FLAGRANTLY DENIED BASIC CONSTITUTIONAL RIGHTS. <sup>13/</sup>

WHY? YOU MAY ASK:

AT THIS TIME IT IS IMPORTANT TO NOTE THAT THE PRESENT LAW HAS

12/(Continued)

c. Generally tribal governments do not have jurisdiction over non-members residing within the original boundaries. Many tribal governments have passed ordinances assuming civil jurisdiction in civil actions between a member and a non-member upon stipulation of both. Others provide for non-members to institute an action against the tribal member if the non-member stipulates to submit his person and all his property to the tribal jurisdiction. United States v. McBratney, 104 U.S. 621 (1881)

d. The State can assume limited civil and criminal jurisdiction over members upon complying with P.L. 280, and upon approval by referendum vote of the majority of the adult members of the Tribe. Title 18, Sec. 1362, U.S.C.

e. The Federal courts do not exercise civil jurisdiction over civil matters, except in limited ways which are not relevant to this discussion. See Federal Indian Law (1958), p.341

f. The Federal courts do assume criminal jurisdiction over members and non-members in felony cases coming within the major crimes and assimilative crime provisions, where the offense has been committed by or upon an Indian. Title 18, Sec. 1152, U.S.C.

g. The Federal courts do not assume jurisdiction over misdemeanor crimes committed by Indians, leaving these offenses to the Tribal authorities. Title 18, Sec. 1152, U.S.C.

13/ For Example, on the Flathead Reservation in Montana, where your speaker lives as a fourth generation imigrant, the State has assumed criminal, but not civil, jurisdiction under P.L. 280. Some of the enigmas which frequently arise are briefly as follows:

a. The State continues to exercise criminal jurisdiction over Tribal members. Problems arise when the statutes have overlaps between the civil and criminal areas.

b. Tribal members, charged with crimes, unable to post property bonds, and property bonds of member relatives and friends not being acceptable because of lack of State civil jurisdiction to enforce security contracts, are remaining in jail for lack of bail.

c. Members, on trial for serious felonies, being tried by juries made up predominantly of non-members, who subconsciously, or otherwise, have built-in resentment against the accused because of his immunity from other State civil laws, cannot expect a fair and impartial trial.

NOT ALWAYS BEEN THE ACKNOWLEDGED LAW,<sup>14/</sup> BUT, RATHER HAS EVOLVED ALMOST EXCLUSIVELY FROM A SERIES OF FEDERAL COURT CASES.

DURING THE 50 YEARS OF THE ALLOTMENT PERIOD, AS A RESULT OF THE FEDERAL POLICY PERMITTING BREAK-UP OF TRIBAL ENTITIES AND TRIBAL GOVERNMENTS, A LEGAL VACUUM WOULD HAVE EXISTED. BUT, HISTORY REVEALS THAT THIS WAS NOT THE INTENTION OF THE FEDERAL GOVERNMENT.

SHORTLY AFTER THE ARRIVAL OF THE HOMESTEADERS AND SETTLERS, THEY, TOGETHER WITH THEIR BROTHER INDIAN CITIZENS,<sup>15/</sup> ESTABLISHED STATE AND LOCAL GOVERNMENTS ON THE THEN SUPPOSEDLY EXTINGUISHED RESERVATIONS,<sup>16/</sup> THE FEDERAL GOVERNMENT CONCERNED ITSELF ALMOST

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<sup>14/</sup> See Federal Indian Law (1958), p. 379

<sup>15/</sup> In those areas where the State assumed jurisdiction over most civil matters during this more than half-century period when Tribal governments were dormant, a further question emerges: P.L. 380 permitted those States not then (1953) having jurisdiction over Tribal members to assume such by taking affirmative legislative action. The Court cases seem to conclude that if the latter was not accomplished, then no jurisdiction had ever been valid. Consequently, it can only be concluded that, although assuming such, the State never had such valid jurisdiction.

It is elementary that any orders, decrees or preceeding of a Court not having basic jurisdiction are void and of no force and effect.

Your speaker has found no cases in point where the Courts have addressed this specific question. Until the retrospective effects of this ultra vires State jurisdiction has been tested, all decrees and orders of State courts issued during the period of invalid jurisdiction are suspect. Quiet title actions, tax and mortgage foreclosures, partition suits, probate proceedings, guardianship conveyances, and such, because of the possibility that a Tribal member, though not identified as such in the proceedings, was a party, are particularly critical.

<sup>16/</sup> Many maps, sales advertisements and regulations promulgated by the B.L.A., Bureau of Land Management and Department of Interior referred to these lands "within the Former Reservation." Nor was description confined to the Administration. Congress, in the body of their Acts, frequently used the term "former" in describing the lands. See for example, Act of July 19, 1914, 38 Stat. 510. In the case of Clairmont v. United States, 225 U.S. 537 (1912) the U.S. Supreme Court has held that where Indian title to lands had been extinguished, the lands were no longer within the reservation.

EXCLUSIVELY WITH SELLING THE SURPLUS LANDS AND MANAGING THE FUNDS AND TRUST LANDS OF THE MEMBER INDIANS. EXCEPT IN THESE LATTER AREAS; THE STATES GENERALLY EXERCISED EXCLUSIVE JURISDICTION, BOTH CIVIL AND CRIMINAL, OVER ALL CITIZENS -- EMANCIPATED MEMBERS (I.E. MEMBERS WHO HAD RECEIVED FEE PATENTS TO THEIR ALLOTMENTS), TRUST-PATENT MEMBERS, AND NON-MEMBERS ALIKE ON OPEN RESERVATIONS, AND CONTINUED TO DO SO FOR THE FOLLOWING HALF-CENTURY. STATE COURTHOUSE RECORDS SHOW THAT AS LATE AS THE LATE 1950'S SOME TRIBAL GOVERNMENTS WERE USING THE STATE COURTS TO ENFORCE THEIR RIGHTS AGAINST THEIR OWN MEMBERS. THE FEDERAL CONGRESS AND ADMINISTRATION APPEAR TO HAVE ENCOURAGED THIS LOCAL GOVERNMENT JURISDICTION.<sup>17/</sup>

UNDER THE EVOLVING LAW AS PRONOUNCED BY THE FEDERAL COURT CASES, THE STATE COURTS ARE NOW PRECLUDED FROM ASSUMING CIVIL JURISDICTION OVER ACTIONS BY A NON-MEMBER AGAINST A MEMBER WHERE THE SUBJECT MATTER OF THE ACTION OCCURRED WITHIN THE RESERVATION.

THE FEDERAL COURTS HAVE GENERALLY DENIED THEIR JURISDICTION.

AS A GENERAL RULE TRIBAL COURTS HAVE NOT, AND PROBABLY CANNOT, UNDER THEIR PRESENT CONSTITUTIONS AND ORDINANCES, COME FORWARD WITH ANY REASONABLE SUBSTITUTE FOR THE NOW DISPLACED JURISDICTION.

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<sup>17/</sup> See Act of August 19, 1949, 63 Stat. 621, for one of many similar examples.

MOST TRIBES NOW PERMIT CIVIL ACTIONS INVOLVING DISPUTES BETWEEN MEMBERS AND NON-MEMBERS EITHER 1] WHERE THERE IS A CONSENT BY STIPULATION BETWEEN BOTH PARTIES, OR 2] WHERE, THOUGH NOT CONSENTED TO BY THE TRIBAL MEMBER, THE NON-MEMBER AGREES TO SUBMIT HIS PERSON AND HIS PROPERTY TO THE TRIBAL COURT JURISDICTION.

HOWEVER, THE LIMITATIONS OF THEIR SUBPOENA AND PROCESS POWERS, BOTH AS TO PERSON AND PROPERTY; THEIR LIMITED POWERS AND AUTHORITY TO ENFORCE THEIR ORDERS AND DECREES INSIDE AND OUTSIDE THE BOUNDARIES OF THEIR JURISDICTION BY REASON OF STATE COURTS' REFUSAL TO EXTEND; IN MOST CASES, FULL FAITH AND CREDIT TO TRIBAL COURTS; THE ALMOST NON-EXISTENCE OF A BODY OF SUBSTANTIVE LAW,<sup>18/</sup> ALL DEMONSTRATE THEIR IMPOTENCY TO PROVIDE ANY DEGREE OF RELIEF FOR THEIR TRIBAL MEMBER OR NON-MEMBER.

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18/ A typical provision taken from the Flathead Reservation Ordinance Code reads as follows:

"In all civil cases the Tribal Court of the Flathead Reservation shall apply any laws of the United States as may be applicable, any authorized regulations of the Interior Department, and any ordinance or custom of the Tribe not prohibited by such Federal Laws. If any doubt arises as to the customs and usages of the Tribe the court may request the advise of the law enforcement committee of the Confederated Salish and Kootenai Tribal Council as to these customs and usages and accept them.

Any matters that are not determined by this process to be traditional customs and usages of the Tribe, or found to be covered by applicable Federal Law, authorized regulations, or Tribal ordinances of the Flathead Reservation, shall be decided by the Tribal Court of the Flathead Reservation according to the laws of the State of Montana."

BECAUSE OF THE DEMONSTRATED LACK OF A COMPETENT FORUM, MOST CIVIL DISPUTES BETWEEN NON-MEMBERS AND MEMBERS ARE NOT BEING JUDICIALLY RESOLVED.<sup>19/</sup>

DESPITE THE CHAOS WHICH THE FEDERAL INDIAN POLICY, AS IMPLEMENTED, HAS CREATED, MOST NON-MEMBERS HAVE RESOLVED THEMSELVES TO THE FACT THAT IT IS THE LAW.<sup>20/</sup>

IT BECOMES APPARENT THAT ONE GOVERNMENT MUST ULTIMATELY DOMINATE AND ONE MUST BE SUBSERVIENT.

THAT ULTIMATE DECISION IS THE FUNDAMENTAL BASIS OF CURRENT CONTROVERSY.

FOR AN UNDERSTANDING OF THE MERITS OF THE RESPECTIVE POSITIONS FURTHER ANALYSIS IS NECESSARY.

<sup>19/</sup> The non-member, to minimize the effects of financial loss, has reverted to discriminatory practices which in other areas would be rank violations of existing Federal civil rights acts. Here, however, discrimination is not directly practiced by reason of race, color or national origin; but, it is rationalized, indirectly because of non-jurisdiction by reason of race, color or national origin.

This discrimination has been manifested in various areas: employment, housing, leasing, consumer credit, mortgages, to name a few.

Perhaps one of the most confusing areas of the conflicting jurisdiction arises in the case of families made up of both classes of citizenship, resulting from frequent intermarriage. One of the spouses is a member, the other is not, perhaps some of the natural children are members, and, because of enrollment requirements, some are not. Resolving property, custodial and other related matters becomes virtually impossible.

<sup>20/</sup> For example, Williams v. Lee, 358 U.S. 217 (1958); Kennerly v. District Court, 400 U.S. 423 (1971); McClanahan v. Arizona, 411 U.S. 164 (1973); Confederated Salish and Kootenai Tribes v. Moe, supra; Seymour v. Superintendent, 368 U.S. 381 (1962); Mattz v. Arnett, 412 U.S. 481 (1973)

THE "LEADERSHIP" ACTIVIST OF THE INDIAN MOVEMENT SEEM TO RECOGNIZE THE IMPOSSIBILITY OF THE PRESENT JURISDICTIONAL STATUS AND WOULD TAKE UNREALISTIC MEANS TO CORRECT IT. IN A BLIZZARD OF PROPAGANDA FOCUSED TOWARD POLITICAL SEPARATION, SOVEREIGNTY OF INDIAN TRIBES, THE LEGITIMACY OF AUTONOMOUS INDIAN INSTITUTIONS, INCLUDING TRIBAL COURTS, THEY HAVE INTRODUCED THE IDEA OF ELIMINATING ALL PREVIOUSLY ASSUMED STATE AND LOCAL GOVERNMENT JURISDICTION BY EXTENDING TRIBAL GOVERNMENT JURISDICTION OVER ALL MATTERS AND PERSONS WITHIN ORIGINAL RESERVATION BOUNDARIES.

THIS IDEA HAS BEEN DRAFTED INTO A MAJOR POLICY POSITION BY RESOLUTIONS ADOPTED BY THE LAST CONVENTION OF THE NATIONAL CONGRESS OF AMERICAN INDIANS IN SALT LAKE CITY, UTAH, IN OCTOBER OF 1976.

THE AMERICAN INDIAN POLICY REVIEW COMMISSION, ESTABLISHED BY CONGRESS IN 1975, AND MADE UP OF 3 SENATORS, 3 CONGRESSMEN, AND 5 REPRESENTATIVES FROM THE INDIAN COMMUNITY, ON MARCH 16, OF THIS YEAR, GAVE OFFICIAL SANCTION TO THIS CONCEPT BY REPORTING THAT FEDERAL POLICY OUGHT TO GUARANTEE TRIBAL GOVERNMENTS HAVE ALL THE POWER NOW HELD BY NON-INDIAN GOVERNMENTS.<sup>21/</sup>

RECENT FEDERAL CASES, UNDER EXTREMELY LIMITED FACTUAL SITUATIONS, WOULD SEEM TO SUPPORT SOME LIMITED TRIBAL GOVERNMENT JURISDICTION OVER NON-MEMBER ACTIVITY.<sup>22/</sup>

<sup>21/</sup> At the time of drafting, no copies of the Report have been made available; thus, no complete analysis is possible.

<sup>22/</sup> United States v. Mazurie, 419 U.S. 544 (1975); Oliphant v. Schlie, No. 74-2154 (9th Cir., August 24, 1976)

WHOLESALE REVISIONS OF TRIBAL CONSTITUTIONS AND LAW AND ORDER CODES HAVE BEEN DRAFTED IN THE FURTHERANCE OF THIS OBJECTIVE. EXHAUSTIVE REVIEW OF THESE DOCUMENTS HAS FAILED TO UNCOVER ONE INSTANCE WHICH WOULD PROVIDE THE NON-MEMBER AN OPPORTUNITY TO PARTICIPATE IN ANY MANNER IN THOSE GOVERNMENTS.

THE POSITION OF THE NON-MEMBER FOR STATE GOVERNMENTAL DOMINANCE IS BRIEFLY AS FOLLOWS:

CONCEPTUALISTIC IDEAS THAT INDIANS ARE A FOREIGN PEOPLE AND INDIAN RESERVATIONS ARE A FOREIGN LAND ARE, UNDER PRESENT FACTUAL CONDITIONS, TOTALLY INCONSISTENT WITH THE CITIZENSHIP OF INDIANS IN THE UNITED STATES AND THE STATE WHEREIN THEY RESIDE. INDIANS ARE ENTITLED TO THE BENEFITS AND PROTECTION OF STATE LAWS; THEY ARE ENTITLED TO VOTE AND DO SO; MANY HOLD STATE ELECTIVE AND APPOINTIVE OFFICES, DESPITE THE ANOMALY THAT THEY ARE NOT ANSWERABLE TO THE VERY LAWS WHICH THEY ARE LEGISLATING, ADMINISTRATING OR ADJUDICATING.

THEY SERVE AS JURORS IN OUR JUDICIAL SYSTEM, EVEN THOUGH THEY ARE NOT RESPONSIBLE TO THE JURISDICTION OF THAT JUDICIAL SYSTEM.

NON-MEMBERS REJECT THE IDEA, THAT WHEN THE UNITED STATES DELEGATES ITS POWERS TO ACT AGAINST CITIZENS ON AN INDIAN RESERVATION, IT CAN DO SO FREE OF CONSTITUTIONAL RESTRAINTS. THE UNITED STATES IS ENTIRELY A CREATURE OF THE CONSTITUTION. ITS POWER AND AUTHORITY HAVE NO OTHER SOURCE.



IT CAN ONLY ACT IN ACCORDANCE WITH ALL LIMITATIONS IMPOSED BY THE CONSTITUTION.

NON-MEMBERS CONTEND THAT THE SHIELD WHICH THE BILL OF RIGHTS AND OTHER PARTS OF THE CONSTITUTION PROVIDED TO PROTECT PERSONAL AND PROPERTY RIGHTS OF ALL UNITED STATES CITIZENS SHOULD NOT BE STRIPPED AWAY JUST BECAUSE THEY HAPPEN TO BE UPON AN INDIAN RESERVATION.<sup>23/</sup>

THEY WOULD REMIND THE FEDERAL GOVERNMENT, AND ALL PROPONENTS OF THE PROPOSAL, THAT INDIAN TRIBAL GOVERNMENTS HAVE NOT BEEN, AND PROBABLY NEVER CAN BE, CONSTITUTED IN SUCH WAY THAT THEY CAN HAVE THE SAME KIND OF QUALIFICATIONS THAT THE CONSTITUTION GUARANTEES IN THE EXERCISE OF FEDERAL AND STATE GOVERNMENTS. IN PART THIS IS ATTRIBUTABLE TO THE INHERENT DIFFERENCES, VALUES, AND ATTITUDES THAT SEPARATE THE INDIAN GOVERNMENTS FROM NON-INDIAN AMERICA.

THE FUNDAMENTAL REASON FOR THEIR EXISTENCE IS TO ENHANCE THE ECONOMIC AND SOCIAL WELFARE OF THEIR OWN MEMBERS, TO THE EXCLUSION OF ALL OTHERS, WHO CANNOT QUALIFY FOR MEMBERSHIP BY REASON OF RACE, CREED, OR NATIONAL ORIGIN.

THERE IS NO TRADITIONAL INDIAN DOCTRINE PROVIDING FOR THE SEPARATION OF POWERS.

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<sup>23/</sup> See Reid v. Covert, 354 U.S. 1 (1957); Panama Refining Co. v. Ryan, 293, U.S. 388, 420-430 for analogous cases.

NOR IS THERE ANY TRADITIONAL INDIAN DOCTRINE SEPARATING ITS GOVERNMENT FROM ITS CULTURE OR RELIGION. ON THE CONTRARY, IN MANY INDIAN GOVERNMENTS THE INDIAN RELIGION IS THE VERY FOUNDATION OF ITS GOVERNMENT.<sup>24/</sup>

TYPICALLY, THE TRIBAL GOVERNING BODY PROVIDES THE RULES OF SUBSTANTIVE LAW AS WELL AS PROCEDURAL, AND THUS EXERCISES LEGISLATIVE, EXECUTIVE, AND JUDICIAL POWERS OVER ALL WHO ARE GOVERNED. SUCH BLENDING OF FUNCTIONS IN ONE BRANCH OF THE GOVERNMENT IS REPUGNANT TO THE "LETTER AND SPIRIT" OF THE FEDERAL CONSTITUTION RELATING TO SEPARATION OF POWERS.

MOREOVER, SUBORDINATE ADMINISTRATORS, JUDGES, PROSECUTORS, AND EVEN JURORS, ARE APPOINTED, PAID BY, AND RESPONSIBLE TO THE TRIBAL GOVERNING BODY. THE LATTER'S DOMINANCE OVER THE SOCIAL, POLITICAL AND ECONOMIC AFFAIRS OF THE RESERVATION INDIAN ARE TOO OBVIOUS TO BE COMMENTED ON.

SUFFICE TO SAY THAT MEMBERS MUST LOOK TO THE GOVERNING BODY FOR JOB PROMOTIONS, ENROLLMENT OF THEIR CHILDREN, LEASES AND GRAZING PERMITS, RIGHT-OF-WAYS, CREDIT FOR BUSINESSES, FARMING OR RANCHING PURPOSES, PRO-RATA DIVIDEND PAYMENTS -- IN SHORT, THEIR VERY SURVIVAL.<sup>25/</sup>

<sup>24/</sup> See 82 Harvard Law Review, 1343, et. seq. (1969)

<sup>25/</sup> Federal Indian Law (1958) citing *Journeycake v. Cherokee Nation*, 155 U.S. 196 (1894) "The distinctive characteristic of [Indian] communal property is that every member of the community is an owner of it as such."

AT THIS POINT IT IS IMPORTANT TO NOTE THAT THE ENROLLED MEMBER HAS A PERSONAL OWNERSHIP INTEREST IN ALL TRIBAL COMMUNAL PROPERTY,<sup>26/</sup> AND HAS A PERSONAL RIGHT TO SHARE IN NET PROCEEDS FROM THE SALES AND REVENUES OF TRIBAL RESOURCES.

UNDER MOST TRIBAL CONSTITUTIONS, GOVERNING BODIES ARE NOT ONLY RESPONSIBLE FOR THE GOVERNMENTAL WELFARE, BUT ALSO THE ECONOMIC MANAGEMENT OF TRIBAL LANDS AND RESOURCES IN ORDER TO PROVIDE DIVIDENDS IN THE FORM OF PRO-RATA PAYMENTS TO MEMBERS -- THUS MANY OF THE ATTRIBUTES OF A PROFIT PRODUCING CORPORATION.<sup>27/</sup>

CONTRARY TO CONTENTIONS BY SPOKESMEN FOR THE LEADERSHIP ACTIVISTS GROUPS, THE 1968 INDIAN BILL OF RIGHTS<sup>28/</sup> AFFORDS NO PROTECTION. IMPLICIT IN TRIBAL GOVERNMENT AND TRIBAL COURT JURISDICTION OVER NON-MEMBERS' PERSON AND PROPERTY, WHERE THE LATTER HAS NO REPRESENTATION, IS A VIOLATION OF THOSE "FUNDAMENTAL PRINCIPLES OF LIBERTY AND JUSTICE WHICH LIE AT THE BASE OF ALL OUR CIVIL AND POLITICAL INSTITUTIONS."<sup>29/</sup>

LEGISLATION, ADMINISTRATION, AND ADJUDICATION OF TRIBAL GOVERNMENT WOULD BE IN THE HANDS OF PERSONS, OR REPRESENTATIVES OF PERSONS,

<sup>26/</sup> Braker, American Indian Tribal Courts, Am. Bar Journal, Vol 62, p. 1002-1007, August 1976.

<sup>27/</sup> See Title 25, Section 477 U.S.C.A.

<sup>28/</sup> Act of April 21, 1968, 82 Stat 77, Codified at 25 U.S.C.A. § 1302-03.

<sup>29/</sup> Herbert v. Louisiana, 272 U.S. 312

WHO, AT ALL STAGES, WOULD HAVE DIRECT AND PERSONAL MOTIVES TO BE BIASED AND FAVORABLE TO ONE CLASS OF CITIZENS TO THE PREJUDICE OF THE OTHER.

IF, INDEED, "EQUAL PROTECTION," AND, THUS, REPRESENTATION, WERE EXTENDED TO THE NON-MEMBER, THE PROBLEM WOULD NOT BE ELIMINATED BECAUSE OF THE COMPETITION BETWEEN CLASS INTERESTS. THE PARTICIPATION BY MEMBERS, WHO HAVE PERSONAL AND DIRECT INTERESTS IN GOVERNMENTAL MATTERS, WOULD MAKE FAIR AND IMPARTIAL HEARINGS VIRTUALLY IMPOSSIBLE, THUS, PRECEDURAL "DUE PROCESS" WOULD BE VIOLATED.<sup>30/</sup>

AS FEDERAL TAX PAYING CITIZENS, NON-MEMBERS WOULD SUGGEST THAT IT IS UTTERLY UNREALISTIC, SHORT OF MASSIVE INJECTIONS OF FEDERAL TAX DOLLARS, TO PRESUME THAT TAX BASES AVAILABLE TO TRIBAL GOVERNMENTS COULD POSSIBLY SUPPORT THE CREATION AND MAINTENANCE OF THE SOME 118 SEPARATE, AUTONOMOUS GOVERNMENTS WITH STANDARDS NECESSARY TO SATISFY THE COMPLEX SOCIAL, ECONOMIC, AND POLITICAL NEEDS PRESENT EVEN IN THE MODERN DAY RESERVATION SOCIETY.<sup>31/</sup>

IN SUMMARY, THE PRINCIPLE IS UNIVERSALLY ADMITTED THAT THE FEDERAL GOVERNMENT IS ONE OF ENUMERATED POWERS UNDER THE FEDERAL CONSTITUTION.

<sup>30/</sup> See Palko v. Connecticut, 302 U.S. 319, wherein J. Cardozo states "Fundamental too in the concept of due process, and so in that of liberty, is the though that condemnation shall be rendered only after trial. . . the hearing, moreover, must be a real one, not a sham or a pretense."

<sup>31/</sup> See Footnote 10/, Page 5, supra.

WHILE THE POWERS UNDER THE COMMERCE AND TREATIES CLAUSES ARE INDEED BROAD,<sup>32/</sup> THE NON-MEMBER CONTENDS THAT THE FEDERAL GOVERNMENT CANNOT, UNDER ANY ENUMERATED POWER, DELEGATE ITS POWERS AND AUTHORITY TO GOVERN UNITED STATES' CITIZENS RESIDING WITHIN THE UNITED STATES TO ARBITRARY TRIBAL GOVERNMENT WHERE THOSE CITIZENS "HAVE MEN SET OVER THEM, WITHOUT THEIR CHOICE OR ALLOWANCE, WHO HAVE POWER TO GOVERN THEM, AND JUDGE THEIR CAUSES WITHOUT A RULE."<sup>33/</sup>

IF THIS BE A FEDERAL GOVERNMENT POLICY, CANNOT IT BE STATED AS WAS SAID EARLIER ABOUT THE FEDERAL INDIAN POLICY, THAT THE CIRCLE OF THE GOVERNMENT'S POLICY TOWARD NON-MEMBER CITIZENS HAS ALSO GONE FULL CIRCLE TO PRE-CONSTITUTIONAL STATUS, REQUIRING US TO AGAIN REVIEW THE BASIC PRINCIPLES OF LIBERTY CONTAINED IN OUR AMERICAN DECLARATION OF INDEPENDENCE?

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<sup>32/</sup> The Federal Government's power over Indians is derived from Art. §8, Cl. 3, of the United States Constitution; Perrin v. United States, 232 U.S. 478; United States v. Kagama, 118 U.S. 375.

<sup>33/</sup> "Arbitrary Government Described", American Historical Documents, Harvard Classics, Volume 43, p. 85.

## E X H I B I T "1"

## FLATHEAD LAKE, MONTANA,

Is situated near to and slightly southwest of the Glacier National Park, the region of eternal ice, which may be reached by automobile from the lake in about three hours. The lake is in a valley 15 miles wide and 30 miles long, between ranges of the Rocky Mountains of scenic beauty, whose slopes are covered with fir, larch, and pine trees. The lake has an area of approximately 360 square miles. The Flathead National Forest lies north, west, and east of the valley. The lake and streams abound in fish, and hunting is excellent. The lake is utilized for bathing, sailing, boating, and yachting, and several steamboats ply between the various towns upon its borders. The shores are well adapted for boat landings and the erection of wharves.

The lands abutting the north half of the lake were disposed of many years ago, and numerous homes and fruit orchards have been established thereon. The south half of the lake is within the former Flathead Indian Reservation. The climate is delightful, the thermometer ranging from about zero to 75° or 80° above. Apples, pears, cherries, peaches, and small fruits of the finest quality are raised upon lands bordering upon the lake, many without irrigation.

Twenty-one groups of villa sites fronting on said lake have been surveyed into 905 lots or villa sites for disposition, and a sale of such portion thereof as the demand may warrant will take place in accordance with the regulations hereto attached. The lots contain not less than two or more than five acres.

These villa sites are not only well adapted for summer villas for persons of wealth but for permanent homes for persons of moderate means and for fruit raising. Good roads, adapted to automobile use, skirt the shores of the lake.

The location of the groups of villa sites is shown upon the above plat, and the name of each group and the number of villa sites are as follows:

| Name.           | Lots. | Name.           | Lots. | Name.           | Lots. |
|-----------------|-------|-----------------|-------|-----------------|-------|
| Abcon.....      | 14    | Foston.....     | 79    | Orchard.....    | 44    |
| Arms.....       | 11    | Foley Park..... | 22    | Pollard.....    | 24    |
| Baptiste.....   | 20    | Gronce.....     | 83    | Safety Bay..... | 181   |
| Big Arm.....    | 64    | Hiland.....     | 3     | Station.....    | 19    |
| Blue Grass..... | 40    | Larches.....    | 15    | White Swan..... | 81    |
| Cromwell.....   | 21    | Matterhorn..... | 84    | Wild Horse..... | 22    |
| Dayron.....     | 42    | Narrows.....    | 8     | Wigwag.....     | 17    |

The sale will begin at Polson on July 26, 1915, and continue at such other places as may be selected by the superintendent of sale. Polson may be reached from Kalispell either from east or west by lake shore. Automobile stages run daily from Polson on the lake to Ravalli, on the Northern Pacific Railway, and from Elmo, on the lake, to Plains, on said railway, via Camas Hot Springs. Trains from Kalispell, on the Great Northern Railway, connect at Somers for the morning trips of the steamers over the lake to Polson, and from Somers to Big Arm by way of Dayton, Elmo, and many other wharf landings on the western shore. Stop-over privileges can be obtained at Missoula, on the Chicago, Milwaukee & St. Paul Railway, and the lake be reached by automobile stage. The Canadian Pacific Railway will also allow stop-over privileges at Elko, Fernie, or Michel, British Columbia, on tourist tickets, from which points connections can be made with the Great Northern Railway to Somers, on the lake.

Plats of the 21 villa sites will be on file in the following United States land offices: Billings, Bozeman, Glasgow, Great Falls, Havre, Helena, Kalispell, Lewistown, Miles City, and Missoula, Mont.; Denver, Colo.; Cheyenne, Wyo.; Bismarck, N. Dak.; Pierre, S. Dak.; Santa Fe, N. Mex.; Phoenix, Ariz.; Salt Lake City, Utah; Carson City, Nev.; Spokane and Seattle, Wash.; Portland, Oreg.; and Los Angeles and San Francisco, Cal. A set of the plats will also be on file with the United States Reclamation Service, room 802 Post Office Building, Chicago, Ill. These plats will be subject to inspection without charge.

Through the courtesy of the Post Office Department, complete sets of the above plats of villa sites may be examined in the post offices at New York, Philadelphia, Boston, Pittsburgh, Atlanta, and New Orleans.

REGULATIONS FOR THE SALE OF THE VII-LA-SITE LOTS AROUND FLATHEAD LAKE,  
IN THE FORMER FLATHEAD INDIAN RESERVATION, MONT.

DEPARTMENT OF THE INTERIOR,  
Washington, March 20, 1916.

*The Commissioner of the General Land Office.*

**Sm:** Under the provisions of the act of April 12, 1910 (36 Stat., 296), you are directed to cause the lots surveyed as villa sites around Flathead Lake, in the former Flathead Indian Reservation, Mont., to be offered for sale at Polson, Mont., at public outcry, under the supervision of the superintendent of opening and sale of Indian lands, at not less than \$10 per acre, beginning on July 26, 1915, and continuing thereafter from day to day as long as may be necessary, Sundays and holidays excepted, in the manner and under the terms hereinafter prescribed.

**Manner.**—Bids may be made either in person or by agent, but not by mail nor at any time or place other than the time and place when the lots are offered for sale hereunder, and any person may purchase any number of lots for which he is the highest bidder. Bidders will not be required to show any qualifications as to age, citizenship, or otherwise. If any successful bidder fails to make the payment required on the date of the sale, the lot awarded to him shall be reoffered for sale on the following day.

**Terms.**—Payments will be required as follows: No lot will be disposed of for less than \$10 per acre, and at least 25 per cent. of the bid price of each lot sold must be paid on the date of the sale and the remainder, if the price bid is \$50 or less, within one year from the date of sale; if the price bid be over \$50 and less than \$100, 75 per cent. of the cost may be divided into two equal payments, due, respectively, one and two years from the date of the sale; if the price bid be \$100 or more, the 75 per cent. remaining unpaid may be divided into three equal payments, due, respectively, one, two, and three years from the date of sale. No entry will be allowed until payment has been made in full for the lot, but in case of partial payment the register will issue a nontransferable memorandum duplicate certificate showing the amount of the bid and the terms of the sale, and reciting the right of the purchaser to make entry upon completing the payments; the receiver in such case will issue a memorandum receipt for the money paid. Nothing herein will prevent the transfer of the interests secured by the purchase and the partial payment of the lot, by deed, but the assignee will acquire no greater right than that of the original purchaser, and the final entry and patent will issue to the original purchaser when all payments are made. All lots affected by the easement provided for in the act of April 24, 1912 (37 Stat., 527); as shown upon the approved plats of said lots, will be sold subject to said easement.

**Forfeiture.**—If any person who has made partial payment on the lot purchased by him fails to make any succeeding payment required under these regulations at the date such payment becomes due, the money deposited by such person for such lot will be forfeited, and the lot, after forfeiture is declared, will be subject to disposition as provided in said act. Lots remaining unsold at the close of sale, or thereafter declared forfeited for nonpayment of any part of the purchase price under the terms of the sale, will be subject to future disposition at public sale at such time and place as may thereafter be provided.

All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously, or which will in any way hinder or embarrass the sale, and all persons so offending will be prosecuted under section 2373 of the Revised Statutes of the United States, which reads as follows:

Every person who, before or at the time of the public sale of any of the lands of the United States, bargains, contracts, or agrees, or attempts to bargain, contract, or agree, with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof, or who by intimidation or unfair management hinders or prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars or imprisoned not more than two years, or both.

The superintendent of the opening and sale of Indian lands will be, and he is hereby, authorized in his discretion to fix for any lot a greater minimum price per acre than \$10, and he may reject any and all bids for any lot, and at any time suspend, adjourn, or postpone the sale of any lot or lots to such time and place as he may deem proper.

Very respectfully,

A. A. JONES,  
First Assistant Secretary.

*Exhibit No. 31*

Testimony presented before the United States Civil Rights Commission: Oct. 20, 1977

Betty Morris, Quinault Property Owners Association Representative to Washington State Chapter Interstate Congress for Equal Rights and Responsibilities

Commentary: Elmer Millner Case

"Remember Elmer Millner" has become the rallying cry for nearly 1,000 property owners on the Quinault Reservation in Washington State. Though we did not know Elmer Millner at the time, when we heard his story we realized that we could not fight injustice alone. We were too late to help Elmer Millner, but it seemed imperative that we band together and vocally demand justice.

Mr. Millner, like the rest of us trusted his government. When that strong arm of the Federal government, the Dept. of Interior stated that the land made available to us was "no longer under tribal jurisdiction... free and clear of all encumbrances, whatsoever... and out of trust since 1920", we believed.

Mr. Millner believed, too. He was about to retire and had complied with all state and county permits. His contractor had almost completed construction on his new retirement home when tribal police stopped construction and he was ordered to appear in tribal court. A tribal judge found him guilty of building on this "alienated land" which the tribe now claims to be under their jurisdiction. In fact they now claim jurisdiction over everything and everyone on, under, beside, and above the reservation.

During the construction of the Millner home, Joe De La Cruz, the tribal chairman, passed the construction site many times a day, often stopping to chat with the crew, but he chose to wait until the house was near completion to shut down the project.

The tribal hearing began with the cheery message from the tribal judge that he was going to make an example of Mr. Millner, and he proceeded to do just that. Mr. Millner had the choice of paying duplicate septic tank permits, building permits, and paying a percentage of the cost of the building to the Quinault tribe. In addition he must sign away beach rights which they claim that we do not have. He must agree to abide by their regulations regarding noise, cleanliness, and even how many unmarried guests he might have overnight.

In event that Mr. Millner did not agree to all of their demands, his new home was to be torn down by the tribe at Mr. Millner's expense and "he was to be escorted from the reservation with as little force as was necessary".

Mr. Millner decided that there was nothing else to do but cooperate. After a long delay, several days off work and trips to the harbor from his Seattle home, he finally succeeded in meeting with Mr. DeLa Cruz to complete the necessary forms. It was then he learned that the waiver that he was to be granted was only for 15 years and it would not be renewable. In the event that he died during that time, his home would not pass on to his heirs but would immediately become the property of the tribe.



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Morris: Elmer Millner Case

Testimony: 10/20/77

Is there anywhere else in America that one can be so completely wiped out? It looked like a good insurance policy for the tribe. One can die quite suddenly on the reservation, and the cards were well stacked in their favor. Any whim and one is banned from the reservation and your property.

Mr. Millner had no recourse but to have his contractor take his home down and rebuild it in Ocean Shores. His loss of more than \$15,000 could not be claimed on his income tax.

We soon organized the Quinault Property Owners Association to fight such injustice. Injustices continue to grow. Hatred grows where friendship and respect formerly existed.

When I heard that the American Indian Policy Review Commission Task Force was to be in Yakima, I sought and was granted an opportunity to speak, hoping to prevent the blood shed that is inevitable. Indian problems can never be solved unless the problems of the non-Indian fee patent land owners problems are solved, also.

This hearing was the most ridiculous farce I have ever witnessed--in fact, an inquisition. Testimony was twisted to fit their preconceived goals. We were lectured, ridiculed. I had assumed until that time that our problems were local in nature and if another group of Indians were to be in power on our reservation, we would be able to work together. Our tribal leaders tell us that we have no rights.

It soon became obvious that these people had come out with the purpose of demanding sovereignty and that they intended to take over jurisdiction of much of the United States. The picture for America was frightening--unbelievable.

I gratefully accepted the opportunity to meet with representatives from 10 states at Salt Lake City a short time later where concerned citizens, both Indian and non-Indian, gave testimony as to the injustices that were growing in the name of Justice to Indians. We formed the Interstate Congress for Equal Rights and Responsibilities.

The 14th Amendment states that the government shall not give special benefits or special burdens to any citizen unless those benefits or burdens apply to all citizens. Our burdens are not equal. We are, indeed, paying for the guilt of the nation.

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Enc: Copies of documents pertaining to the Elmer Millner Case.

**QUINAUT TRIBAL AFFAIRS**

P. O. Box 1118

**TAHOLAH, WASHINGTON 98587**

Phone 276-4425

Mr. Elmer T. Millner  
 2446 W. Sammamish Road, N.  
 Redmond, Washington 98052

Dear Sir:

An inspection of your property on the Quinault Reservation indicates that it is in violation of the Quinault Zoning, Building Permit and Sanitation Ordinances, copies attached. Consequently, the attached complaint has been filed against you in the Quinault Tribal Court.

The Court has summoned you to appear before it at Taholah, Washington at 9:00 a.m., on April 2, 1973, to show cause why your property should not be found in violation of the aforesaid ordinances. If your property is found in violation, you are subject to fine and/or exclusion from the Reservation, and if the violation is not corrected within a reasonable time, the Tribe may remove any offending improvement at your expense. If you fail to appear, a default judgment may be entered against you.

Until the aforesaid court hearing, you are prohibited from adding any further improvements or construction on your land. See attached preliminary injunction.

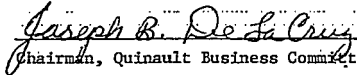
*(This is property "no longer under tribal jurisdiction" when he purchased in good faith.)*

- 2 -

If you wish to apply for tribal zoning, building and sanitation permits, please let the undersigned know and we will send you the necessary forms. While the applications are pending the existing construction and improvements may remain in place, and we will take no further steps until the question of the permits is resolved, except that this hearing set for April 2, 1973 will go ahead as scheduled in order to have the necessary orders entered.

If you have any questions, you may call the undersigned in Taholah, (206) 276-4445, or the Tribal attorney, Charles A. Hobbs, in Washington, D.C. (202) 628-4400.

Very truly yours,

  
Chairman, Quinault Business Committee

Attachments: Complaint  
Preliminary Injunction  
Zoning Ordinance  
Building Permit Ordinance  
Sanitation Ordinance

QUINAULT BUSINESS COMMITTEE, )  
 )  
 Plaintiff, )  
 )  
 V )  
 )  
 )  
 ELMER T. MILLNER, AND A PARCEL )  
 OF LAND KNOWN AS LOT 30, )  
 TAHOLAH OCEAN TRACTS AT SANTIAGO )  
 BEACH ON THE QUINAULT INDIAN )  
 RESERVATION, )  
 )  
 Defendants. )

No. 73-54

ORDER FOR PRELIMINARY INJUNCTION

It appearing to the Court that land owned by the defendant on the Quinault Reservation, namely, Lot 30, Taholah Ocean Tracts, Santiago Beach, may be in violation of Quinault Zoning, Building Permit and Sanitation Ordinances, and that hearing is set for April 2, 1973; and that further construction or improvement should not proceed until there is a determination whether said land is in violation of said ordinances, it is hereby

ORDERED, that defendant and his agents shall stop all construction and improvements immediately, and not resume without further order of court.

FURTHER ORDERED, that Paul Petit, Tribal Officer is directed to serve a copy of this order on defendant Elmer T. Millner as soon as possible. Defendant may have a hearing at any time before this Court to show cause why this preliminary injunction should be terminated.

Dated this 22 day of March, 1973

*Frank Hall*  
 Judge, Quinault Tribal Court

QUINAULT BUSINESS COMMITTEE, )  
 )  
 Plaintiff, )  
 : )  
 )  
 V. )  
 )  
 )  
 ELMER T. MILLNER, AND A PARCEL )  
 OF LAND KNOWN AS LOT 30, TAHOLAH )  
 OCEAN TRACTS AT SANTIAGO BEACH )  
 ON THE QUINAULT INDIAN )  
 RESERVATION, : )  
 )  
 Defendants. )

No. 75- 54

COMPLAINT OF VIOLATION OF  
 QUINAULT ZONING, BUILDING PERMIT,  
 AND SANITATION ORDINANCES.

1. The Quinault Business Committee is the agency of the Quinault Tribe charged with responsibility of enforcing tribal zoning, building permit and sanitation laws. On information and belief, Elmer T. Millner is the owner of certain land on the Quinault Reservation, namely, Lot 30, Taholah Ocean Tracts at Santiago Beach.

2. An inspection indicates that the aforesaid land is presently in violation of tribal law as follows:

a. A residential home has been partially constructed on said land, which is zoned for Wilderness, which construction has taken place without a permit, in violation of Section 3F of the Quinault Zoning Ordinance.

b. Further, the said construction has taken place without a building permit, as required by Sec. 1 of the Quinault Building Permit Ordinance, and without a sewage disposal system permit, as required by Sec. 3.1 of the Quinault Sanitation Ordinance. *had fulfilled all county state regulations & permits*

- 2 -

3. Wherefore, plaintiff requests an order declaring the said Lot 30 to be in violation of tribal laws as specified above; and an order that the defendant, Elmer T. Millner and his agents cease construction and perform no further construction unless and until the necessary permits are obtained. In the meantime, plaintiff requests a preliminary injunction to prohibit further construction or improvement until further order of the court.

4. Plaintiff further requests that defendant, Elmer T. Millner, be ordered to remove the existing construction unless a permit for a zoning exception, a building permit, and a sewage disposal system permit are applied for within 30 days after the hearing requested below. Plaintiff further requests that if defendant fails to comply with such an order, plaintiff be authorized to remove the existing construction at defendant's expense.

5. In event of noncompliance, plaintiff may request further orders imposing a fine on defendant, or excluding defendant from the Reservation, or granting such other relief as may seem proper to the court.

6. Plaintiff requests that this matter be set for hearing on April 2, 1973.

Respectfully submitted.

Joseph B. De la Cruz  
Chairman, Quinalt Business Committee

---

ORDERED, that the matter is set for hearing at 9:00 a.m., at the Quinault Tribal Court in Taholah, Washington, and the defendant is hereby ordered to attend, or in his absence the Court may enter a default judgement. Defendant may be represented by his attorney.

Frank Hall  
Judge, Quinault Tribal Court  
March 22, 1973

Interim Tribal Standards for  
Residences in the Wilderness Zone

The Business Committee (which has reassumed the duties formerly delegated to the Tribal Planning Commission) hereby declares that until general permanent standards can be established, the following will apply as general interim standards with respect to allowing individual residences in the Wilderness Zone.

The only individual residences that will be allowed in areas of the Wilderness Zone, as a general rule, are small cottages intended for weekend or overnight use. Such cottages must be attractive in appearance. Sanitation facilities must be adequate. There shall be no outbuildings. The cottage shall not have a width of more than 60% of the width of the lot (but not more than 20 feet in any event), nor a length of more than 30 feet. The height of the first floor ceiling shall not exceed 10 feet from the lowest ground point under the main structure, and there shall be no second story except under the eaves of a roof that slopes upward to a point no higher than 25 feet above the lowest ground point. There shall be no basement. No part of the cottage shall be built below the line of vegetation. Setback lines prescribed in the Tribal Zoning Ordinance shall be followed. No trailer or mobile home shall be located on the property without a special permit from the Business Committee, which shall be temporary only.

The provisions of the Washington Shoreline Management Act of 1971, and regulations thereunder, shall also apply to the Wilderness Zone, except to the extent the Business Committee specifies otherwise.

The cottages shall be for single family use only (bona fide guests are permissible), and shall not be occupied at any time by more than two unrelated individuals other than members of a single family and the guests of that family. Nor shall the cottage be occupied by anyone who creates undue noise or litter, or who fails to abide by tribal regulations for peace, health, safety and beauty.



-2-

The Tribe has absolute ownership of the beach up to the high water line, and has consistently claimed ownership of the strip between the high water line and the line of vegetation. Whether the Tribe is legally correct or not, the Tribe's policy is that no one shall use this strip except for uses specified in the Zoning Ordinance for Wilderness Zoning (picnicking, hiking, etc., but no residences or other permanent structures). To assure that this policy will be applied, the Tribe, as a condition for a license for a house in the Wilderness Zone, requires that the landowner permanently dedicate this strip to the Tribe for administration as a Wilderness Area. The landowner is not being asked to concede ownership of the strip. He will own it to the same extent he does now, and will be able to use it consistent with its Wilderness Zoning, but the Tribe will police it, to see that unauthorized uses are not made. The Tribe reserves the right to bar from the strip persons other than the owner and his bona fide guests.

*The landowners are not allowed on the beach or any strip. The tribe claims part of the platted land of property owners & our group has spent over \$7,000 defending a resident who was arrested & charged with trespass on his neighbors land - now claimed by the tribe;*

Application for Approval of an  
Existing Residence in the Wilderness Zone

TO: The Quinault Business Committee

We are the owners of an existing residence on the Quinault Reservation. We realize this land is in the Wilderness Zone of the Reservation, and that residences are permitted there only with special permission of the Business Committee. We accept this zoning.

We have read the Interim Tribal Standards for Residences in the Wilderness Zone.

- Check One:
1.  We believe we are in compliance with them. (Check this box only if you are sure you are in compliance. No exception will be granted for a later discovered non-complying item if this box is checked, unless the non-complying item could not reasonably be known to the owner.)
  2.  We believe we are not in compliance with them. (If this box is checked, attach list of non-complying items. If in doubt, list the doubtful item.)

We agree to abide by the tribal standards, and hereby request the Business Committee to approve our existing residence. If Box 2 is checked, we hereby apply for an exception to the tribal standards. The required questionnaire is attached, as is the fee in lieu of building and sanitation permits (1% of the cost of the improvements, plus \$15.00).

If any part of our lot lies to the seaward of the line of vegetation, we hereby permanently dedicate such part to the Tribe for administration as a Wilderness Area. It is understood that we will continue to own such part to the same extent as we now do, and will be able to use it consistent with its Wilderness Zoning, but the Tribe will police it to see that unauthorized uses are not made, and the Tribe reserves the right to bar from the strip persons other than the owner and his bona fide guests.

DATE: \_\_\_\_\_

Signature of owner(s) \_\_\_\_\_

*any when in cause for arrest or  
 subject to banning from the reservation*

QUESTIONNAIRE

(To Accompany Application for  
Residence in the Wilderness Zone)

1. Identification of land: Lot \_\_\_\_\_
2. Owner(s):
3. Mailing address of each owner:
4. When was the land bought?
5. From whom was it acquired?
6. How was it acquired? ( ) Purchase ( ) Gift ( ) Other (specify) \_\_\_\_\_
7. Did the land have any improvements on it when you acquired it? If so, describe them:
8. How much did you pay?
9. Have you added any improvements since you acquired the property?
10. When were they put in?
11. How much did they cost?
12. Latest assessed value: Land \$ \_\_\_\_\_ Improvements \$ \_\_\_\_\_
13. Insured for \$ \_\_\_\_\_

We certify that the foregoing answers are true to the best of our belief and knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_, 197\_\_

Knowingly false answers to the above questions may result in revocation of permission to have a residence in the Wilderness Zone.

*Dept. of Interior stated this land was  
"no longer under tribal jurisdiction"  
We have all been betrayed by our government.*

In The  
Quinault Tribal Court  
Taholah, Washington

QUINAULT BUSINESS COMMITTEE, )

Plaintiff, )

V )

ELMER T. MILLNER, AND A PARCEL )  
OF LAND KNOWN AS LOT 30, TAHOLAH )  
OCEAN TRACTS AT SANTIAGO BEACH ON )  
THE QUINAULT INDIAN RESERVATION, )

Defendants. )

No. 73-54

FINAL ORDER

It appearing to the Court at a hearing on April 2, 1973, at which defendants were present; that the land owned by the defendants on the Quinault Reservation as described above is in violation of the Quinault Zoning, Building Permit and Sanitation ordinances, as alleged in the complaint, it is hereby

ORDERED, that defendants and their agents shall stop all construction and improvements, and not resume until the necessary permits are obtained.

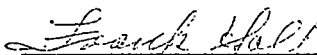
FURTHER ORDERED, that defendants shall remove the existing construction and improvements unless a zoning permit, a building permit, and a sewage disposal system permit are applied for by May 1, 1973. If defendants fail to comply with this order, the Quinault Business Committee is authorized to remove the existing construction and improvements at defendant's expense.

FURTHER ORDERED, that if defendants apply for the tribal permits, and it is determined that the building permit or the sanitation permit must be denied because of conditions which do not meet tribal standards,

defendants shall within 30 days after denial either correct the conditions so as to comply with the ordinances and shall obtain permits, or shall remove the existing construction and improvements; otherwise the Business Committee is hereby authorized to do so at defendant's expense. The same shall apply if the Business Committee determines that no exception to the Wilderness Zone should be allowed, or if defendant fails to comply with conditions for an exception established by the Business Committee.

FURTHER ORDERED, that if defendant fails to apply for the necessary permits by the date above stated, or if they apply and are turned down, or if they fail to comply with conditional approvals, and if they thereafter fail to remove the existing construction and improvements, they shall forthwith depart the Reservation, and not return without further order of this Court or of the Business Committee. In these events, the Tribal Officer, Paul Petit, is hereby authorized to execute this order, using no more physical force than may be necessary.

Done this 2nd day of April, 1973.



Judge, Quinault Tribal Court

Notice to Owners of Existing or Partially  
Constructed Houses in the Wilderness Zone.

Your house is in the Wilderness Zone, established by the Quinault Tribe in March, 1967. No houses are allowed there without special permission of the Tribe. You are requested to apply for permission within ten (10) days.

The interim tribal standards for houses are attached. Your house may be in violation of these standards, but it is also tribal policy to grant waivers of these standards for conditions which were in existence as of March 31, 1973. If a waiver is granted, it will be on the clear understanding that it will terminate (and not be renewable) whenever the property leaves the hands of the present owners, by deed, death, foreclosure, etc., or if tribal ordinances are disregarded, and in any event will expire no later than March 31, 1988. <sup>15 yrs</sup>

The interim standards may be modified in the future, but tribal policy is that owners relying on them will not suffer by any future changes.

QUINAULT BUSINESS COMMITTEE

Interim Tribal Standards Attached

*Exhibit No. 32*

FOR THE PERIOD January 1, 1972 through September 30, 1977 (as of 10/12/77)

COMMERCIAL ARRESTS

| <u>Indian</u>                          | <u># Arrests</u> | <u>Disposition</u> |
|--|------------------|--------------------|
| Unlawful possession of salmon          | 1                | Guilty             |
| Unlawful fishing in closed area/season | 1                | Bail Forfeiture    |
| " " "                                  | 11               | Guilty             |
| " " "                                  | 2                | Not Guilty         |
| " " "                                  | 10               | Dismissed          |
| Unlawful fishing without a license     | 1                | Guilty             |
|  | <u>26</u>        | TOTAL              |

| <u>Non-Indian</u>                         | <u># Arrests</u> | <u>Disposition</u> |
|---|------------------|--------------------|
| Miscellaneous salmon violations           | 5                | Bail Forfeiture    |
| " " "                                     | 4                | Guilty             |
| " " "                                     | 4                | Dismissed          |
| Unlawful possession of salmon             | 63               | Bail Forfeiture    |
| " " "                                     | 14               | Guilty             |
| " " "                                     | 1                | Not Guilty         |
| " " "                                     | 3                | Dismissed          |
| " " "                                     | 16               | Appealed           |
| Unlawful fishing in closed area/season    | 85               | Bail Forfeiture    |
| " " "                                     | 168              | Guilty             |
| " " "                                     | 18               | Not Guilty         |
| " " "                                     | 231              | Dismissed          |
| " " "                                     | 6                | Appealed           |
| Fishing for salmon with unlawful gear     | 21               | Bail Forfeiture    |
| " " "                                     | 42               | Guilty             |
| " " "                                     | 3                | Not Guilty         |
| " " "                                     | 33               | Dismissed          |
| " " "                                     | 1                | Appealed           |
| Unlawful fishing without a license        | 73               | Bail Forfeiture    |
| " " "                                     | 42               | Guilty             |
| " " "                                     | 2                | Not Guilty         |
| " " "                                     | 8                | Dismissed          |
| " " "                                     | 9                | Appealed           |
| Failure to complete fish ticket on salmon | 5                | Bail Forfeiture    |
| " " "                                     | 4                | Guilty             |
| " " "                                     | 3                | Dismissed          |
|   | <u>864</u>       | TOTAL              |

COMPARISON OF COASTAL STREAMS 1974-1977

| <u>River System</u> | <u>Year</u> | <u>Treaty<br/>Indian Catch</u> | <u>%<br/>of Total</u> | <u>Punch Card<br/>Sports Catch</u> | <u>Total</u> |
|---------------------|-------------|--------------------------------|-----------------------|------------------------------------|--------------|
| Quileute            | 1974-75     | 10,504                         | 71%                   | 4200                               | 14,704       |
|                     | 1975-76     | 9,523                          | 82%                   | 2233                               | 11,756       |
|                     | 1976-77     | 6,917                          | 86%                   | 1081                               | 7,998        |
| Hoh                 | 1974-75     | 2,997                          | 75%                   | 982                                | 3,979        |
|                     | 1975-76     | 3,140                          | 81%                   | 692                                | 3,832        |
|                     | 1976-77     | 4,210                          | 83%                   | 883                                | 5,093        |
| Queets              | 1974-75     | 5,879                          | 95%                   | 303                                | 6,182        |
|                     | 1975-76     | 4,563                          | 98%                   | 79                                 | 4,642        |
|                     | 1976-77     | 2,353                          | 96%                   | 96                                 | 2,449        |
| Quinalt             | 1974-75     | 5,280                          | 95%                   | 269                                | 5,549        |
|                     | 1975-76     | 3,965                          | 96%                   | 148                                | 4,113        |
|                     | 1976-77     | 3,319                          | 95%                   | 169                                | 3,488        |
| Humptulip           | 1974-75     | 1,347                          | 42%                   | 1808                               | 3,155        |
|                     | 1975-76     | 1,716                          | 67%                   | 816                                | 2,532        |
|                     | 1976-77     | 853                            | 45%                   | 1006                               | 1,859        |
| Chehalis            | 1974-75     | 2,695                          | 49%                   | 2754                               | 5,449        |
|                     | 1975-76     | 4,396                          | 81%                   | 1002                               | 5,395        |
|                     | 1976-77     | 3,045                          | 77%                   | 894                                | 3,939        |



## EMERGENCY SEASON CLOSURES

1976-77 Steelhead Cycle

| Area           | Effective Dates |         | Steelhead Harvest |         |         | Harvestable Number |
|----------------|-----------------|---------|-------------------|---------|---------|--------------------|
|                | Indian Net      | Sport   | Indian            | Sport   | Total   |                    |
| Sekiu          | Dec. 17         | Dec. 22 | 104               | Unknown | Unknown | 750                |
| Green/Duwamish | Dec. 18         | Feb. 6  | 3,258             | 2,415   | 5,673   | 5,260              |
| Puyallup       | Dec. 14         | Jan. 16 | 1,688             | 2,448   | 4,136   | 2,970              |
| Snohomish      | Jan. 9          | Jan. 9  | (1,623)*          | (6,280) | (7,903) | 8,220              |
| Quileute       | Jan. 10         | Jan. 10 | 6,917             | 1,764   | 8,681   | 7,420              |
| Queets         | Feb. 1          | Feb. 6  | 2,353             | Unknown | Unknown | 2,920              |
| Hoh            | Feb. 6          | Feb. 6  | 4,210             | Unknown | Unknown | 3,930              |
| Stillaguamish  | Feb. 6          | Feb. 6  | (1,237)           | (2,600) | (3,837) | 3,470              |
| Skagit         | Mar. 1          | Feb. 21 | 2,345             | 1,657   | 4,002   | 4,400              |
| Nooksack       | Mar. 7          | Mar. 7  | 2,708             | Unknown | Unknown | 2,500              |
| Skokomish      | Mar. 1          | April 6 | 505               | Unknown | Unknown | (700)              |
| White (Stuck)  | Dec. 24         | Dec. 24 |                   |         |         |                    |

\* Estimations. Creel census information not available on these rivers.

1978  
~~1977~~

**WASHINGTON**  
**Game Fish Seasons**  
**and Catch Limits**  
Effective Date January 1, 1977

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**ASOTIN COUNTY**

Note: The taking of steelhead over 20" in length from Asotin Creek, Grande Ronde River, and the Snake River is prohibited.

Water open May 30 to September 31:  
All tributaries of Grande Ronde River

Water open May 30 to November 30:  
Asotin Creek from SR 129 bridge near mouth upstream and tributaries

Note: Lawful to fish up to the base of Headgates dam on Asotin Creek May 30 to November 30.

Waters Open the year around:  
Asotin Creek from mouth to SR 129 bridge approximately 300' upstream.

Grande Ronde River:  
From 1000' above mouth 2 1/2 miles upstream to steel bridge the following restrictions apply:

1. Minimum size on trout—10".
2. Artificial lures with single barbless hooks only.
3. All steelhead over 20" in length must be released.

Note: Taking of trout from the Grande Ronde River upstream from the steel bridge is prohibited.

Snake River

**ALL OTHER WATERS OPEN APRIL 17 TO OCTOBER 31**

→ Add: Note: The Snake River has a 16" minimum size limit on trout from April 1 to June 30.

Re: To protect steelhead smolts.

**BENTON COUNTY**

Closed Water:  
Columbia River from McNary dam downstream to a line drawn across the river as follows: from the red and white marker on the Oregon shore to the yellow and white marker on the Washington shore on a line that intercepts the downstream end of the wing wall of the boat lock near the Washington shore EXCEPT that fishing is permitted up to 400 feet below the entrance to the fish ladder on the Washington shore.

Waters open April 17 to October 31:  
Corral Creek

Wellian Lake is open to juveniles under 14 years → Add: Columbia Park Pond  
of age only.

**ALL OTHER WATERS OPEN YEAR AROUND**

Note: The Columbia River has a 16" minimum size limit on trout from April 1 to June 30 and the Yakima River has a 10" minimum size limit from April 1 to May 31.

Re: New pond developed by Kiwanis Club for juveniles. Stocked by Department.

**CHELAN COUNTY**

Closed Waters:  
Twin Lakes and Tributaries and outlet to junction with the North Fork of the White River (Napaequa River)

Water open January 1 to March 31 and December 1 to 31:  
Roses Lake

Waters open April 17 to July 4:  
Beehive Reservoir

Clear Lake  
Lilly Lake  
Lower Wheeler Reservoir (Black Lake)

Note: Lower Wheeler Reservoir—Artificial lures only. The use of bait prohibited.

Water open April 17 to September 31: → Change: Close July 31

Wapato Lake  
Waters open May 30 to November 30:  
Entiat River  
Kettle River from mouth to Leavenworth Hatchery Bridge

Re: Severe double cropping the same as experienced in previous years.

Wenatchee River

Waters open the year around:  
Chelan Hatchery Outlet Creek below railroad track  
Chelan Lake  
Chelan River  
Columbia River  
Dry Lake near Roses Lake  
Fish Lake  
Lake Wenatchee  
Three Lake

**ALL OTHER WATERS (INCLUDING STREAMS) OPEN APRIL 17 TO OCTOBER 31**

**WHITMAN COUNTY**

Waters open April 17 to July 15:

Negro Creek  
Pampa Pond

Note: "Boat Fishing Unlawful". It is unlawful to fish from a boat or any other floating device on Pampa Pond.

**ALL OTHER WATERS OPEN THE YEAR AROUND**

Note: Lawful to fish up to the base of all dams in Whitman County, EXCEPT Little Goose Dam and Lower Granite Dam which have a standard 400 closure (see page 7).

→ Add: Note: The taking of steelhead over 20" in length from the Snake River is prohibited.

→ Add: Note: The Snake River has a 16" minimum size limit on trout from April 1 to June 30.

Re: To protect steelhead smolts.

**YAKIMA COUNTY****Closed water:**

Buckskin Creek and tributaries from the west boundary of Sundides Golf Course to its mouth

Water open April 17 to June 12 and August 13 to November 30:

Wenas Lake

**Waters open the year around:**All waters between Highway 12 and the Yakima River downstream from Interstate 82 Bridge at Union Gap, EXCEPT Gimn Lake  
Bachelor Creek  
Columbia River  
Yakima River

Note: The Yakima River has a 10" minimum size limit April 1 to May 31.

**ALL OTHER WATERS OPEN APRIL 17 TO OCTOBER 31**

Note: Waters within the boundaries of Yakima Valley Sportsmen's Park are open to juveniles under 14 years of age only.

Note: "Fly Fishing Only". Leech Lake (White Pass) is open only to the use of artificial flies.

Note: Naches River from confluence with Tieton River upstream to the abandoned county bridge, a distance of 2.5 miles is a "Quality Fishing Water". See page 4 for special regulations.

Note: Lawful to fish up to the base of the following reservoir dams: Bumping Lake, Clear Lake, Rimrock Lake.

**SUPPLEMENTAL STEELHEAD AND**

**WHITEFISH SEASONS**

See County Listings for  
Regular Open Seasons

**DAILY CATCH LIMITS:**

Trout and Steelhead—Six pounds and 1 fish, not to exceed 12 fish but shall not include more than 2 steelhead over 20" in length. Note: A person may take 2 trout regardless of weight.

Whitefish—Fifteen (no weight limit)

**POSSESSION LIMITS:**

Trout and Steelhead—Four steelhead over 20" in length regardless of weight, or six pounds and 1 fish not to exceed 12 fish.

Whitefish—Fifteen (no weight limit)

**ANNUAL CATCH LIMIT—STEELHEAD ONLY:**

Thirty steelhead over 20" in length, not to exceed 20 steelhead taken from the Columbia River and tributaries above Bonneville Dam, excluding the Snake River and its tributaries.

**MINIMUM SIZE LIMIT:**

Steelhead and Other Trout—10 inches.  
Note: This size limit applies from December 1 to closing date listed in this section. Minimum size limits under county listings apply at all other times.

**SPECIAL CLOSURES BELOW COLUMBIA RIVER**

**DAMS:** (Check County Noted)

Bonneville Dam—Skamania County

The Dalles Dam—Clatsop County

John Day Dam—Wahkiakum County

McNary Dam—Benton County

**BOAT FISHING UNLAWFUL:**

It is unlawful to fish from a boat or any other floating device during the supplemental steelhead and whitefish seasons in any of the following waters: (Boats may be used for transportation only)

Cedar River

Cowlitz River from Barrier dam at Salmon Hatchery to mouth of Mill Creek

Elwha River from mouth to lower power dam

Green River from Renton Junction Bridge to its source

Hoh River above Highway 101 Bridge March 1 to 31

Lake Washington Ship Canal upstream from railroad bridge to Chittenden Locks and spillway dam

Skykomish River from Highway No. 2 Bridge east of Goldbar to its source

Snoqualmie River from mouth of Tokul Creek downstream to Flumbo access, about 1/4 mile

Stillaguamish River, North Fork from mouth to source

**FISHING FROM BOATS PROPELLED BY MACHINERY**

**PROHIBITED:**

It shall be unlawful to fish from any boat, raft, or any other floating device while it is being propelled by machinery on the following water during the period from December 1 to February 28:

Sauk River

**FISHING FROM BOATS EQUIPPED WITH MOTORS**

**UNLAWFUL:**

It shall be unlawful to fish from a boat or any other floating device equipped with a motor during the supplemental steelhead and whitefish seasons in the following waters:

Kalama River upstream from Modrow Bridge

Nookack River above the confluence of the North and South Forks

→ Add: **Exception:** The following rivers have a daily catch limit of one steelhead over 20" in length in those areas open during the month of March.

Bogachiel River  
Calawah River  
Capitol Lake  
Cedar River  
Dakota Creek  
Deschutes River  
Dewatto Creek  
Dosewallips River  
Duckabush River  
Dungeness River  
Green River (Duwamish)  
Hoh River  
Humpulips River  
Kennedy Creek  
Lake Washington  
Lake Union Ship Canal  
McLane Creek

Nooksack River  
Percival Creek  
Pilchuck Creek  
Pilchuck River  
Puyallup River  
Quilcene River  
Quillute River  
Quinalt River  
Salt Creek  
Samish River  
Sammamish River  
Satsop River  
Skagit River  
Skokomish River  
Skykomish River  
Snohomish River  
Snoqualmie River  
Sol Duck River  
Stillaguamish and North Fork River  
Tahuya River  
Tokul Creek  
Union River  
Wynoochee River

**Exception:** Nooksack River North Fork, March 31. Catch and release with single barbless hook only. All steelhead over 20" in length.

**WHITEFISH**

Eastern Washington—January 1 to March 31 and December 1 to 31 in those rivers and streams east of the summit of the Cascades, including the Big White Salmon River.

Western Washington—In all listed waters west of the summit of the Cascades and west of the Big White Salmon River; in addition, the Green River above the mouth of the North Fork in King County, the South Fork of the Skykomish River, the North Fork of the Snoqualmie River from mouth to the swinging foot bridge at the end of Lake Hancock Road, Middle Fork of the Snoqualmie River from mouth to mouth of Taylor River, the South Fork of the Snoqualmie River from mouth to the Edgwick Bridge and the Tye River shall be open from January 1 to February 28 and December 1 to 31.

Note: Lawful to take whitefish whenever waters are open to fishing.

Note: Unlawful to take trout from waters open under supplemental whitefish seasons that are not open to steelheading.

**STEELHEAD**

Open Seasons: January 1, 1972 to the 1977 closing date specified for each of the waters listed. All these waters are also open December 1 to 31, 1977.

Note: All waters are listed alphabetically. Tributaries are closed unless specifically mentioned as being open.

Note: Waters or portions thereof which are open year around under the county listings are indicated by "year around" following the supplemental season closing date as listed here.

- Abernathy Creek from mouth to a point 500 feet downstream from U. S. Fish and Wildlife Service Hatchery, a distance of about 3 miles—March 31
- Alder Creek (Tuttle River tributary)—March 31
- Asotin Creek from mouth to 400 feet below old Headgates Dam—March 31
- Bear River (Pacific County)—February 28
- Big Beef Creek—February 28
- Big River (Clallam County)—February 28
- Big White Salmon River from mouth to 400 feet below Northwestern Dam—March 31 (year around)
- Bogachiel River from mouth to Olympic National Park Boundary—February 28 from mouth to Highway 101 Bridge—April 30
- Burley Creek (Kitsap County)—February 28
- Calawah River from mouth to forks—February 28; from mouth to Highway 101 Bridge—April 30
- ~~Calawah River, North Fork—February 28~~
- Calawah River, South Fork from mouth to Hyas Creek—February 28
- Canyon Creek—(tributary of South Fork of Stillaguamish) from mouth to forks—March 31
- ~~Capitol Lake and salt water area up to base of Capitol Lake Dam—March 31~~
- Carbon River from mouth to mouth of South Prairie Creek—January 31
- Cascade River—February 28
- Cedar Creek (Clark County) from mouth to junction of Chehalis Creek—March 31
- Cedar Creek (Jefferson County)—February 28
- Cedar River (King County) from mouth to Landsburg Highway Bridge—March 31 (See boat fishing restriction page 29)
- Chehalis River, South Fork from mouth to highway bridge at town of Boistfort (a distance of approximately 6 miles)—March 31

Add: Except as noted.

Change: Mouth to National Park boundary December 15 to February 28; from mouth to Highway 101 Bridge, March 31.

Change: Mouth to forks, December 15 to February 28; mouth to Highway 101, March 31.

Close

Change date: December 15 to February 28

Change: February 28

Delete: "and saltwater area up to base of Capitol Lake Dam."

Re: Severe snagging problem has developed.

Change: from mouth to Landsburg Highway bridge, February 28; mouth to Maple Valley Bridge, March 31.

- Chehalis River from mouth to high bridge on Weyerhaeuser Logging Road No. 17 (approximately 7 miles south of Pe Ell)—April 15
- Chinook River—February 28
- Chuckanut Creek—February 28
- ~~Cloose River from mouth to bridge at Tower Rock—March 31~~ → Delete: Re: No steelhead (above Mossyrock Dam).
- Clallam River—February 28
- Clearwater River from mouth to Snahapish River—February 28 → Change closing date to January 31.
- Cloquallum Creek from mouth to Old Olympic Highway Bridge—February 28 → Change: From mouth to upper bridge on Lost Lake Road.
- Coal Creek (Cowlitz County) from mouth to 400' below falls—February 28
- Columbia River—March 31 (see page 7 for closures below dams) (year around)
- Columbia River sloughs—March 31 (year around)
- Copalis River—February 28
- Coulter Creek—February 28
- Coweman River from mouth to mouth of Mulholland Creek—March 31
- Cowlitz River from mouth to mouth of Muddy Fork—March 31 (year around) (See boat fishing restriction page 28)
- Curley Creek (Kitsap County)—February 28
- Dakota Creek—March 31
- Deep Creek (Clallam County)—February 28
- Deep River—March 31
- Deschutes River from old U. S. Highway 99, near Tumwater, to State Highway 507 Bridge 2 miles west of Rainier—March 31
- Dewatto River from mouth to bridge on Mitchell Road (East Highway)—March 31
- Dickey River, and all Forks—February 28 → Change dates to December 15 to February 28.
- Dosewallips River—February 28; from mouth to U. S. Forest Service Six Mile Bridge—March 31
- Drano Lake—March 31 (year around)
- Duckabush River from mouth to Eight Mile Bridge—February 28; from mouth to falls at Interorrem Guard Station—March 31
- Dungeness River from mouth to junction of Greywolf and Dungeness River—February 28; from mouth to Highway 101 Bridge—April 29 → Change date to March 31.
- Duwamish River (See Green River)—March 31
- East Twin River—February 28
- Elk River (Grays Harbor County)—February 28
- Ellochoman River from mouth to West Fork—March 31
- Elwha River from mouth to lower power dam—April 15 (See Boat Fishing Restriction page 28) → Change date to March 31.
- Emilat River—March 31
- Fisher Slough from mouth to Conway-Stanwood Highway crossing—March 31 (year around)
- Germany Creek from mouth to end of Germany Creek Road, a distance of about 5 miles—March 31
- Goldsborough Creek—February 28
- Goodman Creek (Jefferson County)—February 28
- Grays River from mouth to 7000 line bridge—March 31 (year around—mouth to Ocean Beach Highway)
- Grays River, West Fork—February 28
- Green River from Spokane Street Bridge to 400' below Headworks Dam—February 28; From Spokane Street Bridge to the Porter Bridge at Auburn—March 31. (See boat fishing restriction page 28) Note: Area 200' above and below lower outlet of Green River Rearing Pond closed during hours of 5:00 p.m. to 7:00 a.m. → Change: From Spokane Street bridge to 400' below Headworks dam, February 28; Spokane Street bridge to Freeway 169 Bridge and Flaming Geyser Bridge to Kanasket bridge, March 31.

- Green River (tributary North Fork Toutle River) from mouth to Salmon Hatchery Intake—March 31. Note: Open to "Fly Fishing Only".
- Hamma Hamma River from mouth to 400 feet below the falls—February 28
- Hamilton Creek—April 30
- Hoh River—March 31; from mouth to Highway 101 Bridge—April 30. This season applies only to areas outside Olympic National Park. For Park regulations, contact Olympic National Park Office, Port Angeles, Washington.
- Hoh River, South Fork—that portion outside Olympic National Park Boundary—February 28 → Close in 1978
- Hoko River from mouth to cement bridge on Lake Orette Highway (upper Hoko Bridge)—February 28
- Hoquiam River, and all forks—February 28
- Humtullips River from mouth to forks—February 28 from mouth to Highway 101 Bridge—March 31
- Humtullips River, East Fork from mouth to concrete bridge on Forest Service Road between Humtullips Guard Station and Orisdale—February 28
- Humtullips River, West Fork from mouth to the old fish trap on the Donkey Creek Road above the U. S. Forest Service Boundary—February 28 → Change: from mouth to West Fork bridge.
- Issaquah Creek from mouth to 400 feet below Dept. of Fisheries barrier dam above hatchery—February 28
- Jim Creek from mouth to City of Seattle power line crossing in Sec. 35, Twp. 32 N., R. 6 E.—February 28
- Johns River and North and South Forks—February 28
- Kalama River from mouth to Summers Creek—March 31. (Year around from mouth to 1000' below fishway) (fishing from boats with motors prohibited upstream from Modrow Bridge) Note: Kalama River closed to fishing from 1,000 feet below to 400 feet above the Kalama Fishway.
- Kennedy Creek from mouth to 400 feet below falls—March 31
- Kalakoo Creek—February 28
- Klickitat River from mouth to Fisher Hill Bridge—March 31 (year around)
- Lacamas Creek (tributary to Cowlitz River)—February 28
- Lake Union Ship Canal from Salmon Bay to Lake Washington—March 31 (year around) Note: There is a standard 400' closure below the fish ladder at the Chittenden locks. (See boat fishing restriction page 28)
- Lewis River—March 31 (year around)
- Lewis River, North Fork from mouth to 1,400 feet below spillway of Ariel Dam—March 31 (year around)
- Lewis River, South or East Fork from mouth to 400 feet below Horseshoe Falls—March 31 (year around)
- Little Quilcens River from mouth to the Little Quilcens River Bridge on Penny Creek Road—February 28
- Little White Salmon River from mouth to water intake of Federal Fish Hatchery at Cook—March 31
- Lyre River—February 28
- McDonald Creek (Clallam County) from mouth to Highway 101 Bridge—February 28
- McLane Creek (Thurston County) from mouth to bridge located approximately 200 feet north of power line crossing—March 31
- Melrow River—March 31
- Mitt Creek (Cowlitz County) from mouth to forks, a distance of approximately one mile—March 31
- Mitt Creek (Mason County)—February 28



- Mill Creek (Walla Walla County) from mouth to 400 feet below the U. S. Army Engineers flood control dam—March 31 → Change: From mouth to Mullen Bridge, March 31.
- Mission Creek—February 28 Re: Resource needs added spawning escapement.
- Moclipis River—February 28
- Morze Creek from mouth to Fort Angeles Dam—February 28
- Mosquito Creek (Jefferson County)—February 28
- Naches River from mouth to mouth of Little Naches River—March 31
- Naselle River from mouth to East Fork—March 31.  
Note: Naselle River closed to fishing from falls in Sec. 6, Twp. 10 N., R. 8 W. (Wahkiakum County) downstream 400 feet.
- Naselle River, South Fork from mouth to Bean Creek—February 28
- Nemah River and all forks—February 28
- Newaukum River and Middle Fork and South Fork—March 31
- Newaukum River, North Fork from mouth to 400 feet below Chehalis City water intake—March 31
- Nisqually River from mouth to 400 feet below LaGrande Powerhouse—February 28; from mouth to the highway bridge at McKenna—April 30
- Nooksack River and ~~Lake~~—March 31 (See power boat restriction, page 29)
- North River from mouth to Falls River—February 28 → Add: Nooksack River North Fork, December 15 to March 31. Catch and release with barbless hooks only.
- Okanogan River—March 31
- Olequa Creek—March 31
- Ozette River—February 28
- Palix River and all forks—February 28 → Add: Nooksack River South Fork from mouth to Skookum Creek, December 15 to February 28.
- Percival Creek—March 31
- Pilchuck Creek (tributary of Stillaguamish River) from mouth to falls—March 31
- Pilchuck River—mouth to 500 feet below Snohomish City Dam—February 28; mouth to Machias Bridge—March 31
- Puget Sound—March 31 (year around)
- Pyralup River from mouth to railway bridge at Electron—January 31 → Add: mouth to Carbon River, March 31.
- Pysht River—February 28
- Queets River from mouth to Olympic National Park Boundary—April 30. Note: National Park regulations prohibit fishing from boats or rubber rafts upstream from Matheny Creek.
- Quilcene River—March 31 → Change: December 15 to March 31.
- Quillayute River—April 30
- Quinalt River from mouth to Olympic National Park Boundary—April 30 → Change: Lake Quinalt to Forks, December 15 to March 31.
- Raft River—February 28
- Rainier River from mouth to Highway 18, Echo Lake Branch, approximately 4 miles above the town of Preston—February 28
- Rock Creek (Clark County)—March 31 → Change: Mouth to Hickson bridge except that portion between on Old Highway 99 bridge and Dept. of Fisheries rack, March 31.
- Rock Creek (Skamania County) from mouth to first falls—April 30
- Salmon Creek (Clark County) from mouth to the Bridge at 2nd Ave. N.E.—March 31
- Salmon Creek (Pacific County)—February 28
- Salt Creek from mouth to bridge on Highway 112—March 31
- Sannah River from mouth to Highway 9, except that portion between the bridge on old Highway 99 and Friday Creek—March 31
- Sammamish River (slough)—March 31
- Satsop River from mouth to bridge at Schafer Park—April 15 → Change date to February 28; and from mouth to West Fork, March 31.

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|   | → | Change date to February 28.   |
| Satsop River, Tornow Branch from mouth to posted deadline at bridge on Matlock-Grisdale Road—February 28                    | → | Change: from mouth to Darrington Bridge, February 28.   |
| Satsop River, West Fork from mouth to bridge on Matlock-Grisdale Road—March 31  | → | Change: From mouth to Marblemount, February 28; from mouth to railroad bridge at Mt. Vernon and the Dalles bridge to Marblemount, March 31. |
| Sauk River—February 28 (fishing from boats propelled by machinery prohibited—see page 26)                                   | → |   |
| Seku River from mouth to forks—February 28  | → | Change: From mouth to Vance Creek, March 31.  |
| Sherwood Creek—February 28  | → |   |
| Siebert Creek from mouth to Highway 101—February 28   | → | Add: Skokomish North Fork, mouth to lower dam, February 28.   |
| Similkameen River—April 30  | → |   |
| Skagit River from mouth upstream to Gorge Powerhouse at Newholm—February 28; from mouth to old Faber Ferry Landing—March 31 | → | Add: Skokomish South Fork, from mouth to cement bridge at Brown Creek, February 28.   |
| Skamokawa Creek including tributaries—March 31  | → |   |
| Skokomish River and North Fork to Lower dam and South Fork to cement bridge at Brown's Creek camp grounds—April 30          | → | Change: from mouth to 400' below Pacific Power and Light dam, April 30.   |
| Skookum Creek (Mason County)—February 28  | → |   |
| Skookumchuck River—April 30 (Skookumchuck Reservoir is not open)  | → | Re: Run has declined since completion of dam.   |
| Skykomish River from mouth to forks—March 31 (See boat fishing restrictions, page 26)                                       | → |   |
| Skykomish River, North Fork from mouth to Troublesome Creek—February 28   | → | Change: from mouth to 400' below Pacific Power and Light dam, April 30.   |
| Skykomish River, South Fork from mouth to 400 feet below Sunset Falls—February 28   | → |   |
| Smith Creek (Pacific County)—February 28  | → | Mouth to forks, February 28; mouth of Sultan River to forks, March 31.  |
| Smahalah River—February 28  | → |   |
|   | → | Close in 1978.  |

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| Snohomish River and sloughs—April 15   | → | Change: March 31.  |
| Snoqualmie River from mouth to falls—February 28 from mouth to Tokul Creek—March 31 (See boat fishing restrictions, page 26)                               | → | Change: from mouth to Snider Creek, December 15 to February 28; mouth to Highway 101 bridge (3½ miles north of town of Forks)—April 30 |
| Sol Duc River from mouth to Snider Creek at Snider Ranger Station—February 28; from mouth to Highway 101 bridge (3½ miles north of town of Forks)—April 30 | → |  |
| South Prairie Creek from mouth to high bridge at Burnett—January 31  | → | Change: From mouth to Whitehorse Bridge, February 28; Boulder Creek to Whitehorse bridge, March 31.                                    |
| Squalicum Creek—February 28  | → |  |
| Stillaquamish River from mouth to forks—March 31   | → | Change date to February 28.  |
| Stillaquamish River, North Fork from mouth to Whitehorse Bridge—March 31 (See boat fishing restrictions page 26)   | → |  |
| Stillaquamish River, South Fork from mouth to Boardman Creek—March 31  | → | Change: Close.   |
| Steak River (White River) from mouth to 400 feet below Puget Sound Power and Light Dam about 1 mile above Buckley Bridge—January 31                        | → |  |
| Suez River—February 28   | → | Change: Close.   |
| Suquamish River—February 28  | → |  |
| Sultan River from mouth to 400 feet below Everett Dam—February 28  | → | Change: Close.   |
| Tahuya River from mouth to bridge on Mitchell Road (Lost Highway)—March 31   | → |  |
| Tilton River from mouth to West Fork—March 31  | → | Change: Close.   |
| Tokul Creek from mouth to railroad trestle—March 31  | → |  |
| Tolt River from mouth to forks—February 28   | → | Change: Close.   |
| Touchet River from mouth to forks—March 31   | → |  |
| Touchet River, North Fork from mouth to Jim Creek—March 31   | → | Change: Close.   |
| Toutle River from mouth to Forks—March 31 (year around)  | → |  |
| Toutle River, North Fork from mouth to St. Helena Bridge at Al Raught Park—March 31  | → | Change: Close.   |
| Toutle River, South Fork from mouth to 4950 line bridge, a distance of approximately 9 miles—March 31  | → |  |

Union River from mouth to upper bridge on the old Navy Yard Highway—March 31  
 Vance Creek (Mason County)—February 28  
 Walla Walla River—March 31 (year around)  
 Wallace River from mouth to Olney Creek—February 28  
 Washington Lake—March 31 (year around)  
 Washougal River from mouth to bridge at Salmon Falls—March 31 (year around)  
 Washougal River, West Fork upstream from hatchery Inlake—February 28  
 Wenatchee River—March 31  
 West Twin River—February 28  
 Whitcom Creek—February 28  
 White (Stuck) River from mouth to 400 feet below Puget Sound Power and Light Dam about one mile above Buckley Bridge—January 31  
 Willapa River from mouth to Forks Creek—March 31  
 Willapa River, South Fork—February 28  
 Williams Creek (Pacific County)—February 28  
 Wind River from mouth to 400 feet below Shipherd's Falls—March 31 (year around)  
 Wishkah River from mouth to Mayr Brothers bridge (West and East Forks closed)—February 28  
 Woods Creek and West Fork to Dubuque Road—February 28  
 Wynoochee River from mouth to 400 feet below barrier dam near Grindale, about 2 miles below Wynoochee Dam—April 15  
 Yakima River from mouth to Keechelus Dam—March 31 (year around)  
~~Yellowstone Creek—March 31~~

Change: February 28; from mouth to U.S. 2 bridge at Tunwater Campgrounds, March 31.

Re: To protect wild fish for spawning.

Change: from mouth to 400' below barrier dam, February 28; mouth to old white bridge, March 31.

**TURN IN YOUR STEELHEAD PUNCH CARD BEFORE JUNE 1, 1977**

Change: from mouth to Roza Dam.  
 Re: To provide greater spawning escapement of diminishing run.

Delete  
 Re: Greater spawning steelhead escapement needed.

**LICENSE FEES**

**RESIDENT:** A "resident" means any citizen of the United States or person who has entered the United States under a permanent visa, and who for at least ninety (90) days immediately preceding any application for a license has maintained a permanent place of abode within this state and has established by formal evidence his intent to permanently reside within this state.  
**ALIEN:** An "alien" means any person who is not a citizen and who has entered the United States under conditions other than a permanent visa.  
**NON-RESIDENT:** A "non-resident" means any person who is neither a "resident" nor an "alien" as defined.

|  | Fee     |
|--|---------|
| 1. State, resident citizen hunting and fishing license .....   | \$16.00 |
| This license permits any resident to hunt and fish in any county of the state until the first day of January next following the date of issuance, when it is lawful to hunt or fish therein. |         |
| 2. State, resident citizen fishing license .....   | \$ 8.50 |
| This license permits any resident to fish in any county of the state until the first day of January next following the date of issuance, when it is lawful to fish therein.                  |         |
| 3. State, resident citizen hunting license .....   | \$ 7.50 |
| This license permits any resident to hunt in any county of the state until the first of January next following the date of issuance, when it is lawful to hunt therein.                      |         |
| 4. County, resident citizen hunting and fishing license .....  | \$ 9.00 |
| This license permits any resident to hunt  |         |

1976  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

MAN 15 1976

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

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| UNITED STATES OF AMERICA et al, ) |                             |
| Plaintiffs, )                     | CIVIL NO. 9213              |
| vs )                              | ORDER RE SAMISH, SNOHOMISH, |
| STATE OF WASHINGTON, et al, )     | STEILACOOM, DUWAMISH AND    |
| Defendants )                      | SNOQUALMIE TRIBES' TREATY   |
|                                   | STATUS                      |

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The Court has fully reviewed the hearing transcripts, exhibits, affidavits and memoranda of counsel and concludes therefrom that upon the showing thus far made, it would be difficult, if not impossible, to render a sound and well reasoned decision as to any of the five petitioning tribes. The decision as to each tribe will be limited solely to treaty status for the exercise of fishing rights but in the opinion of the Court this requires further submission of the factual data stated below.

No one has contested the applicability of the standards for treaty entitlement stated in the Ninth Circuit Court of Appeals, as follows:

"Whether a group of citizens of Indian ancestry is descended from a treaty signatory and has maintained an organized tribal structure, is a factual question which a district court is competent to determine."

(Emphasis added) 520 F.2d at 693.

Apparently counsel for the tribes have submitted all information available to them pertaining to "organized tribal structure." However, if any party desires to present further evidence on that subject, such party may apply therefor, in writing, promptly after receipt of this Order.

Under the Circuit Court mandate, every group of persons ORDER RE SAMISH, SNOHOMISH, STEILACOOM, DUWAMISH AND SNOQUALMIE TRIBES' TREATY STATUS - #1.

1 of Indian blood must establish their descent from a treaty  
2 signatory. While counsel for each of the five tribes has  
3 submitted current or dated tribal membership lists, only the  
4 Samish list contains information concerning blood quantum as  
5 to individual persons on the Samish tribal roll. A showing  
6 of individual tribal descendency from a treaty signatory is  
7 necessary. Although the Court is reluctant to require the  
8 submission of individual Indian blood quantum information,  
9 there have been serious disputes among the parties concerning  
10 the validity of certain persons being named as enrolled tribal  
11 members. Also, counsel have argued that waiver or abrogation  
12 of treaty rights by individual Indians is an issue in these  
13 proceedings and the Court believes that blood quantum informa-  
14 tion, among other factors, may have some relevancy.

15 Accordingly, counsel for each of the five tribes shall  
16 serve and file on or before Tuesday, June 1, 1976, the  
17 following information: A current list of the complete names  
18 and addresses of all persons listed as tribal members; the  
19 cities, states or other geographical locations where each  
20 person listed has established residence during his or her  
21 lifetime; and identification of the specific tribal blood  
22 quanta by fraction, of each person enrolled by each tribe.  
23 For example, a Steilacoom enrolled member may have one-quarter  
24 Steilacoom, one-eighth Puyallup and one-eighth Nisqually  
25 blood.

26 On or before Tuesday, June 1, 1976, counsel for each  
27 tribe shall submit the above specified data, in writing,  
28 serving and filing copies thereof upon the counsel of record  
29 in these proceedings. Counsel for any party may serve and  
30 file a memorandum, responsive to the above specified informa-  
31 tion reported by any tribe on or before Monday, June 14, 1976

32 ORDER RE SAMISH, SNOHOMISH,  
STEILACOOM, DUWAMISH AND  
SNOQUALMIE TRIBES' TREATY STATUS - #2.

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and reply memoranda shall be served and filed on or before  
Monday, June 28, 1976.

IT IS SO ORDERED this 19<sup>th</sup> day of March, 1976.

  
GEORGE H. BOLDT  
SR. UNITED STATES DISTRICT JUDGE

ORDER RE SAMISH, SNOHOMISH,  
STEILACOOM, DUWAMISH &  
SNOQUALMIE TREATY STATUS - #3.

*Exhibit No. 33*

ATTORNEYS AT LAW

***Hubbard & Burns***

A PROFESSIONAL SERVICE CORPORATION

JAMES R. HUBBARD  
JACK R. BURNS  
DAVID SCHNAPF

October 18, 1977

Arthur Flemming, Commission Chairman  
United States Commission on Civil RightsRe: Commission Hearing October 19-20, 1977 on Developing  
Conflict Between American Indians in the State of  
Washington and their Non-Indian Neighbors

Dear Commission Chairman Flemming:

This office represents several non-Indian families living on the Yakima Indian Reservation who have requested us to submit the following formal written statement for your record. Your commission has asked for evidence of the growing conflict between American Indians in the State of Washington and their non-Indian neighbors. Non-Indians living on the Yakima Indian Reservation as well as non-Indians who become personally affected by the application of the new federal Indian common law governing fisheries, are not willing to accept the unequal treatment and are demanding equal protection under the law.

Farmers living on the Yakima Indian Reservation have asked not to be identified for the reason that repercussions have occurred in the past when resident farmers have expressed concern contrary to the established Indian policy on the Yakima Reservation. Notable examples are Indian leases becoming unavailable and strict enforcement policy with respect to water rights. The following comments are from persons whose parents have homesteaded portions of land within the Yakima Indian Reservation and from persons who have purchased land from the Yakima Indian Tribe as well as individual Indians. These farmers and their families have lived and raised families on the Yakima Indian Reservation for the past 50 to 75 years.

The following is a list of the observations made by farmers living on the Yakima Indian Reservation:

1. The Indian is considered a citizen of the United States and receives the privilege of citizenship without contributing toward

Yarrow Bay Office

10604 N.E. 38th Place, Suite 105 • Kirkland, Washington 98033 • (206) 828-3636

Arthur Flemming  
Page 2  
October 18, 1977

any of the costs of running the Government.

2. The Indian is considered a ward of the Government. The non-Indian cannot hold an Indian responsible for personal torts nor is there a remedy to enforce simple contractual promises. For example, there is no recourse for the non-Indian farmer if an Indian's cattle destroys non-Indian farmer's crops. A non-Indian can acquire no right-of-way through Indian land, however, an Indian can acquire a right-of-way through a non-Indian's deeded land. Similarly, if an Indian burns weeds, he needs no permit nor is he required even to observe the simplest requirements of safety as prescribed for other county residents.

3. To the farmer, it is an unexplained irony that the ward of the Government has authority to fine, arrest and jail the non-Indian. Approximately 6,000 Indians govern nearly 40,000 non-Indians who have no vote, voice or representation on the Yakima Indian Reservation.

4. Many federally sponsored agencies limit their funding to Indians on the reservation to the exclusion of non-Indians. For example, housing projects for the poor are not available to non-Indians. Wapato Irrigation Project is funded by federal grants and now provides that only Indians may acquire new water designations.

5. The Indian gets free medical, hospital, dental and optical care from birth to death.

6. The Indian can receive free education from headstart to PhDs: No property tax on Indian land is made available for education.

7. The Indian pays no state taxes on personal property, no real property taxes, no income taxes. It is common practice to see Indian smoke shops to encourage both Indians and non-Indians to avoid taxes which support the many services available to Indians. Test cases are pending in this area of liquor sales and many other examples of inequalities with respect to taxes could be cited.

8. The Indian gets wells drilled, sanitary facilities installed on houses away from municipal facilities, all without charge.

9. Tribal land is withdrawn from the rolls of the county which supports the schools and other government services. In addition, even more land is being withdrawn through the use of federal government funding to provide the tribe with funds to repurchase deeded land which they have sold to non-Indians. The non-Indian is going



Arthur Flemming  
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to pay for the reservation twice.

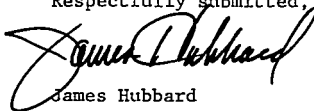
10. Indian children are given a multitude of preferences over non-Indian children. Funding from the John O'Malley agency uses public school time, facilities and money to the exclusion of non-Indian children.

11. Adult Indians are given preference for federally funded jobs, whether such persons are in any way qualified except for the fact that they are Indians.

12. The Yakima Indian Tribe now claims rights to water which has never been disputed creating substantial inequities and hardships for non-Indians living on the reservation. For over 75 years, non-Indian farmers have been using surface water and waters acquired by drilling wells on deeded land. The tribe now claims that the use of water on these lands should be registered and allocated to the Indian use as a priority. As a consequence, farms cannot be sold due to the uncertainty of continued water rights.

There must be unanimous agreement that none of the preferential privileges, programs or funding has really helped the Yakima Indian. Likewise, from the non-Indian farmer's standpoint, there is unanimous agreement that if all Americans lived on the Indian Reservation, there would be no reservation. The general public in Washington is coming to the same conclusion to the extent that special privileges and property rights are granted Indians to the exclusion of non-Indians as in the case of the fisheries decision. As non-Indians become personally affected, the conflict increases. Our society and all of its people demand equal treatment under law. The present inequalities merely perpetuates an intolerable class if not cast system which neither benefits the intended class or society as a whole.

Respectfully submitted,



James Hubbard

JH:NI