

ATNI Kah-Nee-Ta

Supreme Court decision hailed as end to court battles over sparse fish

The Supreme Court's upholding of the Boldt Decision was a cause for celebration at the Affiliated Tribes conference and the fishing rights panel was the pep squad. Federal, state and tribal interests all agreed that the issue should be considered settled once and for all and it was time to "get on with management."

"We are prepared to live with the Boldt Decision," said Oregon's attorney general Jim Redden. He added, "It behooves all of us to concentrate on what we really have as the task ahead—enhancement."

Tribal attorney Dennis Karnopp agreed, saying, "The management system is a mess. It's not a system—it's just the result of political pressures." He hoped Indian people would take a greater role in "projecting more sensible management" and that user groups would get down to the "real issue"—restoring the status of the resource so there is no reason to fight over it.

All the panelists were delighted that the matter was out of the courts. It was critical that the "judicial chaos" be ended, said George Dysart of the U.S. Department of Justice. "There is a great feeling on the part of everybody that we can accomplish more outside court," said Redden. "We were wasting time in court, fighting instead of

preserving the resource."

But some concern was expressed about loopholes or weak spots in the July 2 decision that could lead to more litigation. For instance the justices indicated that the 50-50 sharing of fish between Indians and non-Indians was a foundation to work from. The 50% figure should be considered the maximum allocation necessary to provide Indians with a "moderate living." The minimum allocation, however, is subject to modification due to changing circumstances, such as dwindling tribal populations or the development of other sources of support. "Those reading the decision with a view to the next lawsuit might receive comfort in that," said Redden, adding that some of the language was "regrettable" and could "work to the opposite of what the court wants." But the attorney general noted that it would be "ridiculous to litigate further."

The strengths of the Supreme Court's 6-3 decision were far more obvious to the panelists. According to Dysart, the decision affirmed all the key issues that he had identified while the case was pending in the court of appeals. In particular, it cleared up the confusion about jurisdiction, ordering state courts to abide by federal holdings and giving federal courts the right to step in if the state fails to comply.

Dysart said that there were "some in officialdom" who chose to interpret the Supreme Court decision as an end to tribal involvement in regulation of the fishery. "I don't see that the Supreme Court addressed that issue in the slightest," commented Dysart. Redden agreed: "I read nothing in the decision that the tribal management role is diminished."

In Washington state, there has been some assurance that management would proceed once the treaties were clarified, said Dysart. And from his observations, "Sandison (head of game and fisheries) seems to want to get on with the job."

In Oregon, although the Supreme Court decision does not apply directly, there is a similar desire to "get on with it," said Redden. While, an out-of-court settlement of fish allocations in the Columbia River, was "a step in the right direction there was still doubt in some people's minds that the 50-50 concept was legitimate, noted Redden. "This settles it," he said.

An in the ocean, the decision "clearly places responsibility on the U.S., not the state, to police the taking of fish... as it affects treaties," Dysart. Redden agrees that the off-shore catch figures into the non-Indian share, and has recently joined the tribes in demanding cutbacks in the ocean harvest.

Preserve water quality, quantity

"It was assumed that one day Indians would be gone and the resources would go to special interest groups and the state," noted Russell Jim, a Yakima who sat on the water rights panel. But Jim was happy to report that Indians were still around and still attaching a sacred significance to the resource that binds all of nature together—water.

Jim urged tribes to "stand together" in the battle for water rights and to "give special consideration to the court cases that affect everyone." You may win in court but everytime you

go, you lose a little something, he said, adding "whenever you start winning, they change the rules."

Joe McDonald, Salish-Kootenai, recounted the "total move by Montana to negate Indian water rights." A court suit brought by the U.S. Justice Department against the state challenges S.B. 76, which would have set up a water court to adjudicate water claims with no recognition of prior tribal rights.

Similar concerns were voiced about the President's national water policy, which

was attacked a year ago for its failure to distinguish Indian treaty rights from federal reserved rights. "I don't see that we have anything more than was presented in the first message in June of 1978," said Delbert Frank of Warm Springs, referring to sections 5A and 5B that address Indian and federal rights separately.

John Webber, Land Service Officer for the B.I.A. Portland Area Office, reported on the efforts of an interagency task force appointed by Forrest Gerard to explore the

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INSTANT REPLAY—Nathan "Eightball" Jim engineered the video recording of the Affiliated Tribes convention, giving those in the lobby a glimpse of the proceedings on a second TV screen and preserving the three-day event for posterity.

Spiliay Tymoo Photo by Stowell

Atiyeh woos delegates

"Welcome to Paradise" might have been the unofficial theme of the delegates' banquet on the last night of the Affiliated Tribes conference. Indians from other states were delighted to learn of the good rapport that exists between Oregon tribes and the state government.

Honored guest Governor Victor Atiyeh, offered up as living proof of this relationship, played the role quite convincingly. But what impressed the assembled tribal delegates and pulled them out of their seats for a standing ovation was that Atiyeh was not just acting.

As Joe Cloquet of the Cowlitz Tribe remarked after Atiyeh's speech, Indians can spot sincerity a mile away and Atiyeh's came across loud and clear. The governor said before the banquet that he had two tacks he could have pursued: to talk issues or to create an atmosphere. He chose the latter and his audience ate it up.

The governor delivered a warm and sympathetic speech without the measure of condescension that characterizes many similar efforts. He spoke honestly, addressing some of the conflicts in his own mind about what kind of future Indians should seek. He quoted Indian orators liberally, giving the impression that he might have a well-worn copy of "Touch the Earth" in his living room.

He came across as somewhat of a romantic where Indians are concerned—he didn't know how he came by his interest in Indian people but it's there and deeply-rooted. And yet Atiyeh seemed to be willing to wrestle with some of the philosophical and practical matters that dominate Indian thought.

The governor acknowledged the struggle for resources, which he called the "modern-day gold rush," but expressed the hope that conflicts could be settled outside of court. Atiyeh also took great pains to recognize the sovereignty of Indian tribes as rooted in treaties between nations. But he described his "mixed emotions" about the separateness of tribes. "I want to see you as independent—sovereign, if you will—but I also want you as part of this country," he said.

Phrases like "full partnership" and "same privileges and responsibilities," which would normally be threatening to Indian listeners seemed to slip by unnoticed or at least unchallenged because of the context in which they arose. Tribal delegates sensed that the governor was not dressing up termination ideas with platitudes about egalitarianism. They heard him say instead, "I do not want you to remain weak. You have things to offer this country."

For most delegates, Atiyeh's remarks were refreshing and welcome. They had had a hint of the state's posture toward its Indian citizens two days before during a luncheon presentation on the Commission on Indian Services, a unique organization established by state legislative action. Governor Atiyeh confirmed the authenticity of this posture.

Cloquet expressed the appreciation many at the banquet by saying, "It is so infrequent that we hear such a distinguished person expressing a sincere interest (in us)." And while tribal delegates did not appear ready to defect to Oregon, they undoubtedly left the state with a changed perspective on tribal-state relations let us hope they realize that it was hard work and patience on both sides that brought paradise to Oregon.



LEADERS MEET—Councilman Zane Jackson greeted Governor Victor Atiyeh after the banquet at which Atiyeh was the guest of honor. Atiyeh told ATNI delegates that he respected tribal sovereignty but hoped that Indians would be "full partners" with other citizens.

Spiliay Tymoo Photo by Stowell