SKAGIT VALLEY HERALD

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Fish ruling to go before state court

The case of Indian fisherman Joe McCoy will come before the State Supreme Court Nov. 19. The nine man court announced yesterday that the decision of Skagit Superior Court Judge Charles F. Stafford will be given a hearing in the state high court on that date.

It could be a major landmark in Washington's fight to control salmon fishing by Indians. Judge Stafford's decision nearly a year ago ruled in favor of Indian McCoy, but immediately legal forces for the State Department of Fisheries announced that they would appeal the decision to the higher court.

The hearing will provide a forum for a headon clash between the state's modern salmon conservation methods and an 1855 Indian treaty.

WINS ROUND

Joe McCoy and his 18-foot outboard gillnet boat, aided by the century-old pact, won the first round against the forces of the State Department of Fisheries.

Judge Charles F. Stafford agreed that McCoy was within his rights under the treaty to fish the so-called "jetty drift" near the mouth of the north fork of the Skagit River.

The Indians' right to fish at usual and accustomed fishing grounds is not subject to regulation by the state, ruled Judge Stafford.

CHALLANGED

It is that decision the state is challenging.

Joe McCoy was arrested on July 28, 1960, while he fished during a 10-day closure ordered by the Fisheries Department. He had caught six chinook salmon with his 600-foot nylon gillnet.

"This defendant is subject to the laws of the state of Washington," argues the state in its written arguments to the Supreme Court.

"The continuation of the salmon species depends upon the escapement of spawners up the river, to the spawning ground to propagate."

At stake, argues the state, is Washington's capitalized investment of $670 million.

MEANS RESOURCE

"To the treaty Indian it means a resource which will be available to them forever," its argument contends.

Counters Joe McCoy's attorney, Harwood Bannister of Mount Vernon:

"Any decline in fisheries is not due to Inrian fisheries, but is due to a combination of factors."

The state argues the 1855 treaty, signed by territorial Gov. Isaac I. Stevens, was not intended to reserve a fishery "solely and exclusively to the treaty Indians and put within his power to do with as he may."

Bannister contends the state cannot tinker with the treaty or ask for court relief just because it is now getting the raw end of the 1855 deal.

"The unrestricted right to fish is in the nature of a contractual right, reserved by treaty between the Indians and the United States government," says Bannister.

"The state of Washington cannot abrogate this."