

**No. 23646
NELSON REGISTRY**

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(BEFORE THE HONOURABLE JUDGE MROZINSKI)**

**SEPTEMBER 22, 2016
NELSON, BC**

IN THE MATTER OF

REGINA

v.

RICHARD LEE DESAUTEL

**PROCEEDINGS AT TRIAL
(DAY 4)**

APPEARING FOR THE CROWN:

**G. THOMPSON
A. PEACOCK
M. WORTH**

APPEARING FOR THE ACCUSED:

**M. UNDERHILL
E. PENN**

1 MR. THOMPSON: I would think at the moment, seeing as
2 we --
3 THE COURT: I don't want to do that if there's any
4 risk, but it sounds like there won't be, so ...
5 MR. THOMPSON: I suspect not. I had anticipated that
6 there might be a longer cross on Dr. Kennedy than
7 my friend seems to be indicating. That was one
8 issue.
9 THE COURT: It sounds like even if there is, we've got
10 room on the third week, so ...
11 MR. UNDERHILL: That's why I'm comfortable with that.
12 I mean, he is right. I mean, the Kennedy cross
13 may take longer, but we've got the room.
14 THE COURT: We've got lots of time.
15 MR. UNDERHILL: Yeah.
16 THE COURT: All right. So I'm going to advise the JCM,
17 then, that we won't need the week of October 24th.
18 Okay? All right?
19 MR. UNDERHILL: Thank you.
20 THE COURT: Okay. Thank you.
21 MR. UNDERHILL: So with that out of the way, Your
22 Honour, I'd like to call Cody DeSautel to the
23 stand, please.
24 THE COURT: Thank you.
25
26 **CODY DeSAUTEL, a witness**
27 **called for the accused,**
28 **sworn.**
29
30 THE CLERK: Please state your full name and spell your
31 last name for the record.
32 THE WITNESS: Cody DeSautel. Last name is spelled
33 D-e-S-a-u-t-e-l.
34
35 MR. UNDERHILL: Your Honour, we have prepared, much
36 like we did with Mr. Hart, a set of documents to
37 which Mr. DeSautel may refer his -- refer to in
38 his evidence. I provided sometime ago a copy of
39 this to my friend, and I propose to hand up two
40 copies now: one for the court and one that can be
41 marked. I don't understand my friend has any
42 objections to it being marked as the next exhibit?
43 MR. THOMPSON: No objection, Your Honour.
44 THE CLERK: Shall I enter that as exhibit 30?
45 THE COURT: Yes, please. That's fine. Yes, Madam
46 Clerk. Exhibit 30.
47

5
Cody DeSautel (for the accused)
In chief by Mr. Underhill

1 **EXHIBIT 30: Binder of documents entitled "Index**
2 **to Cody DeSautel Documents"**
3

4 **EXAMINATION IN CHIEF BY MR. UNDERHILL:**
5

6 Q Mr. DeSautel, do you consider yourself to be or
7 self-identify as a Lakes person?

8 A Yes, I do.

9 Q And you are Rick DeSautel's nephew; is that
10 correct?

11 A Yes, I am.

12 Q And you are a member of the Lakes Tribe of the
13 Confederated Tribes of the Colville Reservation?

14 A Yes, I am.

15 Q And I understand you are currently the natural
16 resource director with the -- well, I will use the
17 acronym CCT Natural Resources Department; is that
18 correct?

19 A That is correct.

20 Q Could you describe the court -- for the court, I
21 should say, the nature of your responsibilities.

22 A Our responsibilities as natural resource director
23 include oversight of all the natural resource
24 programs, Fish and Wildlife, Range, Forestry,
25 Environmental Trust, which is kind of our EPA side
26 of the house. We've got History and Archaeology.
27 We've got our Resource Inventory Analysis, which
28 is GIS shop. We've also got our Realty
29 Department, our Land Titles and Records
30 Department, our Department of Transportation, a
31 renovation program that doesn't really fit in
32 natural resources, but I got it anyways. And I
33 think that's all. I've got about 12 or
34 13 programs in total.

35 THE COURT: Is there anything left?

36 THE WITNESS: There is, yes. I don't ever remember
37 them all. I should.

38 MR. UNDERHILL:

39 Q Can you give the court a sense of how many
40 employees, then, ultimately report up to you from
41 all those various departments?

42 A Depending on how many vacancies we have, it's
43 between 4- and 500 employees at any one time. The
44 bigger programs are -- Fish and Wildlife is our
45 biggest at roughly 140 employees currently.

46 Q Now, you talked about the various departments you
47 are responsible for, but can you give a sense of

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1 your sort of day-to-day work, what your
2 responsibilities included. Obviously it's the
3 oversight of all those departments, but maybe give
4 the court a better sense of what your days look
5 like.

6 A So for the most part my responsibilities lie with
7 not only oversight but policy and direction for
8 those programs. I report -- or report directly to
9 the executive director, so I take my direction
10 almost directly from the tribal council. I then
11 give that direction to our programs that we
12 help -- or we use to manage through our integrated
13 resource management plan. So we have an
14 overarching management document that gives
15 directions as to how all natural resources are
16 supposed to be managed for the benefit of natural
17 resources, our human resources and our cultural
18 resources. And we make sure that all of those
19 plans align and all of the activities that take
20 place trying to achieve those objectives align
21 with what is in that integrated resource
22 management plan. And then there's a lot of other
23 policy stuff I won't get into that isn't pertinent
24 to natural resource stuff, but ...

25 Q Thank you. Starting with sort of the most recent
26 and working backwards, maybe you could take the
27 court also through your job history with the CCT.

28 A Okay. So I've been the natural resource director
29 for about two and a half years now. I've worked
30 as an inventory forester and assistant forest
31 manager prior to that. Worked as a natural
32 resource officer, is what we called it, the BIA
33 side. I oversaw the range and land operations
34 program for a while. I worked as a fuels planner
35 for a while and for many years as a forest
36 engineer.

37 Q I want to move now, Mr. DeSautel, and talk about
38 sort of your personal experience with hunting.
39 And we'll start with -- if you could tell the
40 court, first of all, who taught you to hunt and
41 who taught you about the process that you go
42 through.

43 A Okay. So I was taught to hunt by my family. And
44 "family" is something that is kind of an extended
45 term in Indian country, so I have a great number
46 of people I consider my family. My aunts, my
47 uncles, they have always treated me like family

1 even though they are not necessarily blood
2 relatives to my mother or father. There was
3 probably at least a dozen of them that at
4 different times took me out, explained to me why
5 we hunt, how we hunt, how we need to be respectful
6 of the animals, kind of what the process is as you
7 go through and harvest from the time that you
8 are -- realize that you are capable of being an
9 effective, efficient hunter through how then you
10 take care of the meat, how that meat is then
11 divvied up, how you provide for your family, how
12 you provide for your community.

13 So to I guess start with my first hunt --
14 well, we hunted a few times before I actually got
15 anything, because obviously you are not great at
16 it when you first start. But once we went out,
17 went through our hunt, harvested an animal. Then
18 you give thanks to that animal for giving up his
19 life to provide medicine, food for your family.
20 After, that animal is then given away. That is
21 just kind of a ritual that's known at home. It's
22 just, I think, one of great many tribes at home
23 that that is a tradition that shows respect for
24 the animal, to show respect for the community,
25 that you give that animal away to help support the
26 community. And I guess that is it for the most
27 part. We still -- I don't give away any more
28 animals unless families need them. We do hunt on
29 a pretty regular basis. We'll get calls. If a
30 certain aunt or uncle or elder needs meat in the
31 freezer, we get a call and we will go out and
32 harvest animals for them and bring them to them.
33 I think that pretty well answers the question.

34 Q Yeah. Thank you. Could you just expand a little
35 bit on what you were taught about sort of the
36 conservation aspects of hunting.

37 A So it was very important and stressed heavily that
38 we don't waste anything, and that was in our
39 teachings, how we processed the meat and we made
40 sure we used all edible portions of it. It was
41 reinforced with shot placement. So we were taught
42 to shoot animals in a certain location so that you
43 didn't waste any meat from the gunshot. There
44 was -- I guess once the meat is taken care of, you
45 have it cut up, make sure that it's properly
46 packaged so that you can maintain it for a certain
47 amount of time so its edible down the road and in

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1 portions that are useable so that once you take it
2 out and are ready to consume it, there's not any
3 waste after it's prepared.
4 Q You have a good story about a rabbit when you were
5 a younger man. Maybe you can tell the court.
6 A Okay. So it kind of reinforced the conservation
7 side of thing. We were always taught that you
8 only harvested what you planned to eat. So when I
9 was fairly young, I saw a rabbit in the road and
10 thought, I think I can hit that, so I shot it.
11 And my mother at the time told me well, go grab
12 it; throw it in a bag. I thought okay; I thought
13 maybe I was going to get to go home and show my
14 dad what I got. And that wasn't the case. I got
15 home and had to skin it and then fry it up in the
16 skillet, because the rule always was if you shoot
17 it, you have to eat it. Not that I wanted to eat
18 rabbit very bad, but that was the rule, so I got
19 to try out rabbit.
20 Q Mr. DeSautel, have you ever hunted in the Arrow
21 Lakes area? And when I say "Arrow Lakes area,"
22 I'm talking about the -- what at least you
23 understand to be the traditional territory of the
24 Sinixt or Lakes people here in Canada. Have you
25 ever hunted up here?
26 A I have not.
27 Q And why is that?
28 A Well, we established regulations in 2010. At that
29 time I was a federal employee, so I followed up
30 with my federal employer to see if that was
31 something that would be allowed, and they strongly
32 suggested that I didn't, because if I receive a
33 violation in another country, it would be
34 considered an international violation, and I would
35 have been at risk of losing my job. So I was a
36 federal employee up until earlier this spring, so
37 I haven't had that opportunity yet without risk of
38 losing my job.
39 Q Do you want to be able to hunt here, sir?
40 A Yes, very much so.
41 Q And can you tell the court why that is?
42 A Well, for Indian cultures in general, place is
43 very central to what their culture is based on.
44 All the creation stories that we hear and we were
45 taught when we were young have specific place
46 names and how things came to be and what was
47 supposed to be done in those places. A good

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1 example is a legend Tom Bluey [phonetic] used to
2 tell -- he was an elder from the Lakes and
3 Colville bands -- about how salmon got to the
4 Kettle Falls. How a coyote had to go down to
5 Celilo Falls and sneak them by the three sisters
6 at Celilo that held all the fish there and allowed
7 them to come up to Kettle Falls, and that's how
8 that fishery was established.

9 And again, places are very crucial to tribes
10 in general, and especially -- well, I'm not
11 calling -- Lakes aren't unique to that. Culture
12 is tied to place. Tradition is tied to place. So
13 to truly be a Lakes Band member in my opinion, I
14 think it's critical that you practise your culture
15 in the place that you are from, to be there where
16 your ancestors were, to be there where your
17 grandfathers were, to practise, participate,
18 harvest animals where the tribe would have
19 originally done that.

20 Q I'd like to turn over now, Mr. DeSautel, to what
21 is now marked as exhibit 30, the cerlox binder
22 that's ahead of you, and what I'd like you to do
23 is first talk about the introduction of hunting or
24 wildlife management regulation on the reservation,
25 and then we'll sort of step back in time before
26 that happened, but if you could first, with
27 reference to these documents as you need to, just
28 give a brief introduction to how that came about
29 for the court.

30 A Okay. So for the most part game regulations
31 weren't really needed by the tribe, that families
32 grew up teaching the young people how to hunt,
33 when to hunt, what animals to harvest, what
34 species, what sex certain times of year. So there
35 wasn't a lot of need for regulations, and it was a
36 very community-based society. So there was always
37 oversight, whether it was your family or your
38 aunts or uncles or your friends' parents
39 overseeing what you were doing. So there wasn't
40 really a lot of need for regulations. There was
41 always people out there that kept an eye on what
42 you were doing and made sure you weren't doing
43 anything you shouldn't.

44 There were -- as the tribe organized, the
45 government established a constitution, established
46 a governing body, which is our tribal council. We
47 monitored game trends over time and realized that

1 roughly in the early 70s that -- and even into the
2 late 60s sometimes that there was obviously ups
3 and downs in big game populations. And to make
4 sure that those game populations were always
5 viable, always had sustainable numbers, that we
6 may need to restrict harvest or change seasons
7 during certain years to protect those populations.

8 So if we go to tab 6, it's a resolution in
9 1973, 990. This was the first restriction we had
10 on hunting season, so this is the first time that
11 hunting wasn't allowed year round with the
12 assumption that people were making good decisions
13 about what animals should be harvested at what
14 times.

15 Q Now, you mentioned that, I think you said, in the
16 early 70s the tribes recognized a need to start
17 regulating hunting or game management. Do you
18 have a sense of why that was? Like, why the need
19 in the 70s to do that?

20 A I think there was -- I mean, tribes become more
21 civilized as society changes. There was, I guess,
22 movement away from the that traditional community-
23 based parenting that we had had in the past. Now,
24 this is when I was growing up. I was born in '77,
25 so I just kind of caught the end of this, but I
26 had a lot of families that looked out for me, but
27 I also had friends that didn't really have any
28 oversight, so I think it was just kind of a change
29 in the structure of society and how people viewed
30 how the upbringing of a child should happen. So
31 there was kids that weren't necessarily taught the
32 lessons that they should be, so they didn't have
33 those good hunting ethics, those good hunting
34 morals, those, I guess, teachings from their
35 elders that they should have had that would
36 have -- I guess were replaced by regulations now.

37 Q I wonder if you could turn up tab 5, Mr. DeSautel,
38 and describe for the court what we are looking at
39 there.

40 A So this resolution was created in 1972. We had a
41 bighorn sheep population in the Omak Lake Ridge
42 area. Those animals were very rare to the
43 reservation, so to protect them from hunting
44 pressure and just pressure in general of having
45 folks hunting in there even if it wasn't
46 necessarily for bighorn, we closed that area for
47 all hunting so that those animals would hopefully

- 1 expand their population and become a viable
2 huntable population at some point in the future.
- 3 Q And then can I ask you next to go to tab 8,
4 please, of exhibit 30. And again, just describe
5 for the court what we are looking at here.
- 6 A So this resolution followed the *Antoine* case we
7 had. The original reservation created by
8 executive order in 1872 was 2.9 million acres,
9 roughly. That included the current reservation
10 and what we now refer to as the north half of our
11 reservation. Later on in I think roughly 1910 the
12 north half was ceded from the tribe for a small
13 amount of money. Hunting rights were retained up
14 there. They weren't necessarily spelled out as
15 well as they should have been in the documents.
16 So though Indians had been participating in
17 hunting actively up there since the ceding of the
18 north half, there had never been a violation
19 issue. In roughly the early 1970s Mr. Antoine was
20 up there hunting with his wife. A state game
21 official wrote them a violation. We took that to
22 court, went to the supreme court, won the
23 decision. After the decision we realized that we
24 didn't have any regulations in place. We were
25 using the same ones that we had established for
26 the reservation. We had conversations with the
27 state, and they had some concerns, so what we did
28 with this resolution is close hunting on the north
29 half until we could have cooperative meetings with
30 the State Department of Natural Resources to
31 discuss what a hunting season and bag limit should
32 be on the north half so that we didn't have any
33 adverse impacts on the big game populations up
34 there.
- 35 Q And maybe following on that, Mr. DeSautel, you can
36 take us through tab 9.
- 37 A So tab 9 is the resolution following this, where
38 we've had those negotiations with the state. We
39 evaluated what the big game populations were.
40 We've established what we think are viable harvest
41 levels and seasons that won't have any detrimental
42 impacts to the resource. And surprisingly -- I
43 mean, maybe things happened faster back then, but
44 I think it's interesting to note that we passed
45 this resolution closing the season on the 24th of
46 February, and by the 21st of April we had already
47 agreed with the state on what the regulations

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1 were, so apparently very good and very cooperative
2 discussions back then. Actually, we still have a
3 pretty good working relationship with the State of
4 Washington.

5 Q And the next is tab 10 in the binder. I wonder if
6 you could again help the court with what this
7 document is about.

8 A So prior to a case that was called the *Palmer* case
9 there was non-tribal members who assumed they had
10 hunting rights on fee property that was not held
11 in trust by the federal government for the tribe.
12 That case was tried. The individual fee property
13 owners lost the case. We realized there was going
14 to be some issues with the private landowners we
15 had on the reservation, so we passed a resolution
16 closing big game hunting to all non-tribal members
17 on the reservation. Understanding that we had to
18 some extent a checkerboard reservation, there was
19 a lot of private property intermixed with trust
20 property on the reservation, and it would be very
21 difficult to manage and to enforce how many
22 animals were being harvested in any one season
23 with both state seasons open and tribal seasons
24 open, so that was the reason for this regulation.

25 Q Tab 11, Mr. DeSautel. If you could describe for
26 the court what this document contains.

27 A So this is a report about an introduction of elk
28 we had in 1977. The reservation always had elk
29 but very few. And I'm not sure why. I just don't
30 think there was big enough populations to be
31 viable and expand. We introduced a small herd.
32 In 1977 we established a game refuge for those
33 elk, and they are probably a population that has
34 spread throughout the reservation, almost the
35 entire reservation today. So in the last 40 years
36 they have expanded their range from the original
37 roughly 200,000 acres we have on the reserve. I
38 would say they utilize probably in excess of 8- or
39 900,000 of the reservation. And they swam the
40 river to the Spokane Reservation and also moved up
41 to the north half. So this management plan kind
42 of goes through the intent of re-establishing the
43 elk herd of what our targets will be and how
44 management will be implemented once we have a
45 viable population that can be harvested and used
46 for subsistence by the tribal members.

47 Q Next I'd like to take you to tab 13, Mr. DeSautel.

13
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1 A Okay.

2 Q Now, this a bit more of a meaty document, and so
3 maybe you can start by taking the court, if you
4 could, or take yourself, to page 2 and just sort
5 of introduce this document for Her Honour.

6 A Okay. Your Honour, this is our interim five-year
7 fish and wildlife management plan, and for this
8 I'll go over some broad goals and objectives of
9 the program, and then for the sake of brevity I'll
10 cover just the wildlife portion of it. So the
11 mission statement for the program is "to maintain
12 and protect viable populations --"

13 MR. UNDERHILL: That's page 2, Your Honour, I'm sorry.

14 THE COURT: What page?

15 THE WITNESS: Sorry. Page 2, yes.

16 THE COURT: And I'm going to say just try to slow down
17 just a little bit. So you sped up again. If you
18 just do your best.

19 THE WITNESS: Okay. I am sorry. So the mission
20 statement is to:

21

22 Maintain and protect viable populations,
23 (numbers and distribution of reproductive
24 individuals) of native and desired non-native
25 species of fish and wildlife, and their
26 supporting habitats, while providing
27 sufficient numbers to meet the cultural,
28 subsistence, recreational and economic needs
29 of the tribal membership.

30

31 And I'd like to point out the economic portion --
32 we don't sell any meat, but there is an economic
33 component because we sell permits to non-tribals
34 to hunt upland game birds. And that was a
35 negotiation we had with the state, so that's why
36 there's an economic component in there.

37 If we could then skip to page 3, we can go
38 through our strategic objectives. There's four of
39 those. And these are fairly straightforward.
40 They kind of give you the overall intent of what
41 we are trying to accomplish as a Fish and Wildlife
42 program. So we want to ensure some management of
43 fish, both anadromous and resident. We put a lot
44 of work into re-establishing anadromous fish
45 populations, salmon and steelhead primarily, and
46 habitat resources within the external boundaries
47 of the Colville Reservation and on the north half

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1 and within the tribes' U&A, usual and accustomed
2 areas, where applicable.

3 THE COURT: Sorry, what is the U&A?

4 THE WITNESS: That would be --

5 THE COURT: U&A.

6 THE WITNESS: The usual and accustomed areas.

7 THE COURT: Usual and accustomed areas.

8 THE WITNESS: Yeah. And that would be of all 12 bands
9 within the Colville Tribe. So that stretches from
10 northeast Oregon, central Idaho, up through the
11 Okanagan territory, the Okanagan Valley up into
12 Canada, the Arrow Lakes territory, up north near
13 Revelstoke, and west as far as the crest of the
14 Cascades for the old Moses Columbia Reservation.
15 So we have interest and actively participate in
16 management of all of those areas. The second
17 strategic objective is to:

18
19 Inform the tribal membership about the Fish
20 and Wildlife programs, projects and benefits
21 of healthy, diverse and sustainable fish and
22 wildlife populations while supporting
23 traditional, cultural and subsistence needs.

24
25 The third strategic objective is to:

26
27 Support, train and promote personnel within
28 the Fish and Wildlife Department ensuring
29 policies, procedures, laws and regulations
30 developed for the Fish and Wildlife program
31 are followed.

32
33 Those laws would be tribal, federal and state
34 laws, when and where they are applicable. The
35 fourth strategic objective is to:

36
37 Work cooperatively and establish
38 relationships with internal and external
39 stakeholders to provide the best possible
40 resource management for the tribal
41 membership.

42
43 And while it's our intent to work specifically for
44 the tribal membership, it's in our interest to
45 provide good viable game populations for all users
46 of those populations, so when we manage on the
47 north half, we understand it's also in the best

1 interest of the State of Washington and the folks
2 that hunt in Washington State that we have good
3 viable populations so that they as well can
4 harvest animals and be successful.

5 So if we turn back to page -- I think it's
6 34. Yes, 34, that brings us to the wildlife
7 management program goals and objectives and tasks.
8 So the way this portion is set up and the rest of
9 the management document in general is we have a
10 strategic objective. Then we have a wildlife
11 goal. And then we have tasks associated with
12 accomplishing that goal, working towards the
13 strategic objective. So the first wildlife goal,
14 going back to that first strategic objective where
15 we are ensuring sound management of fish and
16 wildlife, is to:

17
18 Provide for subsistence and cultural use of
19 wildlife by tribal members while maintaining
20 healthy self-sustaining game and non-game
21 populations on the reservation in the north
22 half.
23

24 To do that we prepare a report annually that
25 evaluates what our big game populations are. We
26 use a number of different sources of data to help,
27 I guess, estimate what those populations are. We
28 have big game aerial flights, which are our
29 primary method. We also try to retrieve as
30 many -- as much harvest information as we can.
31 For some animals we issue tags. For other animals
32 we just -- we don't issue tags. We have reports
33 available that folks will submit. They kind of
34 show us what they are harvesting, where they are
35 harvesting, what the age structure is, what the
36 species -- or I guess the species and sex is so we
37 know how many bucks, how many does, how many
38 bulls, cows, whether they are cows or calves.
39 Those types of things that are all important to
40 making sound management decisions about viable
41 populations and what is being harvested by the
42 membership.

43 And we meet on a regular basis throughout the
44 year with our fish -- or our wildlife staff to
45 monitor these trends. It isn't something we look
46 at just once a year. We kind of track these
47 throughout the year, but annually we produce a

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1 report so everybody within the Natural Resource
2 Department and the tribal council is aware of our
3 big game trends.

4 THE COURT: And so the non-game, is that predators? Or
5 what is the non-game population?

6 THE WITNESS: Yeah, so we do have a predator season.
7 And that's really our only non-game we have.

8 THE COURT: Okay.

9 THE WITNESS: But we understand that there's a place
10 for all animals in the ecosystem, so we try to
11 monitor those populations as well. So less
12 predators usually means more big game, but it may
13 mean an inflated, unhealthy big game population,
14 that you see larger --

15 THE COURT: Those would be what? Wolves?

16 THE WITNESS: We do have a wolf season. They are
17 considered a predator. We have coyotes. We
18 have -- those are the two primary ones. Bears are
19 considered a game species, so all edible portions
20 of a bear have to be used. There's a list of them
21 in our game regulations. I don't remember exactly
22 which ones are considered game and non-game. But
23 our wildlife management program is geared
24 primarily towards big game populations, so deer,
25 elk and moose. And antelope. Now, they were
26 reintroduced very recently. And bighorn sheep.
27 So wildlife goal 2, the 1.02, is to:

28
29 Establish annual member hunting seasons,
30 allowing for maximum sustainable harvest of
31 game species.

32
33 So again, the intent here is to make as many
34 opportunities available for the tribal membership
35 as possible. We want them to be able to sustain
36 their cultures, sustain themselves, through the
37 consumption of this food with as few limitations
38 as possible, but we also have to maintain that in
39 doing that, that we are maintaining good viable
40 populations of game animals. We see this is very
41 critical. Native diets especially were very
42 specific, and what we've seen from a health trend
43 standpoint is that people who consume more
44 non-Native foods tend to have more health-related
45 impacts from it.

46 Moving on to wildlife goal number 3 or 1.03:
47

1 Improve annual harvest estimates by
2 increasing tribal member harvest/capture
3 report rate to 50 percent or greater.
4

5 So again, we push hard. We have different raffles
6 and drawings we have for people that return
7 harvest information so that we can do as good a
8 job as possible at tracking how many animals we
9 are harvesting, what kind of animals we are
10 harvesting and whether those are bucks, does,
11 fawns, et cetera. Moving down to wildlife
12 goal 1.04. It gives our target populations that
13 we think are needed to make easily accessible
14 harvest opportunities for the tribal membership.
15 So our target for deer says "achieve winter deer
16 population," so we are assuming that the fawns
17 have survived through to the winter for that year
18 of 12- to 15,000 animals. We have targets for
19 fawn to adult ratio. And we have buck-to-doe
20 ratios, but we do our big game flights in
21 February, and typically the deer -- the bucks have
22 lost their horns by then, so it's a little tougher
23 to figure out exactly what your buck-to-doe ratio
24 is, but we have got some other methods that we use
25 to help estimate that.

26 So moving on to wildlife goal 1.05 on
27 page 36. This sets our target for elk populations
28 to:

29
30 Achieve a self-sustaining, healthy wintering
31 elk population target of 1,500 to 2,000
32 animals.
33

34 Again, this is monitored through tag returns and
35 aerial flights in the winter. Again, this is
36 coming from an original introduction of 44 animals
37 roughly in 1977 to a population that, if it -- I
38 think it's at roughly 1,500 right now. It may be
39 a little in excess. It really depends on the
40 winter, how many animals we get in the wintering
41 ground, how effective our big game flights are,
42 but we have a model that we use to help estimate
43 for differences in winter, differences in snow
44 cover, differences in movement because of snow
45 depth.

46 Wildlife goal 1.06 establishes our moose
47 target. We are looking for a moose population

1 target of 150 to 200 animals. And I think we are
2 well over that. I think we are closer to 4- or
3 500 animals currently for moose. And I think we
4 counted in excess of 200 last year. So assuming
5 there's many more we didn't see, that we have a
6 very, very strong moose population.

7 Wildlife goal 1.07:

8
9 Maintain self-sustaining healthy populations
10 of upland game birds on the Colville
11 Reservation.
12

13 We do have some members that harvest upland game
14 birds, primarily ruffed grouse and blue grouse,
15 but we also have non-members that hunt on the
16 reservation for -- their upland game birds are
17 typically more pheasants, chukars, those types of
18 species that are more in the shrub-steppe-type
19 habitat. We want to make sure we provide good
20 opportunities for those hunters as well.

21 And then:

22
23 Maintain self-sustaining healthy populations
24 of migratory game birds.
25

26 For wildlife goal 1.08. Again, for the same
27 reason. We have some tribal members that utilize
28 those migratory birds. And I don't think -- we
29 don't have a game season for the non-tribals for
30 that, but we understand the importance of
31 migratory birds not just that reside on the
32 reservation but travel through the reservation on
33 their way to other, I guess, seasonal patterns or
34 places.

35 Moving on to page 37, wildlife goal 1.09.

36
37 Maintain self-sustaining population of
38 California bighorn sheep on the reservation.
39

40 Again, we had a small population of these on the
41 Omak Lake Ridge going back into the late 60s/early
42 70s. That population hasn't done that well.
43 There were some domestic goats and sheep that were
44 there, so we had some issues with disease. We've
45 since transported other sheep from around south
46 central Washington and up here in BC to a
47 different portion of the reservation, and that

1 population has done very well. We actually
2 increased the number of animals that we allow to
3 hunt this year because the population has done so
4 well. We started with roughly 100 animals that
5 were planted, and we are well in excess of 200
6 animals at this point and are looking to
7 transplant them in other areas because they have
8 utilized all of the available habitat they have in
9 that Hell's Gate area. So this goes through
10 the -- the wildlife goals go through the specific
11 tasks that are we are going to use to help manage
12 those populations. I want to point out that one
13 of those is maintaining a relationship with the
14 Washington State Department of Fish and Wildlife
15 and the US Department of Fish and Wildlife on
16 bighorn sheep monitoring efforts. We realized
17 that in a lot of places those populations are kind
18 of distinct and there's issues with genetics, that
19 they don't necessarily move back and forth between
20 populations as much as they should, so it takes
21 some management intervention to make sure you get
22 good genetic flow across all populations within a
23 certain geographic area. So we work very hard
24 with the state with that to make sure that that
25 stays in place.

26 Wildlife goal 1.010 to:

27
28 Maintain or increase the quality of habitat
29 necessary to sustain, protect and restore
30 wildlife populations.

31
32 This goal kind of goes through some of the
33 geospatial GIS-type analysis we do. There's
34 different models we do. There's different habitat
35 assessments we do to evaluate what shape the
36 habitat is in, how many animals it can support,
37 where improvements can be made, where protections
38 need to take place, so we understand that wildlife
39 populations are very, very closely tied to
40 available habitat and how productive that habitat
41 is. So there's a lot of work that goes into
42 managing habitat, knowing that good habitat will
43 produce good viable numbers of big game
44 populations.

45 Wildlife goal 1.011:

46
47 Maintain or improve the quality of habitat

1 necessary to sustain, protect and/or restore
2 wildlife populations.
3

4 Again, kind of along those same lines. This one
5 kind of talks a little more about hunting
6 opportunities and aligning with the tribes'
7 integrated resource management plan. So with some
8 of the active management we do, say for forestry,
9 for example, when we do timber harvest, those
10 provide openings in a forest canopy that provides
11 more forage down below for big game populations.
12 So this kind of speaks more to some of those type
13 of interactions we have as a management program.

14 Moving on to page 38, wildlife goal 1.012 to:
15
16 Minimize mortality of wild animals on the
17 reservation and surrounding lands due to
18 disease and contaminants.
19

20 So again, to make sure we always have good viable
21 populations for the membership. When we have, I
22 guess, ups and downs in big game populations, we
23 know that they are kind of cyclic, that we are
24 going to have a buildup and you'll have a falloff,
25 whether that's from disease or bad winters or
26 whatever, maybe, or a buildup of predators, that
27 we try to make those ups and downs as small as
28 possible. So we work hard to monitor big game
29 health. We reach out to our tribal members, to
30 the folks that are hunting. We get feedback from
31 them on a very regular basis to see what they are
32 seeing out there and kind of made the point
33 earlier that we have -- kind of going back to our
34 teachings, that everybody kind of looked out for
35 everybody else. We kind of have the same thing
36 going on with our big game populations. The
37 tribal membership is very active in communicating
38 with the Fish and Wildlife program when they see
39 things that they think could be potential issues.

40 So, I mean, we've got a staff of 140 within
41 our Fish and Wildlife program, but we've probably
42 got another thousand hunters out there that are
43 regularly saying hey, this is what I'm seeing; can
44 you take a look at this. For one reason or
45 another I'm seeing a lot of animals here; I'm not
46 seeing many here; I'm seeing a lot of predators
47 here. So we always get feedback from the

1 membership, and we use that as part of our
2 monitoring system. And that helps us identify
3 where we have different issues with different
4 populations.

5 Moving on to wildlife goal 1.013. I think
6 this one is pretty unique to our tribe, and I
7 think a lot of tribes maybe have something like
8 this in their regulations, but the intent of this
9 wildlife goal is to:

10
11 Increase tribal member proficiency in the use
12 of hunting equipment and utilization of wild
13 game.
14

15 So again, something that was done traditionally by
16 families, now we have regulations and a program in
17 place that helps to mitigate for some of those
18 teachings that aren't happening from the family.
19 So wildlife goal 1 is to:

20
21 Conduct annual archery proficiency exams in
22 each district to develop proficient archers.
23

24 So we have separate archery seasons. And to be
25 issued an archery tag, you have to pass a
26 proficiency test where you have to bring your bow
27 to the test. And I've put on a number of these
28 tests. We test your bow make sure it's
29 mechanically functional, make sure it's the
30 appropriate draw weight, and then we have a course
31 we run them through to make sure they can shoot
32 the bow efficiently. There's certain -- a number
33 of targets that they have to hit in a certain area
34 to show that they can proficiently shoot that bow
35 so that they can humanely kill and I guess recover
36 animals once they are harvested. I don't know any
37 other agency that does that. There may be some
38 states. I know Washington State does, that they
39 have similar requirements as far as what equipment
40 you have to use, but they don't require folks to
41 show they are proficient. And we've discovered a
42 lot of problems with things. People tend to not
43 use their equipment all year, and then when the
44 season rolls around they want to pull it out and
45 they haven't shot it; they haven't checked it. So
46 this makes folks bring those bows, arrows,
47 different equipment they have out early. And I've

1 spent a lot of time fixing bows that people
2 assumed were in good operational order that
3 aren't. So this has been a very good regulation
4 for us. I think it minimizes the number of
5 animals we'd lose comparatively to other agencies,
6 whether that be the state or feds, from archery
7 hunting.

8 The second goal is to:

9
10 Maintain two individuals within the
11 department that are certified to teach a
12 tribally operated hunter safety course.

13
14 So again, something that families used to do a
15 good job of, teaching kids how to safely operate
16 firearms, how to humanely kill game animals they
17 are trying to harvest. Since that doesn't happen
18 now, we try to make that opportunity available
19 through the teachings of our program. This is how
20 you operate a gun. This is how you safely clean
21 and maintain a gun. This is how you shoot a gun
22 so that you can accurately hit what you are trying
23 to hit and hit it in the appropriate place so you
24 don't have any wastage. The third goal and
25 probably the most important there is to:

26
27 Provide demonstration in various venues how
28 to process wild game to minimize waste.

29
30 So again, very, very important to us. We
31 understand that those animals have given up their
32 lives to help sustain us, so to be very respectful
33 to those animals, it's important to us to maintain
34 and consume all the edible portions of every
35 animal that we harvest, so we teach folks how to
36 cut them up, how to package them, to make sure
37 that there's no wastage.

38 So moving on to wildlife goal number 2:

39
40 Ensure wildlife populations are maintained
41 within the tribes' ceded and U&A areas to
42 meet the cultural and subsistence needs of
43 the tribal membership.

44
45 And again, U&A there is usual and accustomed. So
46 wildlife goal 2.01 is to:

47

1 Represent tribal fish and wildlife interests
2 pertaining to state and federal resource
3 management activities on the north half and
4 within the tribes' usual and accustomed area.
5

6 So today we are talking specifically about Lakes,
7 but we have a number of other cases and other
8 outreach we've had to federal agencies looking at,
9 again, the vast territory that was usual and
10 accustomed areas for all 12 bands of the Colville
11 Reservation. A good example is a case of tribe 1
12 for the Wenatchi Band's hunting rights now in the
13 Icicle, which is just out of Leavenworth in
14 central Washington. Those rights were lost. The
15 tribe went to court to fight to get those back.
16 Now the Wenatchi Band has access to that fishing
17 ground that was critical to where they were, to
18 who they were as Wenatchi people back in the --
19 well, prior to the early 1900s when they were
20 moved over to the Colville Reservation.

21 So the tribe actively tries to manage that.
22 It's just difficult because we were an executive
23 order tribe. If we would have been a treaty
24 tribe, they would have spelled out exactly what
25 rights we had and they would have recognized
26 hunting and fishing rights in those usual and
27 accustomed areas, but because it was executive
28 order they just established the reservation and
29 didn't really define any of those other rights.
30 So now the tribe has to go through and
31 re-establish and fight for those rights in court
32 for every one of those bands. So it's a very
33 time-consuming and very expensive venture, that
34 these cases typically cost us between 3 and
35 4 million dollars to litigate, more or less,
36 depending on how complicated they are. But we are
37 very cognizant of when we fight them and how we
38 fight them and make sure that we have the
39 appropriate resources to be able to fight them and
40 do a good job for those 12 bands that the tribal
41 council represents.

42 Moving on to wildlife rule number 3 to:

43
44 Contribute towards population recovery of
45 federal threatened and endangered species and
46 other priority species that occur within the
47 boundaries of the Colville Reservation. The

1 Colville Tribe has the right to accept or
2 reject state threatened or endangered
3 species.
4

5 So while we have that right, we typically don't.
6 We work very hard to manage those species. The
7 best example is sharp-tailed grouse we have on the
8 reservation. The last biggest population left in
9 the State of Washington is on the reservation. We
10 work very hard and we have a lot of restrictions
11 in place to make sure that sharp-tailed grouse
12 population is sustainable. We don't harvest any
13 of them. They still allow some harvest in other
14 areas. I don't think necessarily in Washington
15 State, but I know in other areas they do. But we
16 work very closely with the state, especially on
17 anadromous fish. There's threatened endangered
18 spring chinook that we help manage. And steelhead
19 populations are also threatened and endangered.
20 Well, I think they are both endangered; they are
21 not threatened. So we work very closely with the
22 state and federal agencies to make sure that we do
23 everything we can to make sure those populations
24 stay viable.

25 So moving on to wildlife goal 3.01, we want
26 to:

27
28 Restore native wildlife species throughout
29 their historic range on the reservation,
30 where habitat exist or can be feasibly
31 restored.
32

33 So understanding that we are the only ones capable
34 of managing on our land, we try to do as good a
35 job as possible, and I think we do a great job
36 compared to some of the other federal agencies
37 about. And if you look at the number of animals,
38 the -- I guess the quality of animals is probably
39 the best indicator. We've got some very big
40 animals and very mature animals that we have
41 harvested. It shows we have very good age
42 structure. We have very good distribution of
43 buck-to-doe ratios. We've always had really good
44 numbers of fawn survival. So our management has
45 been very effective.

46 Maybe bump down to wildlife goal 3.02:
47

1 Maintain, restore and manage those habitats
2 upon which T&E and priority species depend.

3
4 So again, understanding that habitat is critical
5 to maintaining good populations. We spend a lot
6 of time, a lot of money. We have a fish accord
7 with Bonneville Power Administration. It's
8 roughly \$20 million a year over the last 10 years
9 that we've spent, some of it on wildlife
10 mitigation but a big chunk of it on anadromous
11 fish mitigation. We've done a ton of habitat
12 work, all way up to the Canadian border. We've
13 also assisted some of the Okanagan bands in doing
14 some work with sockeye up into Canada. We've done
15 a lot of work up the Okanagan Valley. So we see
16 those benefits not just for our tribal members
17 when we have more fish return, but the state has
18 given a ton of people out around Brewster last
19 year because there was such a good sockeye run
20 that had come back, in large part because of the
21 habitat work that had been done by the tribes in
22 the state.

23 Moving on to wildlife goal number 4:

24
25 Maintain the health and safety of the
26 Colville Reservation and north half
27 residents.

28
29 So goal 4.01 is to:

30
31 Minimize wildlife-related threats to public
32 health and safety on the Colville Reservation
33 and north half.

34
35 And this kind of speaks to what my Uncle Rick's
36 job is. So when we have bear complaints and we
37 have cougar complaints, we make sure we address
38 those as quickly as possible, as efficiently as
39 possible, make sure that the public is protected,
40 try to protect those animals as best we can. For
41 the most part they are trapped and relocated so
42 that they can still be the wild animals that we
43 intend them to be. We just don't necessarily want
44 them right there in the communities.

45 Wildlife goal 4.02 is to:

46
47 Reduce dangerous and nuisance wildlife

1 complaints.

2
3 So again, it talks about kind of how we coordinate
4 to respond to those types of complaints. Not
5 necessarily so much the specifics of how we trap
6 them and remove them, but we have a few different
7 options that we can use. I mean, there's -- but
8 for the most part, it talks specifically about how
9 we transport them away, how we make sure the
10 public is protected and how, in some cases, their
11 livelihoods are protected. So we have some
12 complaints sometimes with bears in orchards or
13 corn fields or big elk herds move into alfalfa
14 fields, so we do what we can to mitigate those
15 while causing as little effect as possible to the
16 big game populations.

17 The last wildlife goal speaks specifically
18 about wild horse management. I don't know if
19 that's something we need to cover, but just
20 generally we have a wild horse population on the
21 reservation. We try to maintain it at a certain
22 level to make sure that tribal members have access
23 to go capture those animals and use them if we
24 wish, but we don't want to have so many that they
25 have negative impacts to the ecosystem. Yakima is
26 a good example. They have -- the last number I
27 heard was 18,000 wild horses on their reservation,
28 and they have wreaked havoc on the range. So we
29 manage the population to make sure it stays as a
30 sustainable level so that doesn't happen.

31 Q Thank you, Mr. DeSautel. Maybe you can also give
32 the court just a brief overview of the enforcement
33 side of things. We heard a little bit from your
34 uncle yesterday about his job, but maybe you could
35 just very briefly walk the court through how these
36 various regulations that you've summarized here
37 are enforced on the reservation.

38 A So we have a Natural Resource Enforcement
39 Department that works within our Parks and
40 Recreation Department that is responsible for
41 enforcing all of the laws we have in our -- I
42 think it's 4-1 Fish and Wildlife code. So there's
43 a number of rules and regulations we have in there
44 to protect the resource, to protect the users.
45 And they are responsible for going out and doing
46 checks, just kind of doing patrols to make sure
47 that everything is -- all the laws and regulations

1 we have in place are followed. And if we have any
2 complaints or any, I guess, violations that are
3 turned into us, they will follow up on those and
4 issue citations if needed. So say if somebody
5 does violate a law. We catch them. They will go
6 to court, tribal court; that is very similar to
7 any other court. They are issued a civil
8 infraction. Likely what they typically get is
9 some type of fine or community service in lieu of
10 that fine, and then the loss of their hunting
11 rights are for a certain amount of time. So if
12 it's your first offence, it's typically a year you
13 lose your hunting rights for. If it's a second
14 offence, typically it's two years. On a third
15 offence, you have the risk of losing your hunting
16 rights for the rest of your life. And again, the
17 penalties associated on the -- either the
18 community service or the monetary side increase
19 with each violation as well.

20 Q And again, that's -- it's a tribal court; is that
21 right, Mr. DeSautel?

22 A That is a tribal court, yes, sir.

23 Q I would like to spend a little bit of time zeroing
24 in on the Arrow Lakes area, and to do that, at
25 tab 12 you'll see, Mr. DeSautel, is a copy of the
26 2010 Arrow Lakes hunting regulations.

27 MR. UNDERHILL: And just for the record, that is a
28 copy, Your Honour, of what is already marked as
29 exhibit 29.

30 Q So, Mr. DeSautel, let's start with talking about
31 your knowledge of the reasons behind the
32 promulgation of this regulation. You've spent a
33 lot of time just now talking about the healthy
34 game populations on the reservation itself. Tell
35 me why it was felt necessary or important to
36 develop these regulations.

37 A So before we ever issue a season, we feel it's
38 very critical to have a good assessment of what
39 the state of the game populations are. So I know
40 prior to this being issued there was some meetings
41 with biologists of the province: discussed what
42 shape the big game populations were in, had some
43 field visits with some of our staff that evaluated
44 numbers they were seeing, general health of the
45 animals they were seeing. But again, since this
46 was kind of a new area to us and we didn't have
47 maybe as good a handle as we would have if they

1 would have been on reservation, we thought it was
2 critical that we have regulations in place to make
3 sure that we were appropriately managing our
4 harvest so that we weren't having negative impacts
5 to the resource.

6 Q Are you aware whether or not the sort of
7 equivalent, if I can call it that, BC regulations
8 were reviewed in developing these?

9 A Yes, they were. And there were some specific
10 language taken from the BC regulations. An
11 example would be bag limits. Our bag limits are
12 identical to what BC allows for in their
13 regulations. There was also an antler restriction
14 within this for moose that was taken from the
15 BC regulations. And the request of the bios at
16 the time, that there was, I am assuming, an age
17 structure issue, so they were limiting harvest to
18 the spike-fork bulls, so we included that
19 restriction in our regulations as well.

20 Q Mr. DeSautel, my colleague noted you used the term
21 "bios." Does that mean biologists?

22 A Biologists, yes, I am sorry.

23 Q Yes. Thank you. There is actually not a season
24 outlined in these 2010 regulations; is that
25 correct?

26 A That is correct.

27 Q And can you tell the court why that was or is?

28 A There wasn't a season outlined in these
29 regulations, my understanding was, because there
30 was specific planned hunts that the tribe would
31 organize. They would identify what individuals
32 would come up and take part in those hunts, so we
33 didn't want to open just a general season to any
34 Lakes band member. We wanted to be very strategic
35 about how we approach this and make sure that what
36 we were doing was something that was a viable
37 option going forward. So we limited the
38 opportunities to a certain number of our
39 individuals.

40 Q And is there now a season in the current
41 regulations?

42 A Yes, ma'am, there is.

43 Q You mentioned earlier in your evidence that for
44 certain species on the reservation you use a tag
45 system; is that correct?

46 A That is correct.

47 Q Is a tag system used for the Arrow Lakes area?

Cody DeSautel (for the accused)

In chief by Mr. Underhill

1 A Yes, it is. One, for documentation sake. And
2 primarily at the request of the biologist from
3 British Columbia, they wanted to make sure that we
4 had accurate harvest data for any animals that
5 were taken up here so that they could help
6 incorporate that into their big game management in
7 British Columbia. So we required tags and
8 committed to returning any harvest information or
9 I guess even hunt information, tags that were
10 issued but weren't necessarily filled, so we would
11 have a good sense of how many hunters we had in
12 British Columbia and how successful those hunters
13 were.

14 Q Have you given out any tags since 2010? Do you
15 know?

16 A We have not. So beginning -- going back to an
17 earlier comment I had about kind of limiting the
18 tribe and the tribal members' risk and making sure
19 we had enough resources to follow through
20 appropriately with the court case, once this case
21 was established we didn't know that we necessarily
22 had the financial resources to defend a number of
23 tribal members in court if they were to come up
24 here and be issued citations. That could run into
25 tens of millions of dollars very quickly depending
26 on how many folks we had hunting and how many
27 violations were issued. So we have not issued
28 tags, but we have developed regulations and we
29 have had folks up looking at populations, kind of
30 monitoring what data British Columbia has online,
31 and they have a fair bit online, and they have a
32 very good reporting system and web page available.
33 So that was the reasoning for no additional tags
34 being issued.

35 Q Now, I understand, Mr. DeSautel, you may be able
36 to help the court with the background to -- the
37 pages are unnumbered, but you'll see a few
38 pages in there's "hunter information - unlawful
39 acts"?

40 A Okay.

41 Q And maybe -- your uncle wasn't able to describe
42 the background to this in any great extent. Maybe
43 you can help the court with where these came from.

44 A Primarily this is taken out of our reservation
45 regulations. There was some small changes made so
46 that it would cover specific Sinixt issues, but
47 many of the regulations we have here are

30
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Cross-exam by Mr. Thompson

1 consistent with our big game regulations for the
2 reservation. We try to do this so that we don't
3 complicate things for our tribal members. We want
4 them to understand what the regulations are. We
5 want to be consistent so that when they go out,
6 it's very easy for them to follow the rules, and
7 we don't have to issue violations because things
8 have become too complicated from our management.
9 Is there any specific questions we had about
10 regulations? There's only a few in here that are
11 specific to Sinixt. Most of them are consistent
12 with our big game regulations for the reservation.

13 MR. UNDERHILL: I'll take a minute. I think we are
14 almost done, Your Honour. I just want to take a
15 minute to look at a couple of points.

16 Those are my questions for Mr. DeSautel, Your
17 Honour.

18 THE COURT: All right. Thank you.

19

20 **CROSS-EXAMINATION BY MR. THOMPSON:**

21

22 Q Mr. DeSautel, I just wanted to start by asking you
23 a few questions just about your personal
24 background. You covered some of these, I know,
25 with Mr. Underhill, but I'd just like to clarify a
26 couple of things. You are a member of the
27 Confederated Tribe of the Colville Reservation?

28 A Yes, I am.

29 Q And you are actually a member of the Lakes Tribe
30 of the Colville?

31 A Yes, I am.

32 Q And that is -- just so we are absolutely clear
33 about this, there's 12 tribes in the Colville
34 Reservation; correct?

35 A That's correct.

36 Q Now, you were born in the United States; is that
37 right?

38 A Yes, I was.

39 Q Where were you born?

40 A I was born in Spokane, Washington.

41 Q And how old are you now?

42 A I am 39.

43 Q And you grew up in the United States; is that
44 right?

45 A Yes, I did.

46 Q And you lived your entire life in the United
47 States?

- 1 A Yes, I have.
- 2 Q And who are your parents, please?
- 3 A My father was Anthony DeSautel, and my mother was
- 4 Sue McKinney.
- 5 Q And were they both members of the Lakes Tribe?
- 6 A My father was. My mother was not.
- 7 Q And just what affiliation what your mother?
- 8 A She -- I don't think she has any tribal
- 9 affiliation. She may have some back, but it's not
- 10 any of the northwest tribes.
- 11 Q So do you know where she's from? What her
- 12 background is?
- 13 A For the most part family heritage is Scot and
- 14 Irish. She came from north central Oregon, moved
- 15 up to the Inchelium area where my father was from
- 16 when she was in grade school with my grandfather,
- 17 and they met shortly after high school and were
- 18 married.
- 19 Q So she's not -- is she of Aboriginal descent?
- 20 Does she belong to any Indian tribe in the United
- 21 States?
- 22 A No.
- 23 Q No. And when you were -- when were you -- when
- 24 you were young, did you come up to British
- 25 Columbia at all?
- 26 A Yes, I did.
- 27 Q And --
- 28 A I --
- 29 Q Sorry, go ahead.
- 30 A I used to come up on a very regular basis with my
- 31 uncles.
- 32 Q You'd come up with your uncles to BC?
- 33 A Yes.
- 34 Q Starting at what age?
- 35 A Probably when I was 7 or 8. I actually came up
- 36 before that with my grandparents. Probably when I
- 37 was 6 or 7 or maybe even younger than that. That
- 38 was more for recreation, though.
- 39 Q So you were coming up with your grandparents when
- 40 you were young for recreational purposes?
- 41 A Yes.
- 42 Q And you had said that you had not -- in answering
- 43 a question from Mr. Underhill, that you had not
- 44 hunted at all in Canada; is that right?
- 45 A That is correct.
- 46 Q So you did do some hunting in the United States?
- 47 A Yes, I did.

- 1 Q But never up in what you would consider to be the
2 Arrow Lakes territory; is that right?
- 3 A No, I have not.
- 4 Q So what is your education, please, sir?
- 5 A I have a bachelor of science degree in
6 environmental science.
- 7 Q And where is that from?
- 8 A That's from Haskell Indian Nations University.
- 9 Q And any other certificates or degrees or anything
10 of that sort?
- 11 A Technical fire management degree and a
12 certification for silviculture for forestry.
- 13 Q And you -- according to your will-say that was
14 provided by my friend, and I think you testified
15 to some of this, you've had a number of different
16 jobs, and I wanted to get one thing straight. You
17 had said that you were working for the Bureau of
18 Indian Affairs; is that right?
- 19 A That's correct.
- 20 Q Relatively recently. What were the dates of that?
- 21 A I started employment in June of 2010. I resigned
22 from my BI position in March of 2016.
- 23 Q So 2010 to 2016. And that's when you became the
24 director of Natural Resources for the Colville?
- 25 A I started as the director of Natural Resources on
26 IPA, interpersonnel -- I don't remember what it's
27 called. Interpersonnel action, I think. Or
28 interagency personnel action. So I was on loan
29 from the BIA to the tribe in this position from
30 roughly March of 2014 to current.
- 31 Q And prior to going on with the BIA -- this is
32 where I think I was confused. Were you working
33 then for the Colville Tribes before 2010 when you
34 moved over to the BIA?
- 35 A Yes, I was a tribal employee under a Bureau of
36 Indian Affairs 638 contract for the forestry
37 operations.
- 38 Q So you were involved in forestry with the
39 Colville, and how many years did you do that?
- 40 A Started working there summers while I was going to
41 school in 1997 up through -- with one break in
42 action to work for fire management, through about
43 2010.
- 44 THE COURT: Would you like some more water?
- 45 THE WITNESS: Thanks.
- 46 MR. THOMPSON:
- 47 Q Could you tell us what month it was in 2010 that

- 1 you went over to Bureau of Indian Affairs?
2 A It was June of 2010 when I officially started. I
3 think I was given the notice somewhat earlier than
4 that. The BIA hiring process is very lengthy, six
5 months to a year typically for us.
6 Q So during the time you were -- between 1997 and
7 2010, let's say, when you were with Colville and
8 you were working as a forestry technician, that
9 was within the same department that you are
10 working with now; is that right?
11 A Yes, that is correct.
12 Q And that department is the Natural Resources
13 Department? I just want to get this straight.
14 A Yes, that's correct.
15 Q And under Natural Resources you also have -- Fish
16 and Wildlife is one division?
17 A That's correct.
18 Q And the division that you are in now is a separate
19 division, but you are related under -- you are in
20 the same department?
21 A I'm oversight over all of the Natural Resource
22 programs, so the Natural Resource program manager
23 reports directly to me.
24 Q And you report to the tribal council; is that
25 right?
26 A I have an executive director that I report
27 directly to, but a lot of my direction comes
28 directly from a natural resource committee that
29 set up within the tribal business council.
30 Q So the natural resource committee is creating --
31 for lack of a better word, do they create the
32 policy that is then provided to you?
33 A Yes. They are the policy body of the tribe.
34 Q So do you have any input into that policy?
35 A To some extent. I more provide information. The
36 decision is ultimately up to our elected council.
37 Q And just so I'm clear about this, the council --
38 the tribal council is composed of representatives
39 of all 12 of the constituent tribes?
40 A Not necessarily. We have four separate districts
41 across each -- kind of move east to west across
42 the reservation, and there's four councilmen
43 elected from the Inchelium district, which is the
44 furthest to the east, which is where many Lakes
45 members reside. There's two from the Keller
46 district, four from the Nespelem district and four
47 from the Omak district to comprise the 14-member

- 1 business council. And we don't have any
2 restrictions or requirements that we have. Any
3 certain number of bands represented within tribal
4 council, it's the responsibility of the tribal
5 council to represent the interests of all 12 bands
6 regardless of what their heritage or where they
7 come from is.
- 8 Q So at the end of the day the tribal council, as
9 its composed, will create all the policy that is
10 to be carried out?
- 11 A That is correct.
- 12 Q So that with regard to -- and I'm thinking
13 specifically to the regulation revolving around
14 Arrow Lakes. That direction, as to that policy
15 for that regulation, emanates from the tribal
16 council; is that right?
- 17 A That is correct.
- 18 Q And I'll come back to that, of course.
- 19 A Okay.
- 20 Q So as you are overseeing Fish and Wildlife, you
21 are effectively your uncle's supervisor or you
22 actually are -- have authority over his position;
23 is that right?
- 24 A Yes. Removed by about four or five links in the
25 chain of command.
- 26 Q But you are up above -- but in the chain of
27 command, you would be giving -- you could be
28 giving a direction that would be carried out by
29 him eventually?
- 30 A Yes, that would be correct.
- 31 Q So just so I have your structure correct, you had
32 said you report to an executive director that then
33 reports to the council. Is that the same for all
34 the departments in the Colville Tribes?
- 35 A Yes. There's five division directors who report
36 directly to the executive director, and then we
37 have the council above the executive director.
38 And depending on the division director, they have
39 different programs under him. So we have a public
40 safety director, a health and human services
41 director, education director and natural resource
42 director. And I think that's all of them. I
43 think that's all of them.
- 44 Q So one of the things that is in your will-say and
45 your counsel provided, and I think I heard you say
46 this, is that you are also responsible for
47 developing and monitoring policy and legislation

1 that affects the Colville Tribes; is that right?

2 A That is correct.

3 Q So in terms of the application of, let's say, the
4 Arrow Lakes regulation at tab 12 of the exhibit,
5 you would be responsible for monitoring that
6 policy; is that right?

7 A Yes. I would have discussions with the Fish and
8 Wildlife program manager about this in review.

9 Q And I take it that you -- did you do anything, and
10 I realize you were not the natural resource
11 director at this time in 2010, but going back to
12 the time frame you were in Colville Tribes's
13 employment, did you have anything to do with the
14 development of the policy on that regulation
15 that's at tab 12?

16 A I did not have any part of the development.
17 Typically in the review process, again, as the
18 council is responsible for maintaining the
19 interests of all 12 bands within the tribe, as a
20 natural resource director I'm responsible for the
21 interests of all 12 bands, not just the Lakes
22 band.

23 Q Right. And you were aware the regulation was
24 being promulgated or developed at that time, were
25 you?

26 A I was aware of that, yes.

27 Q And just -- and we'll come back to that as well,
28 but I'd like to keep you in this exhibit, please,
29 and take you to tab 13, which you've just been
30 through in some detail. I just wanted to ask you
31 a few further questions about this. And if you
32 could turn over to page 2, please. And you've
33 gone through this very thoroughly, Mr. DeSautel,
34 and I appreciate the clarity you've given us on
35 this, but I just want to confirm a couple of
36 things. At the very top of page 2 where you are
37 talking about -- it appears to be a kind of an
38 introduction. The last sentence talks about the
39 goals, and I take it that means the goals of the
40 entire document; is that right? Do you see that?

41 A Yes.

42 Q It says:

43
44 Also applicable to management of the boundary
45 waters of the Colville Reservation, the area
46 known as the north half ...
47

1 I just wanted to ask you about that. The north
2 half is not formally part of the reservation; is
3 that right?

4 A Not any more. It was part of the original
5 reservation as it was created in 1872.

6 Q But you are still creating regulations for that
7 particular area; is that right?

8 A Yes, we are. We do have hunting rights up there,
9 so we promulgate regulations for it.

10 Q And then you say "the other" -- as you have been
11 discussing:

12
13 ... the other historical usual and accustomed
14 areas.

15
16 And the Arrow Lakes is defined as one of those.
17 You gave us that evidence?

18 A Yes, I did.

19 Q And when -- is there a definition of "usual and
20 accustomed area" that you are familiar with that
21 would account for that?

22 A So when we review history, and our History and
23 Archaeology Department does a lot of this, we look
24 at core areas that were used. Obviously tribes
25 were very nomadic. They travel a lot depending on
26 where the subsistence opportunities were. Whether
27 those were fishing, whether those were hunting,
28 whether those were gathering roots or berries. So
29 they didn't necessarily have one particular place
30 they lived. They had a core range of areas that
31 they inhabited. Through a lot of research by our
32 History and Archaeology Department, we've
33 determined that those areas are -- and we have
34 maps that determine where they are based on what
35 band it was. So again, if you look at the Palouse
36 and Nez Perce, they were down in southeast
37 Washington and the Wallowa Valley in northeast
38 Oregon, even into Idaho to some extent, throughout
39 north central Washington to the Cascades and then
40 up into Canada with the Okanagans and Lakes Tribe.

41 Q So it's your understanding, then, that the way
42 that definition is applied is that there is a
43 group or a committee that researches it; is that
44 right?

45 A Yes. We have a program that's responsible, our
46 History and Archaeology Department, about
47 understanding where cultural sites are, making

1 sure they are protected, making sure the tribal
2 membership is aware and understands their culture
3 heritage and important places to the tribe and its
4 12 bands.

5 Q And I take it you have never been on that
6 committee or have participated in it?

7 A No, that's not a committee. That is a program
8 that works within the tribe, our history and
9 archaeology program, and no, I've never worked for
10 that program.

11 Q I appreciate your clarification. Thank you for
12 that. So in terms of your understanding of that
13 particular program, that program, I take it, as
14 you say, has an archaeology department. Do you
15 send people into the field, as far as you are
16 aware, to investigate?

17 A Yes, we do. We send a lot of archaeologists,
18 especially during the spring, during the drawdown
19 months for the river. We have a lot of work
20 that's conducted in the field and regularly
21 throughout the rest of the year for other types of
22 activities, looking at specific sites or specific
23 areas that have been reported to us or working in
24 coordination with state and federal agencies for
25 projects that they are working on, that are within
26 Colville's usual and accustomed areas.

27 Q So then when the designation is arrived at, it
28 becomes applicable in your regulations; is that
29 right?

30 A The -- well, the regulations are specific to --
31 our reservation regulations are specific to the
32 reservation. We have north half regulations, we
33 have Sinixt regulations and we have Wenatchi
34 regulations. So we don't develop regulations for
35 some of those other areas because we, again, don't
36 have the financial resources to necessarily fight
37 those in court. We have limited staff, limited
38 funding, so we try not to pull our staff in too
39 many different directions. We try to focus them
40 on the things we are working on for the time
41 being. It is the intent of the tribe to
42 re-establish hunting rights or I guess have legal
43 authority to have hunting rights in all of our
44 usual and accustomed areas at some point in time,
45 but again, as an executive order tribe those
46 rights weren't necessarily spelled out because we
47 weren't -- we didn't sign a treaty, as some of the

- 1 other tribes in Washington did. And that was
2 because, to my understanding, General Stevens was
3 on his way to Colville to negotiate a treaty with
4 Colvilles and Spokanes, but the Yakima War broke
5 out, so he went back to Yakima and never made it
6 back up, so an executive order was issued instead.
- 7 Q And I take it -- you had mentioned in that
8 answer you just gave that there was an intention
9 to establish or re-establish -- I'm paraphrasing
10 here -- a presence in certain areas; is that
11 right?
- 12 A That is correct.
- 13 Q So what you are suggesting, if I have this
14 correct, is that an area that you may not have
15 used, you would seek to re-establish your presence
16 there by taking steps in some manner to use it; is
17 that right?
- 18 A So we are attempting -- they used it historically.
19 Depending on the band, the area will be different.
20 They used it historically if they were taken from
21 those lands and forced on to reservations. So
22 again, using the Wenatchis as an example, they had
23 always resided in the Wenatchee Valley. They
24 always fished specifically at the Icicle, the
25 mouth of the Icicle where it hits the Wenatchee.
26 They were removed from there and moved to the
27 Colville Reservation. So they didn't willingly
28 move, but they were forced, so we are trying to
29 re-establish those rights, because, as I've said,
30 for the Lakes Tribe, we are very connected to
31 places, very central to the identity of tribes and
32 their culture, so we think it's very important to
33 try to go after those rights to allow the bands we
34 have to practise their rights, to practise their
35 cultures and traditions in the places where they
36 are from, because that's truly where they belong,
37 that's truly what their culture and tradition is
38 tied to, is that specific place.
- 39 Q So let me take you -- just if you turn to tab 12
40 here for a moment. I want to go back to the game
41 plan, but I do want to take you to the regulation
42 for a moment. And you'll see at the bottom where
43 it says "Background." This is on the -- I don't
44 think you have the right page, sir. It would be
45 the first page in tab 12.
- 46 A Oh. Gotcha. Okay.
- 47 Q At the bottom there you'll see this section

1 entitled "Background." And it appears what is
2 stated here is that:

3
4 The Colville Business Council on behalf of
5 our constituent Arrow Lakes tribe --

6
7 Which would be the Lakes Tribe; correct?

8 A That would be correct.

9 Q

10 -- and through the Colville Tribal Code
11 established Arrow Lakes Aboriginal Society.

12

13 And is it your understanding that it was under the
14 Colville's overall Tribal Code that this Arrow
15 Lakes Aboriginal Society was created or arranged
16 to be created? Is that correct?

17 A That I'm not sure I could speak to. I'm not sure
18 about the origins of the Aboriginal Society.

19 Q Do you know about the Arrow Lakes Aboriginal
20 Society?

21 A Vaguely.

22 Q Are you aware that it's a society established
23 under British Columbia law?

24 A That I was aware of.

25 Q And it goes on to say:

26

27 ... is aggressively pursuing reserved rights
28 to hunt, fish and gather ...

29

30 Et cetera. And I'm interested in the phrase
31 "aggressively pursuing." And is it your
32 understanding that when this was -- this
33 regulation was promulgated, there was a sense of
34 some, let's say, urgency to do this?

35 A Well, "urgency" I don't know if it is the best
36 term to use. There's been interest expressed,
37 push from our tribal members from the different
38 bands, that they want to go back to where they are
39 from to practise their culture. That's been a big
40 priority for our tribe, is to maintain that
41 culture. We seem to lose a little more, a little
42 more, a little more over time, especially as some
43 of these elders pass away. So it's pretty
44 critical for us to get back to these places to
45 maintain and build upon that culture that we do
46 have left, that cultural traditional knowledge.
47 So by "aggressively pursuing" it, I think they are

1 trying to state that we want to get Lakes people
2 back in Lakes territory to maintain as much of
3 that culture as possible, because we understand
4 that a lot of the folks that were present there,
5 that were elders there, that have that knowledge,
6 we are starting to lose, so it's critical to
7 maintain the culture, the viability, the Lakes
8 people and who they are. They need to be there
9 and they need to do that very soon to have the
10 opportunity to maintain their culture.

11 Q So let me take you back -- thank you for that.
12 Let me take you back to the game plan at tab 13,
13 if I may.

14 A Okay.

15 Q And take you down to the mission statement. And
16 you talk here about -- and I think you did
17 describe some of this -- the last part of that
18 statement:

19
20 ... providing sufficient numbers to meet the
21 cultural, subsistence, recreational and
22 economic needs of the tribal membership.
23

24 So there's a number of things in there. One of
25 them does say "recreational." So is it correct
26 that the numbers that are created here for these
27 areas would include just that, some opportunity
28 for individuals to take -- to have recreational
29 hunts, let's say?

30 A Again, I would say the tribal members don't
31 recreationally hunt. Those more speak to the
32 opportunities that we provide to the non-members
33 that we agreed to with the state in the 1998
34 agreement we had. So we had a negotiation with
35 the State of Washington. That was part of the
36 *Palmer* case where they felt they had rights to
37 hunt on privately owned property on the
38 reservation. One of the -- I guess the
39 compromises we made was that instead of allowing
40 them to hunt big game on the reservation, we would
41 allow for some upland game bird seasons for
42 non-members on the reservation. And it isn't
43 specific to fee properties, private properties, on
44 the reservation. We just have blocks of area that
45 are set aside as hunting areas for those
46 non-tribal members.

47 So again, that's where the recreation and

1 economic needs of the tribe issue permits through
2 our Parks and Recreation Department. They have to
3 buy those permits. Understandably recreation is a
4 big part of hunting for many non-tribal members,
5 but for tribal members it's essential to our
6 culture, so "culture" and "subsistence" would be
7 the two words in that sentence that apply to the
8 tribal members. "Recreation" and "economics"
9 would apply to those non-member hunting seasons
10 and opportunities that we have.

11 Q And you indicated too that the economic needs --
12 you don't sell anything, so you are not talking
13 about taking meat for sale, but when you are
14 referring to the economic needs for hunting, you
15 are referring to people who require it for their
16 own economic purpose; is that right?

17 A Well, I guess you could say that the subsistence
18 would help offset some economics, so you don't
19 have to go to the store and buy food because you
20 are harvesting your own food. So some of our
21 families that live on limited incomes, that's very
22 important to them. If they can't hunt, they don't
23 have the ability to feed their families. But
24 again, the economics kind of goes more back to
25 the -- I mean, we sell fishing permits. There's
26 other permits we sell for opportunities on the
27 reservation. And we use those funds to help fund
28 our management program, so it goes towards our
29 wildlife program. It goes towards our parks and
30 recreation programs. So we reinvest those dollars
31 in the resources, in our programs that help police
32 those resources.

33 Q Let's go over to the next page where it talks
34 about:

35
36 The plan provides direction of a schedule for
37 the development of 15 site-specific Fish and
38 Wildlife Resource Management Units, RMUs.

39
40 Is British Columbia considered a separate RMU,
41 resource management unit?

42 A Those resource management units are specific to
43 the reservation. They are broke apart -- or
44 that's how we define the reservation. There's a
45 number of different watershed units within each of
46 those bigger resource management units. And we
47 have different management objectives depending on

1 where the resource management unit is. So for
2 example, the Omak Creek Resource Management Unit
3 we manage more specifically for anadromous fish
4 production. So we've got summer -- or steelhead
5 and spring chinook that spawn in that creek. It's
6 one of the very few spawning habitats we have on
7 the reservation. So while we try to have a
8 balanced approach for all resources across the
9 reservation, with these specific resource
10 management units, some of them have more targeted,
11 I guess, resource priorities, is the best way to
12 say it.

13 Q And, sorry, I didn't understand that. Is --
14 British Columbia, can it be considered to be
15 separate?

16 A British Columbia is not included in these
17 15 resource management units. They are specific
18 to the Colville Reservation.

19 Q Right. I am sorry, I missed you on part of that.

20 A Sorry.

21 Q So if it's not a resource management unit, British
22 Columbia is considered just a separate area? How
23 do you consider British Columbia?

24 A So it is considered a separate area. We realize
25 we don't have sole management authority over that
26 area, so we have consultation with the folks that
27 help manage those different areas. And again,
28 this applies not just to British Columbia but to
29 the State of Washington, to the federal
30 government, for those federal lands that we hunt
31 and help manage. And again, some of those we
32 don't currently have opportunities to hunt on, but
33 that doesn't mean that we don't participate in
34 management and habitat improvement projects. So
35 while this integrated resource management plan
36 that we are referring to here is specific to the
37 reservation, there's also work that happens off
38 reservation. We just don't necessarily spell it
39 out, because that wasn't the intent of the
40 integrated resource management plan. It was for
41 the reservation.

42 Q Further down the page there's -- you talk about
43 the department's funding coming from.

44
45 ... sources outside the tribes coming from
46 federal and state grants and contracts.

47

1 And I take it you are talking about American --
2 the US federal government; is that right?

3 A Oh, boy. We get money from the state. We get
4 money from the federal government. I think -- I
5 know we share money with O&A Tribes that help do
6 habitat work into Canada for anadromous fish.
7 There are special interest groups we get funding
8 from. There's a number of different funding
9 sources we have for our fish and wildlife
10 management. There's obviously a lot of people
11 throughout the country of both US and Canada that
12 are very, very interested in natural resource
13 management, big game management, anadromous fish
14 and resident fish management, so there are many
15 people willing and interested to contribute to
16 habitat improvement projects, management-type
17 activities, that help improve those populations.
18 So for the most part our funding comes from
19 Bonneville Power Administration. That's by far
20 the biggest portion of our budget. We have a
21 638 contract that's public law. 93-638 that gave
22 tribes the ability to contract the BIA's government
23 trust function, so we carry out that function as
24 well with tribal employees. And we have funding
25 through the state for different ESA-listed
26 species. Those are the biggest sources of funding
27 we get. And then there's some other smaller ones,
28 but that's -- there's 40-some contracts in our
29 Fish and Wildlife program, so I don't know them
30 all specifically.

31 Q The -- I want to take you over to page 7 of the
32 plan, please, which is -- and this is 1.09. And
33 it says to:

34
35 Maintain legal rights and entitlements
36 associated with the 1891 agreement between
37 the tribes and the United States Congress.

38
39 And you describe the *Antoine* decision. And then
40 you discuss -- you mention here "Arrow Lakes" and
41 "Okanagan, BC." And the *Antoine* decision I take
42 it, which you gave some evidence about, was a
43 court case in the Federal Court of the United
44 States; is that right?

45 A Yes, it went to the United States Supreme Court.

46 Q So it went as far as the United States Supreme
47 Court. And of course you now recognize this

1 particular case is in the court system in Canada,
2 the one we are here today on?

3 A Yes, I do understand that.

4 Q And is it -- and I'll come back to that. I have a
5 couple of other questions before we get there.
6 The -- put it this way. Let me ask you this: the
7 *Antoine* case, was that commenced by a situation
8 where you had a tribal member go out and take some
9 steps that would get him charged?

10 A He was hunting on the north half. Again, it was
11 the assumption of the tribe that when that north
12 half was ceded that he maintained all hunting and
13 fishing and gathering rights in that area. That
14 wasn't spelled out specifically in the document,
15 but US policy says that the treaties will be --
16 treaties and presumably executive orders over
17 ceded territories will be understood as the
18 Indians understood them. Understanding that
19 back -- say the Yakima Treaty in 1855, a lot of
20 the Indians that were there for the negotiation of
21 the treaty couldn't speak English, didn't
22 necessarily understand everything that was
23 happening, so the way they are supposed to be
24 interpreted, according to US law, is as the
25 Indians would have understood them. So the
26 Colville Tribe, when they ceded this territory in
27 the early 1900s, they would have understood that
28 they were giving up the land. They would have
29 kept the allotments. And they would have
30 maintained all their hunting, fishing and
31 gathering rights on that former north half. So
32 the *Antoine* case, the state didn't necessarily
33 agree with that, but apparently it took them until
34 the early 1970s before they issued a citation even
35 though we had tribal members up there utilizing
36 and harvesting in that area from -- well,
37 presumably from the time that it was ceded. So
38 once that took place, we fought it in court, took
39 it to the United States Supreme Court, and won the
40 decision.

41 Q And we'll deal with that when we come back to the
42 last exhibit, but I want to go over right now to
43 page 13, please. And you are talking here about
44 "establishing relationships with internal and
45 external stakeholders." And when you discuss
46 "external stakeholders," you are talking about
47 individuals. Would you be talking about lands

1 owners, for instance?

2 A Some of them are landowners. Some of them are
3 management agencies. Some of them are special
4 interest groups. Some of them are organized, I
5 guess -- I don't know how you would define or say
6 UCUT. It's the Upper Columbia United Tribes, so
7 it's a group of tribes that are organized into a
8 specific organization that has functions that they
9 push on behalf of some of the member tribes. So
10 there's a number of different people that we
11 coordinate and cooperate with, again, looking to
12 incorporate best management practices for the
13 resources that we are trying to manage.

14 Q So you would be considering -- you would be
15 considering applying that to British Columbia as
16 well; is that right?

17 A Yes. I would assume that we would consider
18 British Columbia a partner in management, and we
19 would help promote whatever regulations were
20 deemed appropriate between our biologists and
21 their biologists and the data that we provided and
22 they provided.

23 Q But other stakeholders, you would consider that
24 you would deal individually with individual
25 landowners, for instance, in British Columbia?

26 A That I'm not sure about. Typically the way
27 regulations are written, we don't authorize
28 hunting on privately owned lands unless you have
29 permission of the landowner. So the assumption is
30 that you are dealing more with, for Washington
31 State, state-owned lands and federally owned
32 lands. Because we don't necessarily make
33 assumptions that because the state or federal
34 government has agreed to something, that private
35 landowners are going to agree to the same thing.

36 Q Let me take you to page 32. Skipping forward
37 quite a bit here, please. And this is under your
38 "Fisheries Management." And this is from an
39 earlier comment you made that the Fisheries goal
40 number 5 here talks about facilitating tribal
41 members' pursuit of their rightful ceremonial and
42 subsistence fisheries in the Okanogan River,
43 including the BC portion. And then I notice that
44 there's under fisheries goal 5.01 to the provision
45 of tribal, and I'm interested in this issue of the
46 "selective recreational harvest opportunities."
47 Are you talking about recreational harvest for

1 tribal members there?

2 A No. Again, I kind of gave the reference around
3 Brewster before, that even though we are the ones
4 that do the habitat improvement and active
5 management to improve those populations, everybody
6 up and down the system benefits. So, I mean, from
7 people that fish in the ocean to the spawning
8 grounds, everybody gets access to those fish. So
9 there's a lot of opportunities not just for the
10 Colville Tribe but everybody up and down the river
11 above and below us because of the work that we do.
12 And I don't know how much money the state makes
13 off the licences they sell just in that Brewster
14 area, but it is -- I mean, it looks like a parking
15 lot of boats when the sockeye are running well in
16 there. So those are the opportunities we would be
17 referring to. There is great opportunities for
18 the state along with the tribes.

19 Q Let me take you over to page 35. Going to
20 "Wildlife Management" here. And Her Honour was
21 asking you some questions about predators at this
22 point and regarding predator seasons and so forth.
23 And have you organized predator culls as part of
24 this?

25 A We do allow for predator culling for certain
26 species. I'd have to go back to the game
27 regulations. That's where we cover specifically
28 what is allowed and what isn't allowed for harvest
29 of predators. I don't have that with me. And I
30 don't want to misspeak and misquote our
31 regulations.

32 Q So the numbers here for the populations are
33 based -- that number is based on the Colville's
34 own analysis of what the populations look like?

35 A Yes.

36 THE COURT: Down at the bottom of that page?

37 MR. THOMPSON: I'm sorry, I'm taking -- I'm down to --

38 THE COURT: You are on 35; right?

39 MR. THOMPSON: 104, I'm sorry, regarding deer.

40 THE WITNESS: Okay. So those big game populations are
41 specific to the reservation. Those -- again,
42 since we have sole management and discretion over
43 the reservation, we write these goals specifically
44 for the reservation. And that is where the
45 majority of the hunting happens, because that's
46 where the majority of the people are. So this 12-
47 to 15,000 deer is specific to how many animals we

1 would like to see on the reservation available for
2 harvest by the tribal members.

3 MR. THOMPSON:

4 Q So let me take you back to the -- sorry, tab 12,
5 and -- which we have been discussing. And
6 Mr. Underhill took you through some of this
7 certainly. And just wanting to be absolutely
8 clear here and make sure that I have your evidence
9 correct from the first time through. I think he
10 asked you -- and I'm not -- just bear with me,
11 please, one moment while I check what my note
12 says. Right. We are talking about -- and I'm not
13 totally clear we went through this, but who may
14 hunt. I'm on page -- the second page of the
15 regulation now. And we did go through this a
16 little with your uncle, but I'd like to just take
17 you to this as well. So in order to hunt in the
18 Arrow Lakes area that you've put in this
19 regulation, you must be a Lakes Band descendant.
20 In other words, you must be a member of the Lakes
21 Band of the Colville; is that correct?

22 A That's correct.

23 Q And you must be an enrolled member of the
24 Confederated Tribes?

25 A That's also correct.

26 Q So you have to have those two qualifications
27 before you are entitled to hunt; is that right?

28 A That is correct.

29 Q And then the identification is you have to carry
30 your tribal ID card listing Arrow Lakes; is that
31 right?

32 A That is also correct.

33 Q Okay. So -- and that's it. Those are the people
34 who are permitted to hunt?

35 A That is correct.

36 Q Then the harvest limits. And I believe
37 Mr. Underhill did ask you this. Those particular
38 limits were set -- this regulation says 2010. Are
39 those limits still in place?

40 A Those limits are still in place, and we have
41 checked those with the British Columbia bag
42 limits, and they are still consistent. So the
43 2010 bag limits for British Columbia were exactly
44 the same as we have in our 2010 regulations.
45 Those same bag limits are still in place in 2016,
46 and our regulations are consistent with BC's
47 regulations.

- 1 Q But when you say "it's consistent with BC's
2 regulation," are you suggesting that that is what
3 the BC bag limit is? Is that correct?
- 4 A That is correct. For the units that are in the
5 Sinixt traditional usual and accustomed territory.
- 6 Q So what you've done is you've taken the BC bag
7 limit and just duplicated it here; is that right?
- 8 A Yes. "Duplicated" maybe isn't the best word to
9 describe it. Again, we had conversations with our
10 biologists to understand what their big game
11 populations were, what the trends were, what their
12 distribution was of different age classes and
13 buck-to-doe ratios, bull-to-cow ratios, so they
14 strongly recommended that this was the most
15 prudent management, the most prudent bag limits.
16 So from that standpoint, yes, I guess we followed
17 the recommendations of the British Columbia
18 biologists.
- 19 Q Sir, I'm curious. You say that British Columbia
20 gave you these bag limits. My understanding was
21 that British Columbia would not share that
22 information.
- 23 A British Columbia's bag -- or game regulations are
24 published online, and we did have conversations
25 with the biologists. If Eric Krausz testifies,
26 you will hear testimony about the meetings that
27 took place, the conversations that took place, and
28 I have his meeting notes that outline some of
29 their concerns and why we arrived at these bag
30 limits and these restrictions that we have in our
31 regulations.
- 32 Q So isn't it your understanding, though, that
33 British Columbia did not want the Sinixt to -- or
34 the Lakes, rather, to -- the Lakes Tribe to be
35 hunting in British Columbia?
- 36 A What we have in the meeting notes is that they
37 understood that this was a legal matter. This
38 wasn't necessarily something that biologically
39 they thought would be a big impact on the
40 population because of the limited number of Lakes
41 members that would likely be hunting, but they
42 understood that this wasn't a decision they made.
43 It was the biologists. They strictly talked about
44 what the game populations were, what the trends
45 were and whether a limited harvest for -- was --
46 would have any negative impacts on the
47 BC populations.

Cody DeSautel (for the accused)
Cross-exam by Mr. Thompson
Colloquy

- 1 Q You weren't present at the meetings?
2 A I was not.
3 Q So you are going off the meeting notes; is that
4 correct?
5 A I am. That is correct.
6 Q And those notes that you are referring to, are the
7 notes taken by Mr. Krausz; is that correct?
8 A That is correct.
9 Q And those were made available to you by him; is
10 that right?
11 A That is correct. And I have had a number of
12 conversations with Eric personally where he
13 expressed the same things.
14 THE COURT: Are you going into a different area? Is
15 this a convenient time for the morning break?
16 MR. THOMPSON: We will be, Your Honour, yes. Yes, it
17 is. Thank you.
18 THE COURT: So, Mr. DeSautel, you are under
19 cross-examination now, so I do have to ask that
20 you not speak to anybody about your evidence
21 during the break. We are going to take a
22 15 minute break. All right?
23 THE WITNESS: Okay.
24 THE CLERK: Order in court. This court will reconvene
25 at 11:30.
26
27 **(WITNESS STOOD DOWN)**
28
29 **(PROCEEDINGS ADJOURNED AT 11:14 A.M. FOR MORNING RECESS)**
30 **(PROCEEDINGS RECONVENED AT 11:31 A.M.)**
31
32 THE CLERK: Order in court. All rise. Provincial
33 court is reconvened.
34 MR. THOMPSON: Your Honour, after reviewing my notes, I
35 have no further questions.
36 THE COURT: No further questions?
37 MR. UNDERHILL: And no redirect, Your Honour.
38 THE COURT: Well, I'm sorry, Mr. DeSautel, for keeping
39 you over the break, but thank you very much for
40 coming and testifying. And you are excused. I
41 think we are over, then, until tomorrow morning.
42 I'm going to say 9 o'clock tomorrow morning just
43 to be sure that we are through the -- if that's
44 all right with the clerks.
45 MR. UNDERHILL: I'm sorry, is that 9 o'clock, Your
46 Honour?
47 MR. THOMPSON: 9 o'clock.