Yakama Nation – Appeal Testimony

The Yakama Nation is a federally recognized sovereign nation. It was first expressly and legally recognized in 1855, in a Treaty with the United States. The Treaty explicitly reserved the right of the Yakama Nation People to hunt, fish, and gather at their usual and accustomed places.

The Yakama Nation's Treaty rights were not granted to the Yakama Nation. Rather, the Treaty was a reservation of rights NOT ceded to the United States.

The Yakama Nation has always lived along the Columbia River. Generations of our ancestors have hunted, fished, and gathered in the surrounding areas. Our right to continue to exercise our Treaty rights is well-documented in the court system. We are fiercely protective of our Treaty rights, as those rights have been under near-constant attack since they were memorialized in 1855.

We are protective of the rights our ancestors reserved for us because our people depend on them. Our tribal members fish in the Columbia River. Fishing is done for a variety of purposes beyond commercial gain. We also fish for subsistence purposes, to provide food to our communities—including our elders and those who can't provide for themselves—and for religious and cultural purposes. We eat the fish we catch and we use the fish in many of our ceremonies. Fishing is a tradition passed down along families since time immemorial, and both the act of fishing and the fish themselves are important cultural resources. The same may be said for hunting and gathering. These things are woven into the fabric of our People, just as the Bill of Rights is woven into the fabric of the United States.

Our usual and accustomed fishing grounds lie along the Columbia River, and we have reserved rights to hunt and gather in our Ceded Lands along the Columbia River.[1] Any impact to the Columbia River, and the surrounding areas, threatens our Treaty rights.

The proposed rail expansion will increase the amount of train traffic. This will have a negative impact on the Yakama Nation, in a variety of ways.

Most importantly, the increased rail traffic will interfere with the exercise of the Yakama Nation's Treaty rights. An increase in train traffic will impact both access to fishing sites and the risk of injury or death to tribal fishers.

Along the Columbia River, there are train tracks. Many of our fishing sites are accessed by crossing those train tracks. An increase in train traffic will limit access to those sites that lie alongside the train tracks.

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[1] *Confederated Tribes and Bands of the Yakama Nation et al. v. United States Dept. of Agriculture et al.*, 2010 WL 3434091 (2010 E.D. Wash.)("tribal members enjoy 'in common' usufructuary rights" on lands ceded by the Yakama Nation).

Further, an increase in train traffic will increase the risk of injury or death. Every time a tribal fisher crosses a train track, they are exposing themselves to the risk of injury or death. Over the years, the Yakama Nation People have suffered fatalities and injuries due to train strikes in areas where it is perilous to cross but necessary to access Treaty-protected fishing sites. Any increase in train traffic would increase the safety risks faced by tribal fishers.

There are a variety of other impacts, that were discussed in detail in the letters submitted to the Commission—the increase in rail traffic threatens those cultural resources – like She Who Watches—that lie along the Columbia River. It threatens the fish and wildlife restoration that the Yakama Nation has been doing through its fisheries management program. It also increases the risk of train derailments and spills, as we have seen in the recent derailment at Mosier. Finally, it increases emissions, negatively impacting climate change.

When making your decision on the application, it is important to keep in mind the real-world impact of your decision.

We provided all of this information to the Commission. The Department recommended conditions to protect the Yakama Nation's Treaty rights. However, the Commission seemingly discounted the importance of the Yakama Nation's Treaty rights, and eliminated the recommended conditions.

If you look at the transcript of the Commission's hearing, it is clear that the Department's own Director warned the Commission that removing the recommended condition would have an adverse impact on Treaty rights, which would violate the governing laws.

The Scenic Area Act, the Management Plan, the Scenic Area Ordinance, all require protection of Treaty rights. They <u>prohibit</u> uses that negatively affect Treaty rights.

The removal of the recommended conditions, which were included to protect Treaty rights, shows the Commission violated its own laws in approving the application.

However, even if the conditions were re-incorporated, the conditions will not adequately protect Treaty rights. Before the last meeting, we informed the Commission of our position, that the Commission does not have the ability to enforce a provision limiting train traffic. This concern was echoed by many of the Commissioners at their last meeting. Several Commissioners stated that as a reason the conditions should be removed.

However, that is not what the applicable laws governing your decision on this application provide. As the Department stated in its review of our appeal, the Board has only two options. The Board must either include conditions that would ensure the project would not affect or modify any Treaty rights, OR the Board must deny the railroad's application.

I am here to tell you that any supposed condition limiting the amount of rail traffic would not be adequately enforced against the railroad. If the Board grants this application, it will have a negative impact on Treaty rights. Therefore, the Board must deny the application.

Thank you for your time and attention. The Yakama Nation appreciates your careful consideration of this issue.