

Court decisions are a victory for treaty fishing harvests

By Ron Suppah
Tribal Council Chairman

The Ninth Circuit Court of Appeals has been busy over the last month dishing out guidance on the long-standing and contentious Columbia River Salmon disputes.

The Ninth Circuit Court hears appeals to the rulings of the District Court of Oregon, which is where Judge James Redden is presiding over the most recent round of legal challenges to how the federal government meets its obligation under the Endangered Species Act to protect salmon and steelhead as it operates federally-owned dams on the Columbia and Snake Rivers.

In addition, the Ninth Circuit Court is the court that reviews challenges to the way that the Bonneville Power Administration meets its legal duties under another federal law, the Northwest Power Act, to market the hydropower produced at the federal dams while also protecting and mitigating for the impacts to fish and wildlife.

On April 6 the Ninth Circuit Court issued an opinion in the *Columbia Snake River Irrigators*

Association v. National Marine Fisheries Service. Here, the federal government decided that it should plan for tribal treaty harvest to continue into the future as it develops its plans for the federal dams.

The Confederated Tribes of Warm Springs encouraged and supported the decision to plan for future treaty harvests. Judge Redden agreed with the federal government and Tribes that are planning on future treaty harvest was appropriate—that it should be counted as part of the existing base of actions to evaluate its operations plan for the dams against.

This special protection for treaty harvest was attacked by other interests that often argue that the way to save salmon and steelhead is to curtail or eliminate all harvests on the river. They asked the Ninth Circuit Court to overturn Judge Redden's decision that it is appropriate to give unique protection to tribal treaty harvests.

The Ninth Circuit agreed with Judge Redden and the tribes. Tribal treaty harvest should be planned for the future—it is appropriate that it be given special protection in ESA

planning. The Ninth Circuit has confirmed what the tribes has argued on this issue for many years—treaty harvest is not on the chopping block when developing Endangered Species Act plans for the federal dams.

The federal government must meet both its treaty obligations and the Endangered Species Act requirements, not trade one for the other.

On the same day last month, the Ninth Circuit agreed with Judge Redden's decision to sweep away the Endangered Species Act plans that the federal government had developed for the dams on the Columbia and Snake Rivers. *National Wildlife Federation v. National Marine Fisheries Service*. In 2004 the federal government offered up a new plan that treated the dams and their impacts to salmon as steelhead as just another piece of the environment that could not be changed. The government's plan really treated these dams simply as if they were big rocks in the river that they could do very little about.

Warm Springs, along with other tribes, the State of Oregon, and environmental groups challenged this novel new theory,

The dams are part of the system that must be accounted for when developing plans to protect salmon and steelhead.

arguing that it let the dams off the hook for protecting and restoring depleted salmon and steelhead runs.

Just about two years ago, Judge Redden sided with the tribes and other challengers, tossed out the plan that ignored the dams, and sent the federal agencies back to work on a new plan.

Now the Ninth Circuit has ruled that he was right to do just that—the dams are part of the system that must be accounted for when developing plans to protect salmon and steelhead. The federal government's new plan is due to be provided to the public and Judge Redden later this month.

Finally, on May 3, in *Golden Northwest Aluminum v. BPA*, the Ninth Circuit issued a key new ruling relating to how the Bonneville Power Administra-

tion (BPA) provides funding for fish and wildlife protection and restoration.

Under the Northwest Power Act, BPA is to provide funding to make up for impacts to fish and wildlife caused by the dams in the Columbia Basin. Warm Springs receives some of this funding to do fish and wildlife work both on the reservation and across its historical and traditional use areas off reservation.

In years past, BPA has set a budget for what it was willing to spend and Warm Springs, along with other tribes and states, has squeezed the fishery restoration work down to fit within the budget. This prompted a legal challenge—the argument was that Bonneville needed to develop a plan for what it must do to meet its fish and wildlife duties first, and then develop a budget and collect funds in its power sales to implement its fish and wildlife plan.

The Ninth Circuit Court settled the dispute and agreed that you first need a plan and then Bonneville must collect revenue to put the plan in motion. This seems like common sense, but it is a new way of

doing business that will improve our ability to do the on-the-ground work that will speed the recovery of depleted fish and wildlife in the Columbia basin.

We should be grateful for and proud of these new statements from the federal court. They vindicate the positions we have presented in the difficult litigation forum for years.

Our goal will be to take this new guidance into the discussions that we have with the federal government and strongly encourage full compliance with these directives.

As always, we will work to find common objectives, and reach agreement on how to rebuild the fish and wildlife resources so critical to all Warm Springs citizens, and the Court has given us new tools for our discussions. I remain optimistic that we can resolve our issues without litigation. However, should our goals and plans be met with resistance from our federal counterparts, and we must resort to legal options, I believe that the courts are speaking clearly that the views of the tribes ring true and are pointing the way to the restoration of our fish and wildlife.

Veteran says plaque should be relocated

By Leslie Mitts
Spilyay Tymoo

When it comes to remembering and honoring, one local veteran is speaking out for his fellow servicemen.

In particular, Chesley Q. Yahtin Sr. feels that a plaque dedicated to veterans of the Korean War is being underappreciated.

Currently the plaque sits in a field outside the Museum at Warm Springs.

In Yahtin's opinion, the plaque and other memorials dedicated to veterans of war need to be relocated to a place of honor—especially in order for them to be viewed more often.

Yahtin said, "It's something to cherish, so to speak."

According to Yahtin, "It kind of bothers me to have this plaque sitting out there in the brush."

To find a solution, Yahtin said, "Put it out there where



Leslie Mitts photo

The memorial is some distance away from the museum building.

people can see that we served."

Though he decided to voice his concerns, Yahtin said, "People might feel differently about it."

Yahtin served in the Korean War from 1949-1953.

During that time, Yahtin said, "I've seen a lot of bad stuff going down."

He began serving as part of the front lines, and later worked as a medic.

After the war, Yahtin said, he suffered from the effect of seeing so much devastation.

"It's not something to brag about but you have to do it when it comes in front of you," he said.

During the war, Yahtin said, he was injured twice—once shot with a small firearm and later hit by shrapnel during a mortar attack.

The Lions Club of Madras originally presented the plaque to the veterans of the Korean War in 2003.

"I have to appreciate the fact that these Madras people recognized the Korean War veterans," Yahtin said. Still, he added, "To this day I've not yet seen anybody looking at that flag sitting back there since it was put back there."

At first, Yahtin said, he considered not speaking up. However, he explained, "I'm going to anyway in respect to the ones that were beside me that didn't come home, those that were in front of me that didn't come home."

"I do these things in respect to them," Yahtin added. "Those that got hit and wounded and died—sacrificed their whole lives."

Museum seeking summer intern

The Museum at Warm Springs is seeking a summer intern. The intern will work with the museum for five weeks, with pay at \$10 per hour. The following are application requirements:

Letter of application expressing your interest in how you can contribute to the museum.

Proof of enrollment or future enrollment in a higher education institution.

Proof of Native American heritage via enrollment document. Three letters of recommendation, one specifically

from your school of higher education. The intern is required to take a UA test.

The intern is responsible for his or her housing during the internship.

Contact the museum's Education Program at 541-553-3331, ext. 407. Or fax to 553-3338. E-mail to the following: temnsh@redmond.net.

Letter of application and required documents are due by June 5. Mailing address: The Museum at Warm Springs, PO Box 909, Warm Springs, OR 97761.

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