

**DE-RAILING, from page 7**

situation in the Gorge, where communities are forced to accept economic projects that put their lives and environment in jeopardy.

"Where was the manifested right for an individual to express (such) domination and dehumanization? What was its origin? There are practical, real steps in time, associated decisions, case law, legislative acts, that have empowered and materialized the ability to make decisions that dominate and dehumanize people. It started with native people. But now the residents that have endured this derailment last year – you are beginning to feel what it's like to be dehumanized."

Goudy says the Doctrine of Discovery remains a key legal tool that is used to violate native rights, particularly in dispute resolution and court proceedings.

Chuck Sams, Communications Director for the Confederated Tribes of the Umatilla, agrees that the Discovery Doctrine is still harming tribes in court.

"It's still inculcated into American law," Sams said. "And until such time as we're willing to recognize the racist values of those laws, and the structures they put in place to ensure that they are perpetuated, we're going to always face that in a federal court, or even a state court for that matter."

Some of these tensions were clearly on display at Tuesday's hearing in The Dalles, with the railroad's lawyers arguing that tribes are not competent to determine treaty rights violations, and that local governments like Wasco County are fundamentally not authorized to recognize such violations when doing so might obstruct a federal railroad corporation.

"It is a very conscientious choice, that we are putting ourselves in a position to prolong our reliance on fossil fuels," Goudy said. "The ability to make a choice to seek profit rather than responsible decision-making is enabled by a judicial system and a legislative system that currently promotes that type of choice."

In March, Goudy joined the Standing Rock Sioux tribal council and thousands of

tribal members in Washington, D.C. to call for the dismantling of "the flawed and unholy idea of the Doctrine of Discovery" and an end to U.S. government actions that continue its legacy of "domination and dehumanization." Last year, Goudy traveled to the Vatican to hand deliver a request to Pope Francis to revoke the Doctrine of Discovery and three papal bulls supporting it.

"He asked me to pray for him, which I did. I asked him to pray for me," Goudy said.

For years, the Gorge has been an economic battleground for out-of-state energy companies hoping to score big by investing in infrastructure projects that connect domestic supply chains to the global market.

Many of these proposals have been shot down by tribes who retain deep ancestral ties to specific sites, and reserved the right to protect those sites in contractual treaty negotiations signed back to 1855 with the U.S. government.

In May 2016, the Army Corps of Engineers denied a key permit for a massive coal export terminal at Cherry Point after finally agreeing that the project would harm the fishing rights of the Lummi Nation. The Lummi had formally opposed the project on that basis for nearly three years, and had engaged in significant legal and advocacy work to prove what ultimately a simple observation. The financial backer of the terminal – Pacific Island Terminal – implied that Lummi Nation fishermen may be confused about where they fish and how often they do it.

The situation mirrored an earlier one in Boardman, Oregon, where a coal terminal was rejected in August 2014 after a company spokesperson told the media that a tribal fishing site either did not exist or existed somewhere else – despite official documentation from the Yakama and Umatilla tribal governments. Similar conflicts continue today where energy companies jockey for property rights over existing rights-holders – including at the Port of Tacoma in Washington and along the Klamath River in Southern Oregon.

"You can call it what you want – improper consultation, irresponsible decision, but I call it genocide," said Goudy. "It is a genocidal act to continue to make irresponsible decisions that will impact a people and our nation that will shorten our sustained existence, and that's what the United States is doing to native nations. Not just Yakama Nation – all native nations."

For tribal leaders, these modern day legal battles are the continued cultural influence of the Doctrine of Discovery and the related notion of terra nullius – or vacant land lacking native occupancy. The absence of native education in U.S. schools provides support for such a doctrine.

"Our education system, kindergarten through college, does not teach American Indian history," says Chuck Sams, spokesman for the Confederated Tribes of the Umatilla. "We're taught as if we're already gone."

Sams says the lack of education on native history is a major obstacle for effective treaty rights enforcement, and that a tribal delegation will soon be traveling to Omaha, Nebraska, where Union Pacific is headquartered, to explain tribal concerns with rail safety with the company. One concern Sams said he'll raise is that slowing mechanisms for dangerous locations have already been installed in Washington but not in Oregon.

"We recognize that it's costly. But in my knowledge, and in historical perspective, I've never seen the rail company in dire straights for funding," Sams said.

In November, project supporters in Boardman announced they had reached an agreement with tribes and environmental groups that will prevent further legal disputes over coal while facilitating discussion of other proposals at the site – as long as they do not harm treaty fishing rights.

On Thursday, June 8, tribes scored another victory when a U.S. district judge in Washington found in favor of the

Swinomish Indian Tribal Community, asserting that BNSF Railway cannot use federal pre-emption to override tribal rights involving a 1991 easement agreement between the Swinomish and BNSF. In that case, BNSF moved significant quantities of oil trains through the Swinomish reservation without permission.

By settling that tribal rights in that case are not preempted by federal railroad law, U.S. District Judge Robert Lasnik cleared the way for the Swinomish to seek an injunction that might remove oil trains from their treaty lands completely.

"A deal is a deal is a deal," said Swinomish Chairman Brian Cladoosby. "The Tribe takes the agreements that it signs seriously, and we expect them to be honored."

Ironically, Tuesday's decision by the Gorge Commission fell just a few days after treaty day weekend – an annual celebration where plateau tribes celebrate the signing of their treaties with the U.S. government.

"You can learn a lot in 162 years," said Asa Washines, a tribal councilor with Yakama Nation soon after the Yakama Nation's treaty day parade. "Our treaty rights are inherent, and they are the supreme law of the land. It's unfortunate that they (railroad companies) feel this way, but the thing about them, all these coal and oil trains that are coming down the Columbia River, we defeated several of them, but we know they'll just keep coming, and so we'll just keep fighting."

"In the last 160 years since the signing of our treaty we've been really cognizant of how to move forward. We will continue to be on the forefront of protecting our natural resources, and what they mean not only to Yakama Nation but to all people," Washines said. "And so we will continue this fight, we will continue to educate folks, we will continue to push forward and bring awareness, to raise the consciousness of all people so they understand where we are coming from. And once they realize we are right, history will remember it. I think people want to be on the right side of history as opposed to the wrong side of history."

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