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A Union Pacific engine travels past the wreckage of the June 3 oil train derailment near Mosier. Union Pacific had sought to add a second stretch of rails through the area, a request that was denied on appeal by the Columbia River Gorge Commission

De-railing Goliath

Tribal communities score victories against Union Pacific, fossil fuel projects

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In a victory for residents, tribal communities and environmental groups, the Columbia River Gorge Commission upheld a Wasco County decision to deny Union Pacific its permit to run additional rail lines through the town of Mosier, where one of its crude oil trains derailed and burned only a year ago.

The commission will issue its written decision on the matter by early September.

Created by Congress in 1986, the Columbia River Gorge Commission oversees the management and protection of the National Scenic Area that extends for 83 miles along both sides of the Columbia River.

On Tuesday, at the Readiness Center in The Dalles, the commission deliberated on the fate of a proposed construction project that would double five miles of track owned by railroad giant Union Pacific. The project raised strong opposition from local community members, who cited the massive accident one year ago on June 3, when a train carrying 94 tankers of crude oil derailed in Mosier, 69 miles east of Portland. Some of the cars burst and shot fiery plumes into the air, and continued to burn for 14 hours. The disaster confirmed the worst fears of local residents after the evacuation of the K-8 Mosier Community School.

A June 23, 2016, report from the Federal Railroad Administration found that the accident was caused because Union Pacific had failed to maintain its track, adding that

“broken and sheared lag bolts... are critically important to resolve quickly.”

Earlier this year, an investigation by the Associated Press found data showing that nearly 24,000 defects were found on the nation’s 58,000 miles of oil train routes. Union Pacific received the most violation recommendations at 800, according to the Associated Press report.

Union Pacific reached an agreement with the Federal Railroad Administration to conduct more inspections and make improvements to their lines. The company began running trains through Mosier just two days after the fire was out, and by the end of the month more oil trains were running.

Even prior to the accident, Union Pacific had sought to expand its lines. It applied for a construction permit with Wasco County to add additional tracks through Mosier to facilitate more train traffic. That call was immediately opposed by local leaders. Within a week after the June 3 disaster, local leaders rallied near the scene led by chairman of the Yakama Nation, JoDe Goudy to call for an end to oil train traffic in the Columbia River Gorge.

Wasco County Commissioners denied Union Pacific’s permit application in November after hearing from local tribes that the project would harm their treaty rights.

Since that November decision, Union Pacific has vigorously appealed that ruling. It first appealed to the Columbia River Gorge Commission and later attempted to move the hearing to both federal court and

the Land Use Board of Appeals – two legal forums with greater distance from the communities most at risk.

The railroad company’s first attempt to wrest control from the Gorge Commission, was dismissed on March 8. The case is now on appeal to the Ninth Circuit Court. On March 10, Union Pacific appealed to Oregon’s Land Use Board of Appeals arguing that state permits should be issued regardless of Wasco County’s treaty rights concerns. Union Pacific withdrew the LUBA appeal after Friends of the Columbia Gorge filed a motion to dismiss – arguing that the Gorge Commission maintained exclusive jurisdiction. On April 5, the Ninth Circuit Court denied an additional motion from Union Pacific that would have expedited their federal case and prevented the Gorge Commission from making their Tuesday ruling.

At the Gorge Commission hearing, the railroad’s lawyers argued that the tribes must meet a high burden of evidence to demonstrate a treaty rights violation, and repeatedly argued that federal railroad law should neutralize the laws that protect the National Scenic Area and authorize the Gorge Commission to protect the scenic area for its recreational and treaty-protected uses. Union Pacific attacked the use of the National Scenic Area Act to deny their permit by characterizing it as a “state law” – despite the fact that it was passed by Congress and signed by President Ronald Reagan in 1986.

The Commission disagreed – and voted to deny the company’s claim that federal

railroad law prevents Wasco County from making their finding for tribal treaty rights. According to Friends of the Columbia Gorge attorney Steve McCoy, the Gorge Commission is empowered to protect the Gorge not only for its scenic values, but for its treaty-protected uses – with clear sections of the National Scenic Area Act naming such terms. Early knowledge of this may have contributed to UP lawyers appealing to other courts.”

On June 3, the anniversary of the Mosier accident, leaders from Gorge communities joined Goudy, Warm Springs tribal councilor Carina Miller, and Walla Walla elder Cathy Sampson-Kruse to commemorate the disaster, and to draw attention to the continuing danger posed by oil trains that still run along the track.

Mosier physician Maria McCormick explained how she saw the event through her training as a medical professional.

“The oil crash last year was a sentinel event,” McCormick said. “We know that sheared screws were the cause of the spill. But it was not the root cause. The root cause of the oil spill and fire last year on June 3 is that we are transporting oil by rail.”

That afternoon, Goudy connected the incident to the Doctrine of Discovery that legalized the seizing of land and cultural rights from tribes like the Yakama Nation, comparing that doctrine to the present-day

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