Lower Beaver Creek focus of enhancement effort

Steep banks, little vegetative cover and a potentially good spawning area makes Lower Beaver Creek the ideal place to focus enhancement efforts. Bonneville Power Administration Columbia Basin Fish and Wildlife Program agreed with plans submitted by tribal fisheries biologists for improvement of the area and allocated $16 thousand for labor and equipment.

Warm Springs fisheries technician aide Orvie Danzuka drills rock for cable which secures Juniper in the stream.

Located one-half mile above the confluence with the Warm Springs River, this portion of Beaver Creek was identified as a "hot spot," says Warm Springs fisheries biologist Bob Heinith. Only two or three spring chinook redds (nests) have been found in the entire lower area primarily because the water is too warm for the fish. The water temperature also acts as a "barrier" to passage, says Heinith.

Spawning gravel in the area is "not bad," says the biologist. The main problem is lack of vegetation. Steep canyon walls "contribute to instream sediment loading and lack of streamside vegetation," says Heinith "These conditions increase instream temperatures which are detrimental to migrating and spawning fish."

Past research and on-reservation work has shown that juniper placed along the streambank will catch and secure high water, floating debris and sediment. It will enable streamside vegetation to become established and aid in stabilization of the site.

In 1984 some work had been done on this area of Beaver Creek. Wire cables holding the juniper broke away, however. This time heavier cable will keep the downed trees secure.

At the Lower Beaver Creek Juniper Rip-rap Project approximately 3,440 feet of eroded streambank was covered with 250 junipers cut locally from the site by the range-agriculture watershed crew. Placement of the trees and boulders was achieved by helicopter transport. Because the terrain at the site was rugged and because minimal environmental impact was planned, helicopter transport provided the best alternative to heavy equipment utilization.

A longline and choker slings enabled Bureau of Indian Affairs Fire Management helitack crew and BPA fisheries crew to hook up to trees and boulders. The helicopter pilot ferried and placed the materials. Depending on bank heighth, junipers were placed parallel to the streambank or at a thirty-five degree angle to the bank facing downstream. Following this procedure, trees were secured against high water movement by cabling them to boulders which had been placed in excavated holes. The depressions were then backfilled.

According to Heinith the project was successful mainly due to team effots of the BPA fisheries crew, the BIA helitack crew and the range-agriculture watershed crew. "Again it was shown that the challenges of rugged terrain and difficult logistical problems were surmounted by inter-cooperation of tribal and Bureau departments." Heinith adds, "Where there's a will there's a way."

To prevent further erosion to the area returning native vegetation would help stabilize banks. Juniper restricts access of cattle to approximately 65 percent of the area, says Heinith. The vegetation situation "is so bad" in this area, says Heinith, it would take 10 to 15 years to restore it. The project is a "quick fix" technique to restore some of the vegetation. "Ideally," says Heinith, "there should be a fence."

Educators discuss environmental instruction

Educators gathered November 14-16 at Sunriver, Oregon to discuss ways to teach students about the environment and environmental issues. The 14th Annual Environmental Education Conference provided workshops, displays and information on topics ranging from water quality to recycling.

Keynote speaker at the conference was the Governor's assistant for natural resources, Gail Achterman. She expresed concern that a "bonding" does not take place between people and nature. "People are an inextricable part of the natural system," she emphasized. Instead of a polarization, a "harmonic relationship" should exist between the two.

Too often, says Achterman, people are viewed as "spoilers" of nature. Zoning laws act to keep people away from nature.

Television, too, creates a barrier for establishing a relationship with nature by being a substitute for the natural experience. Many times nature is presented in a simplistic way, ignoring its complexity.

Environmental education doesn't mean that educators should teach students to reject the use of resources, but that they should teach students to "exercise skill in the use and development" of resources. Harvesting a tree, for example, should be done in a way "respectful to the land." Educators, Achterman says, "have a special responsibility to instil the stewartship ethic" in students.

The Environmental Education Association of Oregon is a professional, non-profit organization "dedicated to creating an environmentally literate society. The organization provides information, resources and educational support to individuals who are concerned for the quality of the environment.

For more information, interested persons may contact EEAO, P.O. Box 40047, Portland, Oregon 97240 or call 1-800-322-EEAO.

Floodplains important to stream

Floodplains are an important part of the riparian zone. All of the floodplain vegetation that shades or directly contributes material to a stream is considered part of the riparian zone. In fact, the frequency or flooding and the groundwater supply are the major factors that control the growth of floodplain trees. Stream channels rely on natural flooding patterns. Floodplains and backwaters act as small reservoirs to hold surplus runoff until peak floods are past. Floodplains also spread the impact of a flood over a larger area, while the vegetation helps collect debris. The composition of plant communities depends on the water pattern (fast- or slow moving), and flooding is critical in the exchange of nutrients and energy between the stream and the riparian area. Both wet and dry phases are necessary in this zone to complete the stream's nutrient cycle and food chain.

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Treaty fishing controversy proceeds from confrontation to co-management

The last twenty years of the treaty fishing controversy in the Pacific Northwest can be characterized as a path from confrontation to co-management. The period between 1850 and 1942 set the stage for this development. Treaties with the Washington coast, Pudget Sound and Columbia River tribes were signed in 1855 and 1856. The provisions of these treaties were nearly identical: the tribes ceded most of their lands—but reserved exclusive rights to fish at "all usual and accostomed fishing places...in common with citizens." While the Indians kept their fishing rights in these treaties, the right to take fish had been diminished by 1855 because non-Indian settlements already being established, and non-Indian settlement meant not only sharing the fish runs but also logging, mining and damming that destoryed the fish. The admission of Oregon, Washington and then Idaho to the Union created state governments that authorized non-Indian fisheries, which intercepted fish bound for treaty fishing areas.

The competition by the settlers with Indian fishermen was the basis for the first major fishing rights case to reach the Supreme Court: *U.S. v Winans* in 1905. This U.S. Supreme Court decision held that treaty Indians have the right to cross non-Indian lands to fish at their usual and accustomed fishing places. The court also said that treaties are to be interpreted the way the Indians had understood them. In 1915, however, the Western Washington Indian Agent was moved to appeal to the Washington legislature to show compassion when regulating the Indian fisheries.

Another event with special importrance for the lower Columbia River tribes took place in 1918, when Congress created the Columbia River Compact at the request of Oregon and Washington so that the two states could jointly regulate commerical fishing on the mainstem of the Columbia River.

In 1938, Congress passed the Bonneville Project Act to market power from the Bonneville Dam and other federal mainstem dams. These dams would eventually inundate such important Indian fishing places as Celilo Falls and Kettle Falls and block salmon migation to approximately 2800 miles of habitat. In the same year, Congress passed the Mitchell Act, which promised that the fish lost because of Columbia River dams would be replaced by hatchery fish. (In 1948, however, state and federal fish agencies began implememnting the act by putting almost all of the hatcheries below Bonneville Dam, where only non-Indians fished, instead of in the tribes' upriver fishing areas where salmon and steelhead were destroryed.) Another important judicial decision setting the stage for for recent events was *Tulee v Washington* (1942). The U.S. Supreme Court decided that because a treaty takes precedence over state law, Indians with tribal treaty rights can't be required to buy state licenses to exercise their treaty fishing rights. This also was the first case to rule that state regulation of treaty fisheries could take place for purposes of conservation.

The first attempt to actually aborgate the treaty fishing right took place in 1964, when a U.S. Senate committee considered resolutions to transfer regulation of off-reservation Indian fishing to the states.

These are only a few of the events that led to the "fish wars" of the late '60s and the '70s as well as the procedures instituted during the '80s that recognize treaty fishing rights and the rights of the Pacific Northwest tribes to manage their own affairs.

Important recent events

From 1960 to 1970, violent confrontations and fish-ins occurred on the Columbia River, the Puyallup River and Puget Sound.

In 1968, fourteen members of the Yakima Indian Nation filed suit against Oregon's regulation of off-reservation Indian fishing (*Sohappy v. Smith*). The United States and the Yakima, Warm Springs, Nez Perce and Umatilla tribes also sued (*U.S. v. Oregon*). The federal court compined the two cases.

In 1969, in *U.S. v. Oregon* (Belloni decision), Judge Belloni held that the tribes were entitled to a "fair share" of the fish runs and the state is limited in its power to regulate treaty Indian fisheries (the state may only regulate when "reasonable and necessary for conservation"). Further, state conservation regulations were not to discriminate against the Indians and must be the least restrictive means.

Between 1969 and 1978, three cases, *Puyallup Tribe v. Department of Game of Washington* (The Puyallup Trilogy), brought before the U.S. Supreme Court seccessfully contested the imposition of certain discriminatory fishing regulations upon Puget Sound tribes with regard to commercial steelhead.

In 1973, in *Confederated Tribes of the Umatilla Reservation v. Alexander*, the Umatillas sued and enjoined a hydroelectric dam that would have flooded off-reservation tribal fishing sites along Catherine Creek, a tributary of the Grande Ronde River.

From 1974 to 1977, Washington State Attorney General Slade Gorton and non-Indian user groups resisted enforcement of *U.S. v. Washington*. Violent confrontations occurred in Puget Sound and on the Washington coast.

In 1974, the Puget Sound and Washington coastal tribes in *U.S. v. Washington* formed the Northwest Indian Fisheries Commission (NWIFC). The tribes and non-Indian groups also formed the National Coalition to Support Indian Treaties.

In 1974, after a three-year trial, Judge Boldt mandated in *U.S. v. Washington* (Boldt decision) that the treaty Indian fishery and the non-treaty fishery are each entitled to 50 percent of the harvestable number of fish destined for tribal usual and accustomed fishing grounds and stations and reaffirmed tribal management powers. In upholding the decision, the Ninth Circuit Court of Appeals condemned the state of Washington and its Attorney General for blocking enforcement of Judge Boldt's decree. (Judge Boldt borrowed heavily from Judge Belloni's *U.S. v. Washington* 50/50 principle to Columbia River fisheries.)

In 1974, in *Settler v. Lameer*, the federal court ruled that the treaty fishing right is a tribal right, not an individual right, and that the tribes reserved the arthority to regulate tribal fishing on and off the reservations.

In 1975, the U.S. Army Corps of Engineers completed the last of four lower Snake River dams, compounding downstream passage problems and causing further declines in fish runs. The total number of dams on the mainstem Columbia and Snake Rivers rose to 19.

In August 1977, the four tribes in *U.S. v. Oregon* established the Columbia River Inter-Tribal Fish Commission (CRITFC) as their fisheries technical service.

In 1977, Fishery Advisory Board dispute resolutions under *U. S. v. Washington* began. There were 100 dispute resolutions in 1977. By 1987, dispute resolutions had decreased to zero.

In 1979, the Columbia River, Puget Sound and Washington coastal tribes sued the Secretary of Commerce over ocean fishing regulations because a large percentage

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TREATY INDIAN HARVESTS 1973-1987