



Leslie Mitts/Spilyay

Anona Francis, Niyallee Cochran, Annalise Whipple and Soraya Mendez (from left) perform at the Seventh Anniversary Celebration at High Lookie Lodge.

Judge: state must ensure salmon can navigate culverts

(AP) - Washington state must ensure that culverts under its roads don't block migrating salmon, a federal judge ruled last week in siding with American Indian tribes who complained that dilapidated or poorly designed structures blocked about 250 miles of streams.

The Confederated Tribes of Warm Springs participated in the case, submitting arguments supporting the Washington tribes.

The tribes said the problem limited how many salmon they could catch.

U.S. District Judge Ricardo Martinez said that treaties grant the tribes the right not only to fish, but to catch fish, and the state has a duty not to diminish salmon runs with culverts that block their passage.

Martinez set a hearing for September to discuss how the state will comply with his ruling.

Seattle attorney John Sledd, who represents half of the 20 tribes in the case, said the final word on the ruling's significance would come after a remedy is decided.

Still, Sledd said, the affirmation of treaty rights was a victory that tribal leaders have sought for decades.

"Obviously it's a vindication

that the treaty means something," Sledd said. "We can't repeat the conduct of the last century with regard to salmon and fisheries, so there are going to have to be some changes made."

The 20 tribes went to court over the culverts - tunnels, usually pipes, built to let streams flow under roads - in 2001, opening a "subproceeding" to the 1974 federal case that affirmed the tribes' treaty fishing rights.

That case, known as the Boldt decision, recognized that a series of 1855 treaties gave tribes the right to their fair share of harvestable salmon runs. The courts have continued to monitor issues related to tribal fishing.

State Transportation Department spokesman Lloyd Brown said officials have identified about 1,670 culverts that block the fish.

Existing plans call for replacing some of the culverts over the next 12 years at a cost of \$69 million, with other passages replaced when the state does road construction or maintenance.

In May, the state Transportation Department said it had spent more than \$45 million since 1991 to identify and fix barriers in fish streams.

"It's disappointing, but the case is still being reviewed," said Holly Armstrong, Gov. Chris Gregoire's spokeswoman. "We believe there's a good culvert program, and that will be explained to the court."

Gregoire, who was attorney general when the case began, joined then-Gov. Gary Locke in criticizing the tribes for bringing the subproceeding, saying it would lead to enormous litigation costs and that the state's existing plan for replacing the culverts was good enough.

When they filed the culvert case in 2001, the tribes wanted all the culverts fixed in five years. The tribes now favor a 2016 deadline - the same deadline faced by the state Department of Natural Resources for fixing fish obstructions on state forest roads, Sledd said.

Sledd said Martinez's logic could theoretically be applied to dams that block streams where tribes have fishing rights, but he's not holding his breath for a judge to make such a ruling.

"The devil's in the details," Sledd said. "We've been saying all along that whether you violated the treaty and what kind of injunctive relief you get are different things."

More News from Indian Country

Court sides with state in fight over gambling

AUSTIN (AP) - A federal appeals court dealt a blow to expanding gambling at an Indian casino in Texas, ruling Monday that federal rules undermine the state's power to restrict gaming.

Texas officials have been fighting for several years with the U.S. Interior Department over the Kickapoo tribe's plan to offer Las Vegas-style gambling at its casino at Eagle Pass on the border with Mexico.

Earlier this year, the department gave the tribe preliminary approval to expand its offerings from poker and bingo to a range of games including blackjack, keno, roulette and off-track pari-mutuel betting on horses or dogs.

U.S. Sen. John Cornyn and Texas Attorney General Greg Abbott, both Republicans, had criticized the agency's decision, noting that the state's legal challenge to federal authority was pending before the 5th U.S. Circuit Court of Appeals.

The appeals court sided with the state, ruling the agency's permitting process violates the Indian Gaming Regulatory Act, which gives states significant power to restrict Indian gaming.

Under the federal act, a tribe can offer the same games permitted in the state. Texas operates a lottery and has legalized pari-mutuel betting on horses and dogs. The Interior Department's preliminary approval letter said the state's definition of a lottery is broad enough to include traditional casino-style games except slot machines.

Cornyn, who fought to close Indian casinos when he was Texas attorney general, said states should have more say in decisions about gambling within their borders.

"For years, Texas citizens and their elected representatives have rejected casino-style gaming in the state. The Department of the Interior thought it knew better than the citizens of the Texas and tried to overrule their judgment," Cornyn said. "These decisions should be made by elected representatives, not federal bureaucrats."

The Kickapoo tribe has been trying to expand its gaming operations for more than a decade. It is the only Texas tribe allowed to run even a limited casino.

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