

# Tribes, town on Columbia clash over 1855 treaty

ARLINGTON (AP) — More than 150 years after signing a treaty ceding land but preserving their hunting and fishing rights, Columbia River tribes are locked in a legal dispute with this tiny port over whether those rights can change with the course of the river.

The Port of Arlington wants to build a barge pier near the confluence of the Columbia and Willow Creek. Arlington officials say the pier, intended to handle garbage barges, is critical for Gilliam County's economy.

But area tribes argue the pier would interfere with their fishing at the site, violating terms of an 1855 treaty that guarantees their right to hunt and fish in "usual and accustomed" areas.

The U.S. Army Corps of Engineers initially approved a permit needed to build the pier, but last year revoked it after looking into the tribes' complaints and deciding they might be right.

The disagreement hinges on whether the permit should have

been pulled and what constitutes a "usual and accustomed" tribal fishing site.

The Confederated Tribes of the Umatilla Indian Reservation — backed by Warm Springs and other tribes in the region — contend the pier site is in the middle of a fishing ground protected by the treaty.

Officials in Arlington and Gilliam County dispute that, saying a dam built on the Columbia four decades ago submerged the actual fishing grounds.

Work had already begun on building the pier when the Corps ordered construction stopped.

The Port of Arlington has taken the matter to federal court in Portland.

A string of hydroelectric dams were built along the Columbia starting in the 1930s, undating tribal fishing grounds.

Local officials say the pier is needed to ensure that a nearby landfill is able to compete with other landfills.

Currently, garbage from the Portland area is trucked to the

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landfill. The landfill operators pay a \$3 million annual "host fee," far from chump change to a county the size of Rhode Island with only about 2,000 residents. The landfill provides about 150 jobs and is the county's largest employer.

The port fears a new 10-year contract to truck garbage along Interstate 84 through the protected Columbia River Gorge National Scenic Area may not be renewed for environmental or other reasons, hobbling the landfill.

Umatilla tribal attorney Brent Hall said a fishing village existed near the site where Arlington wants to build the pier, making

it a "usual and accustomed" site protected by the treaty.

The port argues that at the time of the 1855 treaty the shoreline was about 300 feet from the location of the unfinished pier, so the construction site could not have been a fishing site when the treaty was signed. The Columbia rose about 40 feet with construction of the John Day Dam, flooding miles of riverbank.

The tribes, backed by the Corps, counter that protected fishing sites can move with rising river levels and fish patterns.

"The fact that the present location of tribal fishing has shifted with the shoreline and is not precisely where fishing took place in 1855 does not negate its qualifications as a usual and accustomed fishing station," the Corps wrote in papers filed in federal court.

Also at issue is whether archaeological sites could be disturbed by building the pier.

At the tribes' request the Corps of Engineers looked for evidence of archaeological or

historic remnants. Its report said it found "no evidence of any archaeological or historic resources," but added that its divers reported visibility in the water of only inches, so such evidence cannot be ruled out.

So the court decided that on balance, the pier project would improperly affect tribal rights.

The 1855 treaty with the U.S. government was signed by the Cayuse, Umatilla, and Walla Walla tribes, who ceded more than 6.4 million acres in what is now northeastern Oregon and southeastern Washington. In return they got land that was designated as the Umatilla Indian Reservation, which consists of 172,000 acres. The treaty was signed by a number of other tribes as well.

Also under the treaty, the tribes reserved perpetual rights to fish, hunt and gather traditional foods in the ceded lands.

As compensation for the submerging of fishing grounds by dams on the Columbia, the federal government has provided tribes with Town on Columbia,

tribes clash over 1855 treaty "in lieu" fishing sites, most of which were Indian-only access routes to their fishing grounds.

Blood boiled for decades over attempts by white settlers to keep tribal fishermen from crossing their land to get to their fishing sites.

Kathryn Brigham, past chairman of the Columbia River Inter-Tribal Fish Commission, said the tribes have fought in court before over their rights.

She has been active in Columbia River tribal fishing issues for more than half of her 62 years and recalls hostility at hearings on tribal fishing seasons in the mid-1970s.

"People were yelling at us. They carried signs that said, 'Save a salmon, can an Indian,'" she recalled.

Paul Conable, attorney for the Port of Arlington, said the port supports more in-lieu sites for the tribes. That tribal fishermen who lost fishing grounds were not better-compensated is shameful, he said, "but it's not the port's fault."

## Marijuana plants seized on reservation

HARRAH, Wash. (AP) — Authorities say they have seized about 2,300 marijuana plants from three plots located in a wooded area on the Yakama Indian reservation in central Washington.

The latest bust pushes the total number of plants seized in Yakima County to about 100,000 in the annual effort

by local authorities to curb the growth of marijuana production in the region.

The Yakima Herald-Republic reports Yakima County is the top county in the state for marijuana production.

No one was arrested in the raid at Harrah, Wash.

## Kootenai tribe restoring sturgeon habitat

BONNERS FERRY, Idaho (AP) — Four-inch long sturgeon frolicked in a hatchery tank comically flipping onto their backs to feed, then wriggling right side up.

Barely a year old, they looked ancient. Long snouts, sharklike tails and the sturgeon's bony armor hinted at the species' prehistoric origins, which date back 150 million years.

"They're mysterious, beautiful creatures," said Sue Ireland, fish and wildlife director for the Kootenai Tribe of Idaho, the hatchery's operator. "It's important that we do everything in our power to help them survive."

As part of aggressive plans to keep the Kootenai River's white sturgeon population from sliding into extinction, the tribe has crafted a habitat restoration plan for 55 miles of the river. The habitat work will help young hatchery sturgeon survive after they're released into their native waters, and also benefit the remaining wild sturgeon population.

In the 1970s, an estimated 7,000 white sturgeon lurked in the river's cool, green depths. Only 800 to 1,000 adults remain — and that figure's shrinking by about 9 percent each year, ac-

ording to the U.S. Fish and Wildlife Service.

Scientists believe the next few years will be critical for the Kootenai sturgeon. More than three decades have passed since the fish reproduced successfully in the river. If the trend isn't reversed soon, only a handful of wild female sturgeon will be left to spawn.

Kootenai sturgeon are a distinct stock, evolving after the last ice age isolated them from Columbia River sturgeon. The freshwater giants can reach 8 feet in length, but they're slow to mature. The fish don't spawn until they're 30. Although females can live into their 70s, they lay eggs only every four to six years.

Dwindling numbers of Kootenai sturgeon were first documented in the mid-1960s. Then came Libby Dam. Sixty-five million years ago, sturgeon survived the mass extinction that killed off the dinosaurs, but they were no match for modern engineering.

Built in 1974 for flood control and power generation, Libby Dam tamed the spring torrents that once triggered the upstream journey of the sturgeon from British Columbia's Kootenay

Lake to spawning grounds near Bonners Ferry.

In recent years, the U.S. Army Corps of Engineers has released water from the dam to mimic the spring freshets. Although the sturgeon are spawning again, the fry don't survive. In an effort to reverse the trend, the tribe's habitat plan calls for creating deeper pools in the main river and restoring side sloughs for rearing areas.

"We're trying to unlock the mystery of what's keeping them from thriving in the wild," Ireland said.

The restored habitat will also help five other native fish species, including kokanee, which are part of the sturgeon's diet.

Ireland said the habitat plan is a practical document. It recognizes that the river won't return to a pristine state. But by working closely with local landowners, she said, the tribe hopes to mitigate some of the damage caused by a century of diking, farming and other development.

"Society has put constraints on the river," said Greg Hoffman, a fish biologist who works at Libby Dam. Bonners Ferry would flood if the Army Corps of Engineers released the

same volume of spring flow that historically swept down the valley, he said.

"We want to see the system restored, but we'll do it in a way that's sensitive to the local community and the culture of the area," said Patty Perry, the tribe's administrative director.

The tribe has gathered a policy team that includes representatives from Idaho, Washington, Montana and British Columbia's Ministry of the Environment. Tribal members will work cooperatively with other governments to secure funding for the habitat work, Perry said.

Sturgeon are culturally significant to the 141-member Kootenai Tribe.

"The tribe is connected to sturgeon just like the Columbia River tribes are connected to salmon," Ireland said. "They're a spiritual messenger, revered for their longevity."

Ireland, who isn't Native, began working for the tribe in 1996. She, too, fell under the sturgeon's spell. "They get to you," she said, cradling a hatchery sturgeon in her palm. Everyone who works on the restoration effort develops an intense desire to see the Kootenai sturgeon survive, she said.

## Arrest in tribal HQ arson

DULUTH, Minn. (AP) — Federal agents arrested a 20-year-old Nett Lake man in last month's arson that destroyed the Bois Forte Reservation center offices in northern Minnesota.

FBI and Bureau of Indian Affairs officers arrested William Lynn Isham at a Duluth residence where he had been staying.

A criminal complaint and warrant for Isham's arrest were filed in U.S. District Court in Duluth, charging Isham with setting fire to the Bois Forte (boyz fohrt) Reservation Tribal Center at Nett Lake near Orr.

Isham is an enrolled member of the Bois Forte band. He remains in custody.

## Oweesta Corp. has new CEO

RAPID CITY, S.D. (AP) — Rapid City-based First Nations Oweesta Corp. has a new chief executive.

Tracey Fischer now heads the

corporation that helps provide investment capital and assistance to help American Indian communities develop financial institutions and programs.

# Tribal Council Resolution

*The following resolution, and those on the next page, were adopted recently by the Tribal Council of the Confederated Tribes of Warm Springs.)*

## Guide service

Whereas the Treaty with the Tribes of Middle Oregon June 25, 1855 reserved to the Confederated Tribes of the Warm Springs Reservation of Oregon the "exclusive right of taking fish in the streams running through and bordering the Reservation"; and,

Whereas the On-Reservation Fish and Wildlife Committee in conjunction with the Natural Resources Department has reviewed and proposed to the Tribal Council the 2009 Fish-

ing Guide Service Regulations for tribal member owned fishing guide services conducted on lakes and rivers within and bordering the reservation; and,

Whereas the Tribal Council has reviewed the proposed 2009 Fishing Guide Service Regulations and has determined that enactment of such regulations would be in the best interest of the tribe, its members, and of the natural resources of the Warm Springs Reservation of Oregon; now, therefore,

Be it resolved by the Twenty-Fourth Tribal Council pursuant to Article V, Section 1 (l) and (u), of the Constitution and By-Laws, and pursuant to Warm Springs Tribal Code Chapter 340, that the following rules and regulations are hereby adopted for the 2009 season:

1. Tribal member preference (Resolution 8363 and 8363a) shall be used in the selection of all guides.

2. Tribal members have top priority for fishing opportunities on the reservation. Any and all fishing guide business is to be conducted in a way so as not to interfere with any tribal member fishing from waters running through and bordering the Reservation.

3. Annual approval by the Tribal Council of each fishing guide service is required before the start of the fishing guide season.

4. The fishing guides will ensure that their non-tribal member clients comply with the Warm Springs Visitor Fishing Regulations and Fishing Guide Regulations developed by the

Fish and Wildlife Department any applicable state fishing regulations. Guides will provide copies of these annual tribal and state fishing regulations to all clients.

5. Fishing Guide Services will only be permitted to launch and take out from the Warm Springs Boat Launch, Annie Dick's Property (River Mile 85), Whiskey Dick (River Mile 78), and the North White Horse Rapids Area (River Mile 74.5). No other launching or take out areas will be permitted.

6. If guiding is conducted with a vehicle and or by hiking into a fishing area, the operator of the guide service must obtain written authorization from allotment owner, whose land may be utilized to access the river. The guides must have this

authorization document in their possession at all times. Use of allotted lands without owners written consent will subject the guides and clients to citations for trespass violations and will subject the guide service operator to revocation of his/her Tribal Council approval.

7. Fishing guides must be with their clients at all times.

8. Monthly fishing reports must be submitted to the On-Reservation Committee, Committee secretary and to the Natural Resources, Fish and Wildlife Department. Weekly reports will be in a format developed by the On-Reservation Fish and Wildlife Committee and the Natural Resources, Fish and Wildlife Department. The Fishing Guide services are mandated to provide an Annual re-

port to Tribal Council by the On-Reservation Fish & Wildlife Committee.

9. No outsourcing or seeking out other guide services other than those approved by the On-Reservation Fish & Wildlife Committee.

10. Any violation of the rules and regulations applicable to Fishing Guide Service set out in this Resolution will subject the Fishing Guide Service operator to revocation of the Tribal Council's approval to operate a fishing guide service on the waters running through and bordering the Warm Springs Indian Reservation; and,

Be it further resolved that for the 2009 season, the Fishing Guide Service owned and operated by: Al Bagley is hereby approved. (Resolution No. 11,065)