

# Columbia River treaty tribes supporting lost compensation claim by the Colville tribes

The Colville Tribes are suing for compensation due to loss of culturally significant services derived from damaged natural resources.

The compensation for the damages, the Colville tribes argue, are recoverable under the Comprehensive Environmental Response, Compensation, and Liability Act, CERCLA.

The Confederated Tribes of Warm Spring, the Umatilla Tribes, the Yakama Nation and Nez Perce Tribes have since filed a legal brief supporting the claim.

The case is *Pakootas v. Teck Cominco Ltd.*, and is now pending at the U.S. Court of Appeals for the Ninth Circuit.

CERCLA uses broad language to permit governmental trustees—federal, state and tribal—to recover damages from polluters for lost use and loss of services from natural resources, where such resources are injured. The compensation is based on a Natural Resource Damage Assessment.

Tribal nations across the country are recognized as ‘Natural Resource Trustees,’ and participate in Natural Resource Trustee Councils that conduct the NRDA.

“Numerous tribal nations across the United States are or have been recognized as CERCLA Natural Resource Trustees and, given the damages they have suffered, this case is of great significance to them,” said Native American Rights Fund staff attorney Tom Murphy.

The Native American Rights Fund is assisting the Columbia River treaty tribes that submitted the amicus brief supporting the Colville tribes.

The Columbia River treaty tribes have treaty reserved sovereign, pre-statehood rights to harvest natural resources in the Columbia River Basin, including on- and off-reservation fishing rights.

The amicus brief by the tribes in support of the Colville claim asks the Ninth Circuit to reverse the Eastern District of Washington’s order granting Teck Cominco’s motion for partial summary judgment deeming culturally significant service loss claims beyond the scope of CERCLA recovery.

The brief argues the U.S. Eastern District of Washington arbitrarily and incorrectly reframed the Colville Tribes’ service loss damages as “cultural resource damages” and summarily distinguished injured “cultural” resources from “natural” resources without analyzing CERCLA’s express language permitting lost use- and service loss-based damages.

If tribes cannot recover damages when injury to a natural resource prevents the resource from playing its traditionally recognized role in tribal history and culture, i.e., from providing a service to the tribe, CERCLA will not succeed in making trustees “whole,” as the statute is designed to do.

Moreover, the lower court’s interpretation would disproportionately affect tribes, as opposed to state and federal trustees, since many tribal uses of natural resources are integral to tribal histories and cultures.

“For many Native communities, natural resources are and have always been cultural resources, for there is a constant exchange of service between the tribal nation and the natural environment within which it exists and lives,” said Native American Rights Fund tribal water institute fellow Melissa Kay.

“To deny that reality is to refuse to make a tribe whole under CERCLA.”

The tribes serve as trustees on one or more natural resource councils, including for the Hanford Superfund Site, where the United States produced plutonium for use in atomic weapons, and for the Portland Harbor Superfund Site, where, for decades, industries released contaminants into the river and adjacent land.

Preclusion of certain types of tribal service losses from allowable damages through CERCLA’s recovery mechanism because they are deemed “cultural” has no basis in the law, and it would prevent the amici tribes, and many others, from being made whole for the injuries wrought by decades of unmitigated pollution.

Under construction since last June, the Madras campus expansion is being funded through a mix of federal, state, institutional and other public resources. The COCC Foundation is seeking the remaining funds from private philanthropy and grants.

Central Oregon Community College is currently accepting proposals for a commissioned outdoor sculptural installation, with a compensation of up to \$30,000, to become part of the Madras campus’s newly expanded site.

Deadline for applications is March 7. For more information visit the website: [cocc.edu/departments/foundation/growing-together](http://cocc.edu/departments/foundation/growing-together).

Or contact by email: [madrasartcall@cocc.edu](mailto:madrasartcall@cocc.edu)

Or 541-383-7225 to learn more.

## COCC seeks artist for \$30,000 Madras Campus commission

Preference will be given to applicants with ties to the local community and an understanding of the cultural and historical significance of the site and surrounding area, explained Dr. Tina Hovekamp, chair of the Madras campus artist call committee.

“The selection committee can’t wait to receive submissions from interested artists and begin our collaboration for a final selection for this project,” said Dr. Hovekamp.

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The request for proposals is open to local artists with experience in the design, fabrication and installation of public artworks.

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## Another permit for energy storage project

Tribal nations and non-profit Columbia Riverkeeper continue the opposition to the Goldendale Energy Storage Project in Washington state. The project includes drilling a tunnel through a sacred cultural area called Pushpum.

The work would destroy multiple archaeological sites and impacting actively-used gathering areas on federal lands.

Tribes have released statements noting the project would impact petroglyphs, ancestral sites and ceremonial resources.

Bringing construction another step closer was the January confirmation of a water quality permit for Rye Development, despite an appeal filed by tribal nations and multiple nonprofits. Rye Development is based in Boston, and backed by Copenhagen.

Columbia Riverkeeper, Washington Conservation Action, American Rivers, and the Confederated Tribes and Bands of the Yakama Nation filed an appeal of the permit to Washington state’s Pollution Control Hearings Board, the PCHB.

The Confederated Tribes of Warm Springs, the Nez Perce Tribe, and the Confederated Tribes of Umatilla Indian Reservation also opposed the project.

*“These parts of our identity—the land, the roots, and the water—are a part of our collective history and we must not erase them.”*

Alyssa Macy

And 57 tribal governments, composing the Affiliated Tribes of Northwest Indians—the largest and oldest such organization—passed emergency resolutions to try and protect the site, urging regulators to deny permits.

“A clean energy future must uphold federal trust and treaty obligations that consider the cultural and health impacts of these projects on sacred sites,” said Alyssa Macy, Confederated Tribes of Warm Springs member and CEO of Washington Conservation Action.

“These parts of our identity—the land, the roots, and the water—are a part of our collective history and we must not erase them,” Ms. Macy said.

As of January, Yakama Nation members said the legally required government-to-government consultation

between the U.S. and Yakama Nation still had not been done. The Federal Energy Regulatory Commission, FERC, must issue the final permit.

FERC first asked the developer, Rye, to consult with tribal nations. Yakama Nation refused to consult with a developer instead of a government. Without breaking its self-written rules, FERC couldn’t keep information disclosed by Yakama Nation completely confidential. And it is against tribal law and custom to disclose some sensitive cultural information, so they cannot fully disclose the importance of this sacred site.

## Cove event in June seeking vendors

The Oregon Parks and Recreation Department is getting ready for its third annual Festival of The Land Event at the Cove Palisades State Park on Saturday, June 7. Last year’s event drew more than 450 people, and state Parks and Rec is hoping for a great turnout again.

This year the festival will explore how the land gives the people life. There will be presentations on cultural diversity in the area, along with three distinctive time periods: Past, present and future land uses around three Oregon rivers.

Parks and Rec is currently looking for food and product vendors for the event.

Get more information by contacting Ranger Erin Bennett, 541-977-5759. Or email: [erin.bennett@opr.d.oregon.gov](mailto:erin.bennett@opr.d.oregon.gov)

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