

For Immediate Release

Tribes Win Culvert Appeal in Ninth Circuit

TAHOLAH, WA (6/27/16)—Twenty-one Treaty Indian Tribes in Washington were handed a victory today as the Ninth Circuit Court of Appeals affirmed a 2007 Federal District Court decision by Federal District Court Judge Ricardo Martinez that hundreds of state-owned, fish-blocking culverts must be repaired. The ruling, made by Circuit Court Judges William A. Fletcher and Ronald M. Gould and District Judge David A. Ezra, confirms that the State of Washington must invest \$2.4 billion to repair the culverts over the next 15 years.

“This is not just a victory for tribes. It’s a victory for everyone,” said Fawn Sharp, President of the Quinault Indian Nation and the Affiliated Tribes of Northwest Indians, and Vice President of the National Congress of American Indians. “We are delighted with this decision.”

“This is a victory for tribal and non-tribal fishermen, and for non-fishers as well, because it will result in healthier ecosystems. It will help assure that salmon can reach their spawning grounds. Our Northwest salmon are keystone species. They are critically important to the survival of other species, healthy habitat, and an overall healthy environment,” she said.

“This decision affirms that treaty tribes do retain off-reservation habitat protection rights,” said President Sharp. “We have been waiting for this decision for a very long time.”

In 1974, Federal District Judge George Boldt ruled that treaty tribes retain a right to take 50 percent of the harvestable fish, based on 19th century treaties established between the state and the tribes in which the tribes ceded millions of acres of land. Judge Boldt’s ruling was backed by the U.S. Supreme Court in 1978.

In his decision Judge Boldt stated that Northwest treaty tribes clearly do retain a habitat protection right, though he deferred the specifics and concentrated on allocation. The habitat issue remained unresolved for nearly 40 years. In 1980 Federal District Judge William Orrick ruled that the habitat protection right is protected in the treaties, though the Ninth Circuit later decided that the habitat issue required a concrete case. For more than 20 years, the issue simmered as the tribes considered which case to pursue. During that time, the threat of a habitat-related suit helped support meaningful negotiations between the state and the tribes, resulting in such far-reaching cooperative agreements as the Timber-Fish-Wildlife (TFW) Agreement.

In 2001, the tribes, along with the federal government, finally initiated action against the State of Washington, alleging that the state’s construction and maintenance of highway and railroad culverts that block salmon migration violate the treaty fishing right.

“Judge Boldt’s opinion, the 2007 decision by Judge Martinez and today’s Ninth Circuit decision confirm, and reaffirm, that the treaties do apply to habitat protection. Tribes have known this all along, and I believe the state has as well. It is time for the state to step up and make the habitat-related investments necessary to protect and restore our great Northwest salmon resource. As co-managers of the resource, with clearly defined habitat rights, it is now very clear that treaty tribes have a legally mandated right that requires it,” said President Sharp.

The state Department of Transportation (WSDOT) with the state Department of Fish & Wildlife has been identifying and repairing problem culverts since 1991 along some 7,054 miles of state highways. They counted 3,613 highway culvert crossings over fish-bearing streams. As of 2015, 1,976 of them still blocked upstream habitat.

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