

1 expert in the United States v. Oregon court case. I am currently the Executive Director of
2 CRITFC. Among other departments, CRITFC has a Fisheries Enforcement department that
3 enforces tribal fishing regulations and maintains public safety at the tribes' fishing sites along
4 the Columbia River. CRITFC also has a Fishing Sites Maintenance department that
5 implements operations and maintenance responsibilities for 31 In-Lieu and Treaty Fishing
6 Access Sites along the Columbia River. CRITFC's Fishery Science and Fish Management
7 departments provide technical assistance to CRITFC's member tribes. CRITFC currently
8 employs approximately 100 staff, which varies seasonally. Among these are more than 20
9 scientists with advanced degrees in fisheries or related sciences.

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11 **PURPOSE OF MY TESTIMONY**

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13 The purpose of my testimony is to highlight the importance of the Columbia River and its
14 fishery resources to the tribes of the Columbia River Basin and in particular to the member
15 tribes of the CRITFC; the Nez Perce Tribe, Confederated Tribes of the Umatilla Indian
16 Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon and the
17 Confederated Tribes and Bands of the Yakama Nation. This importance is exemplified by
18 the commitment of the tribes to salmon and other species restoration as well as the work of
19 the Commission. It is important for the governments the tribes work with to understand
20 tribal perspectives with regard to salmon and the Columbia River. I have chosen several
21 examples of the CRITFC's work to help explain this perspective.

1 **THE TRIBES AND THE COLUMBIA RIVER**

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3 The Columbia River system is the life-blood of all the tribes and First Nations found along its

4 entire length. Since time immemorial, the water, salmon, game, roots, and berries of our

5 homeland—the sacred first foods—have sustained our health, spirit, and cultures. So

6 fundamental was this connection that when the Yakama, Umatilla, Warm Springs, and Nez

7 Perce tribes entered into treaties with the United States in 1855, they specifically included

8 language to ensure that they could continue to fish, hunt, and gather their first foods. (See the

9 Columbia River Inter-Tribal Fish Commission’s Web site, www.critfc.org, for the full text of

10 each member tribe’s 1855 treaty.)



1 In their treaties, these four tribes ceded a collective 66,591 mi² (172,470 km²) of their lands
2 to the United States, agreeing to live on reservations. The tribes' ceded lands are depicted in
3 Figure 1 as lightly shaded areas. The current tribal reservation lands make up a small
4 percentage of the tribes' ceded areas. The tribes customarily undertake fisheries restoration
5 projects within their ceded lands. The tribes also reserved rights to fish at their usual and
6 accustomed fishing areas, which as confirmed by the federal courts may extend beyond the
7 tribes' ceded area boundaries.

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9 **TRIBAL FIRST FOODS**

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11 Through a review of the notes of the negotiations that led to their treaties with the United
12 States, it is obvious that the U.S. negotiators recognized the importance of salmon and first
13 foods to the tribes. Article 3 of the U.S. treaty with the Yakama Nation in 1855 states:

14 *the right of taking fish at all usual and accustomed places, in common with the*
15 *citizens of the Territory, and of erecting temporary buildings for curing them:*
16 *together with the privilege of hunting, gathering roots and berries.*

17 There is similar language for treaties with Umatilla, Nez Perce, and Warm Springs tribes.

18 Through the treaties, the tribes reserved these rights to their first foods, including salmon.

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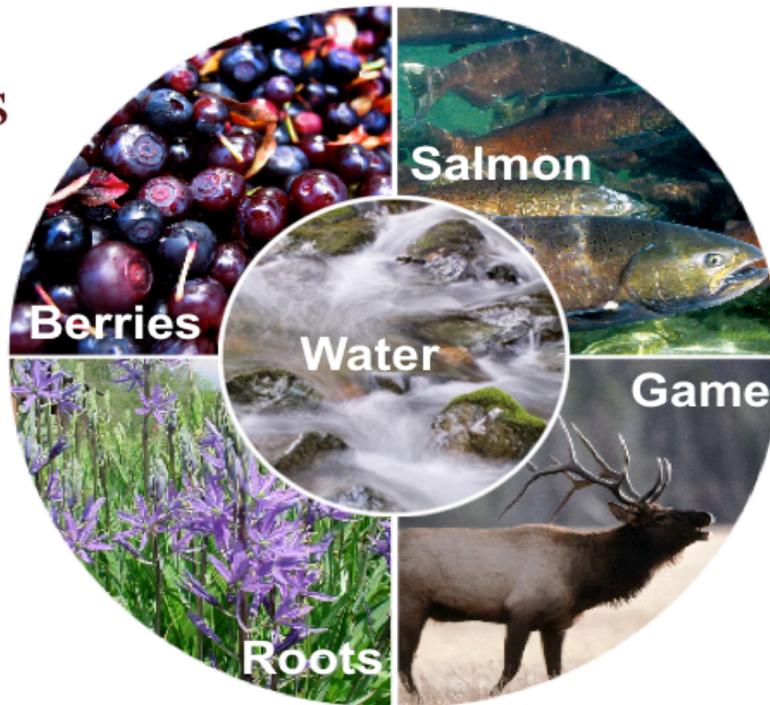
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2 **First**
3 **Foods**



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13 Even today, the tribal first foods are served in our tribal longhouses in the order described in
14 the treaties; first the salmon, then the game, roots, and berries. This order is so engrained in
15 our tribal cultures that the Natural Resources program of the Umatilla Tribe has organized its
16 functions around these first foods.

17 **COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION (CRITFC)**

18 Human impacts on the Columbia basin have dramatically altered the entire ecosystem
19 since the signing of the treaties. Increased human population, dam construction, unregulated
20 harvest, and substantial habitat modifications drastically reduced salmon populations.

21 Annual salmon runs today average fewer than 2 million fish—about one-tenth of what they
22 were, on average, historically (NWPPC 1986).

1 The four Columbia River treaty tribes united forces to address the significant decline of
2 salmon returns. Together they formed CRITFC in 1977 to coordinate their management
3 activities and restoration efforts. Since then, these tribes have become leaders in
4 accomplishing their stated goal to “put fish back in the rivers and protect the watersheds
5 where fish live.” They participate in interstate agreements and international treaties
6 controlling salmon harvest and water management. These tribes are also successfully
7 rebuilding naturally spawning salmon populations, restoring habitat, and protecting the water
8 flowing in the rivers. Initially focusing on salmon and steel- head, CRITFC’s efforts have
9 since expanded to include Pacific Lamprey *Entosphenus tridentatus* and White Sturgeon
10 *Acipenser transmontanus*, the two other anadromous fish species found in the Columbia
11 basin.

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13 **WY-KAN-USH-MI WA-KISH-WIT**

14 Several salmon populations were listed as endangered or threatened under the Endangered
15 Species Act, beginning in the early 1990s. Due to years of frustration at federal inaction to
16 develop the required recovery plans to address salmon survival at all life stages, the tribes
17 developed their own plan to rebuild fish populations. The plan is called Wy-Kan-Ush-Mi
18 Wa-Kish-Wit (Spirit of the Salmon), which was developed through CRITFC by the four
19 member tribes and published in 1995. The plan was updated in 2014 (CRITFC 2014;
20 <http://plan.critfc.org>).

21
22 To date, this is the only plan that quantitatively addresses the full lifecycle of the anadromous
23 fish species for the entire Columbia River basin. The plan seeks to halt the salmon decline
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1 and sets specific numeric goals for full recovery of Columbia basin salmon, steelhead,
2 Pacific lamprey *Entosphenus tridentatus*, and White Sturgeon *Acipenser transmontanus*. It
3 has a goal of doubling the 1995 salmon runs by the year 2020. The plan provides for the full
4 recovery of anadromous fish to the rivers and streams that support the historical, cultural, and
5 economic practices of the tribes within seven human generations. The seven-generation goal
6 is a common theme for tribes that guides decision-making processes to meet the needs of the
7 next seven generations of their people.

8 9 **WATER QUALITY AND TRIBAL FISH CONSUMPTION**

10 Historically, tribal members drank water directly from the Columbia River. Today, a host of
11 contaminants in the river makes this unadvisable and even dangerous. The fish, however, do
12 not have a choice when it comes to the water; they must swim in the river. By doing so, the
13 fish are exposed to and absorb these contaminants. The state governments set fish
14 consumption recommendations based on the amount of contaminants found in the fish. In the
15 past, these rates were based on the amount of fish the average citizen consumes and did not
16 account for the higher levels consumed by tribal members. A CRITFC study completed in
17 1994 concluded that tribal members consume an average of 6–11 times more fish than the
18 general public. The results of a U.S. Environmental Protection Agency fish contaminant
19 survey, completed in cooperation with CRITFC, showed that 92 priority pollutants were
20 detected in resident and anadromous fish tissue collected from 24 different tribal fishing sites
21 on the Columbia River (USEPA 2002). Contaminants measured in these fish included
22 various Polycyclic Aromatic Hydrocarbons (PAHs) as well as dioxins and other chlorinated
23 organic compounds. As a result, the tribes raised a substantial concern that state water quality
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1 standards were not sufficiently protective for the tribal community that still subsisted on
2 large numbers of salmon in their diet.

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4 In 2011, Oregon adopted water quality standards based on the tribal fish consumption rate of
5 175 grams per day (g/d), the fish consumption levels documented in the CRITFC survey.

6 Currently, water quality standards for Washington and Idaho are 6.5 g/d and tribal fish
7 consumption rates are at the center of debates related to revising these standards. Washington
8 and Idaho are in the process of revising water quality standards that hopefully will better
9 protect tribal consumers. In 2012, the U.S. Environmental Protection Agency disapproved
10 Idaho's request to use an updated fish consumption rate of 17.5 g/d because it was not
11 protective of tribal consumers. If water quality standards for either state do not provide
12 adequate protection for tribal subsistence populations, then the tribes will be compelled
13 request the federal government will need to step in and promulgate water quality standards to
14 protect the tribal members.

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16 When the tribes signed the treaties in 1855, contaminated fish were not part of the deal.

17 Large-scale pollution is a result of both federal and non-federal actions. The damming of the
18 Columbia basin has exacerbated this problem. Despite these concerns, tribal members
19 continue to consume large amounts of fish for subsistence purposes. Salmon are a healthy
20 food source and must be protected for human consumption. In 2013, CRITFC's chairman
21 submitted letters to the region's governors advocating for stricter water quality standards
22 based on the higher tribal fish consumption rates. He stated, "The tribes believe that the long-

1 term solution to this problem isn't keeping people from eating contaminated fish, it's keeping
2 fish from being contaminated in the first place.”

3 4 5 **COLUMBIA RIVER TREATY**

6 The Columbia River Treaty between the United States and Canada governs hydropower and
7 flood control on the 1,200-mi (1,900 km) Columbia River. The current treaty, implemented
8 in 1964, does not consider the needs of fish, a healthy river, or the tribes' treaty fishing rights
9 and cultural resources that are now recognized and fully protected under modern laws. The
10 tribes were not consulted during the negotiation of the Columbia River Treaty. As a result,
11 the treaty fails to include tribes or tribal interests. The impacts of the Columbia River Treaty
12 on the tribes' cultural and natural resources multiplied the already disastrous effects that had
13 resulted from the decision by the United States to dam the Columbia River in the 1930s.

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15 The United States and Canada negotiated the Columbia River Treaty to last at least 60 years
16 (2024). After that date, either party may choose to terminate it, but they must provide a 10-
17 year notice of their intent to do so. That 10-year window opened in September 2014. Seeing
18 that date on the horizon, many tribes in the Columbia basin started taking actions in 2007 to
19 secure seats at the table to contribute to analyses and participate in the decision- making
20 process. These efforts have grown into a coalition of 15 Columbia basin tribes that are
21 actively working with several federal agencies and four states to reshape the Columbia River
22 Treaty to protect and benefit tribal culture and resources. The coalition of 15 tribes also

1 coordinates with 17 First Nations in Canada to provide information on fish passage and
2 ecosystem needs to inform all sovereigns and stakeholders in the basin.

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4 The tribes' participation in the Columbia River Treaty 2014–2024 review is critical for
5 protecting tribal rights and interests, including improving ecosystem functions and ensuring
6 favorable conditions for other tribal resources. The tribes also seek representation on the U.S.
7 negotiating team if changes to the Columbia River Treaty are discussed with Canada. The
8 tribes gained the agreement of the United States to regard ecosystem function as co- equal
9 with flood control and power production during the treaty review and to include measures to
10 restore and preserve tribal re- sources and culture. Tribal interests were included in the U.S.
11 Entity Regional Recommendation on the Future of the Columbia River Treaty After 2024
12 (U.S. Entity for the Columbia River Treaty, 2013) submitted to the U.S. Department of State
13 in December 2013.

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15 The U.S. Department of State retains the authority to renegotiate international treaties, but
16 did use the regional recommendation as a key resource during its national interests
17 determination regarding the future of the treaty. The regional recommendation is unique in
18 that it includes the broad consensus of 11 federal agencies, four states, 15 tribes, the power
19 sector, water users, environmental groups, and others. The U.S. Department of State
20 indicated early in the review process that the ability to reach a regional consensus would
21 govern its decision about whether or not to renegotiate the Columbia River Treaty. The
22 tribes' look forward to modernizing the Columbia River treaty to serve the ecosystem needs
23 of the Columbia Basin.

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FOSSIL FUEL DEVELOPMENT PROPOSALS

Proposals for shipment of fossil fuels through the Columbia River Gorge corridor reached unprecedented levels in the last few years. Attachment 1 to my testimony is a table showing recent fossil fuel transportation proposals that would travel along the Columbia River. The cumulative effects of these proposals are of great concern to the Commission and its member tribes. We have consistently advocated that all jurisdictions with authority to do so recognize the cumulative impacts that these proposals would generate. CRITFC’s comments on each of these proposals have stressed this point. In 2014 and 2015, CRITFC adopted resolutions addressing fossil fuel transportation issues. CRITFC resolution 2014-1 is provided as Attachment 2 to this testimony.

CRITFC’s member tribes and the Quinault Nation filed an appeal of the “tank car rule” adopted by PHMSA and the U.S. Department of Transportation due to the tribes’ concerns about railroad safety issues and the number of derailments, spills and explosions of crude oil. The Secretary of Transportation denied the appeal, but pledged’ further rulemaking. The tribes’ concerns have not been resolved.

1 **TESORO SAVAGE, LLC, VANCOUVER ENERGY DISTRIBUTION TERMINAL**
2 **PROJECT**

3 CRITFC also filed extensive comments on the Tesoro-Savage Draft Environmental Impact
4 Statement in January, 2016. These comments highlighted inadequacies in the DEIS
5 including its:

- 6 - Consideration of impacts to tribal people and their resources.
- 7 - Failure to consider the effects on increased rail traffic on tribal people.
- 8 - Assessment of climate change impacts.
- 9 - Under-estimating the impacts to natural resources from the development proposal.
- 10 - The DEIS' failure to recognize the most recent science concerning the biological

11
12 **CONCLUSION**

13 The Columbia River treaty tribes have endured an incredible amount of change in the
14 Columbia River basin since the treaties were signed in 1855. However, the protection of our
15 first foods is paramount to our relationship with the Creator and these protections were
16 promised in the 1855 treaties. Despite the many challenges, the tribes have persevered in
17 protecting the treaty fishing right and reversing the decline of the salmon runs. In many
18 places in the Columbia River basin, salmon runs have even begun to rebuild, which is a
19 direct result of tribal action and advocacy. Tribal and non-tribal citizens of the Pacific
20 Northwest enjoy these increased salmon runs. The advance of fossil fuel transportation
21 projects in the Columbia River Gorge presents a great threat to the hard work of the tribes to
22 restore these salmon runs that are protected in the treaties of 1855.

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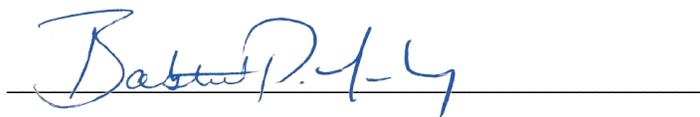
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END OF DIRECT TESTIMONY

I declare under penalty of perjury that the above testimony is true and correct to the best of my knowledge. Executed this 13th day of May, 2016.



Babtist Paul Lumley