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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

IN THE MATTER OF
APPLICATION NO. 96-1

EXHIBIT _____

OLYMPIC PIPELINE COMPANY
CROSS CASCADE PIPELINE PROJECT

PREFILED DIRECT TESTIMONY

WITNESS: STEVEN S. PARKER

ISSUES: FISH, FISH HABITAT, WATER QUALITY & TREATY
PROTECTED RIGHTS AND OTHER YIN INTERESTS
WITH RESPECT TO FISH

SPONSOR: YAKAMA INDIAN NATION

1 **Q: Please state your full name, business address, and job title:**

2 A: My name is Steven S. Parker. My business address is Yakama Indian Nation, Fisheries
3 Program, P.O. Box 151, Toppenish, WA 98948. I am employed with the Yakama Indian
4 Nation (YIN) Fisheries Program, and currently serve as the harvest manager and long
5 term harvest and policy analyst for the Harvest Management branch of the YIN Fisheries
6 Program.

7
8 **Q: Please tell us your educational background and employment history.**

9 A: I am a fisheries biologist with a Bachelors degree and a Masters degree in Fisheries
10 Science from the University of Washington. Again, I currently serve as the harvest
11 manager and long term harvest and policy analyst for the Harvest Management branch of
12 the YIN Fisheries Program. I have worked for the YIN for the past 12 years and have a
13 total of 22 years of work experience in the fisheries field. Prior to my work with the
14 YIN is was employed with the University of Washington as a project leader for a variety
15 of field research projects centered on salmon ecology, and population dynamics. I am
16 also adjunct faculty at the Heritage College, in Toppenish, Washington, and teach a
17 survey course in fisheries science. I have considerable knowledge of the habitat and
18 water quality needs of fish, including salmonids. As the manager and policy analyst of
19 the Harvest Management branch for the YIN I have knowledge of historical and present
20 usual and accustomed fishing practices of the Yakama, knowledge of the habitat
21 restoration projects undertaken by the YIN within the Yakima River Basin, and
22 knowledge of the fish production/hatchery project of the YIN within the Yakima River
23 Basin.

1 **Q: What topics will your direct testimony cover?**

2 A: I will be discussing the interests of the Yakama Indian Nation and its members with
3 respect to fish and fish habitat, as both a user and co-manager of the resource including:

- 4 1. Usual and accustomed fishing practices and locations;
- 5 2. Hatchery operations;
- 6 3. Restoration projects;

7 and how these interests may be impacted by the proposed Cross Cascade Pipeline.
8

9 **Q: Can you give us a brief history of the Yakama Indian Nation and how it came to be**
10 **formed?**

11 A: The Yakama Indian Nation is composed of 14 Tribes and Bands which originally lived in
12 areas spanning what are now the States of Washington, Oregon, Idaho and Montana. In
13 the year 1855 these Tribes and Bands entered into negotiations and signed a Treaty with
14 the United States Government by which they were confederated into one Nation. See
15 Exhibit One (Treaty of 1855). In this Treaty of 1855, which was ratified by the United
16 States Senate in 1859, the leaders of the 14 Tribes and Bands agreed to cede over 21
17 million acres of land to the Federal Government (an area now referred to as the Ceded
18 Area), reserving for themselves an area of land nearly 2.3 million acres in size for their
19 exclusive use and enjoyment (the Yakama Indian Reservation). Exhibit One, p.1-2. The
20 Yakama leaders also reserved for their people the continued right to fish at all usual and
21 accustomed areas, and the right to hunt, gather, and graze livestock on all open and
22 unclaimed lands within this Ceded Area. Exhibit One, p.3.
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1 **Q: What roles does the Yakama Indian Nation currently play with respect to fish in the**
2 **Yakima and Columbia River basins?**

3 A: The Yakama Nation has several roles within the Yakima and Columbia River Basins.
4 First, the Yakama Nation and its members are a user of the fish resource, relying heavily
5 on the catching and consumption of fish for ceremonial, subsistence, commercial and
6 cultural purposes. Second, the Yakama Nation is a co-manager of the resource,
7 regulating the harvest of the resource by its members throughout their usual and
8 accustomed range, managing the resources through the development of a fish
9 supplementation/hatchery project, and managing for preservation and restoration of
10 habitat and water quality for the benefit of the resource.

11
12 **Q: What governmental structure has been established to perform these various roles?**

13 A: The YIN Tribal Council oversees all of these activities through the Fisheries, Cultural
14 and Law & Order Committees. However, the YIN Fisheries Program carries out all day
15 to day operations and reports to the Tribal Council, through the YIN Department of
16 Natural Resources. The YIN Fisheries Program was established in 1977. The program
17 currently has 32 full time employees and up to 135 total employees at varying seasons.
18 The Program has three main branches, Environmental, Fish Production, and Harvest
19 Management.

20
21 The Environmental branch of the Fisheries Program is responsible for monitoring
22 activities outside of the Yakama Reservation for potential impacts to fish and fish habitat.
23 This branch plays an oversight role in order to insure fish protection and compliance with
24 existing applicable laws, as a means of protecting the Yakama Nation's Treaty interests
25

1 in fish throughout the basin. This branch is also responsible for carrying out fish habitat
2 restoration activities within the Ceded Area and on the YIN Reservation.

3 The Fish Production branch of the YIN Fisheries Program is charged with
4 artificial production of fish for future release into the natural environment, with the goal
5 of increasing natural spawning in the basin. Current operations consist of a fish hatchery
6 and three acclimation sites located within the Upper Yakima River Basin.

7 The Harvest Management branch of the YIN Fisheries Program is charged with
8 advising the Yakama Nation Tribal Council on the settings of fishing seasons and catch
9 quotas for all Yakama fishing in any and all usual and accustomed areas. To do so we
10 monitor fish stock status and run sizes throughout the Yakima and Columbia basins.

11 Based upon stock and run sizes we then provide the Tribal Council with
12 recommendations for time and length of harvest seasons and catch limits. The Council
13 then establishes the commercial and subsistence fisheries by Tribal Council Resolution.
14 These Resolutions constitute Tribal law governing fish harvest by Yakama members, and
15 are enforced by Tribal Fish and Game Wardens, who are a part of the Yakama Nation
16 Tribal Police. This process is a crucial part of the Yakama Nation's role as a sovereign
17 regulatory body and a co-manager of the fisheries resource.
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21 **Q: Can you describe for us the range of the usual and accustomed fishing practices of**
22 **the Yakama people?**

23 A: The usual and accustomed fishing areas of the Yakama people span the Pacific Northwest
24 crossing national and international boundaries, and include a range from the Puget Sound,
25 the mouth of the Columbia River, and eastward, encompassing an area centered around
the Yakima and Columbia River Basins. Fishing sites within these areas are not static,

1 but vary in location based upon several factors. These factors include the status of the
2 resource (abundance), the time of year, the ability to reach streams and rivers, movement
3 or change of the river or stream, and man-made impacts. Historically the Yakama's
4 fished throughout the Yakima and Columbia River basins, with exact locations varying
5 based upon these factors.

6 At least three reports have been completed regarding the extent and location of
7 Yakama usual and accustomed areas. The most recent of these was prepared for the
8 United States Department of Justice in 1994 by Dr. Barbara Lane, Ph.D., titled "Usual
9 and Accustomed Indian Fisheries in the Yakima Basin: Anthropological and
10 Ethnohistorical Evidence." which is attached as Exhibit Two. This report identifies
11 several specific usual and accustomed areas that lie within and around the pipeline
12 project area. They include, but are not limited to, Cle Elum River and Lake, Kachess
13 River and Lake, Keechelus River and Lake, Naneum Creek, Swauk Creek, Wilson Creek,
14 the Yakima River and the Columbia River. See Exhibit Two. Fishing occurred along
15 many varying points of these waterways and their smaller tributaries. The pipeline
16 project has water crossings along most of these usual and accustomed fishing waterways
17 and along several tributaries to these waterways.

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21 **Q: Do the Yakama People or the Yakama Nation still fish at these usual and
22 accustomed areas?**

23 **A:** Ceremonial and subsistence fishing still continues throughout the usual and accustomed
24 range, while commercial fishing occurs mainly on the Columbia River. This is primarily
25 due to the loss of abundant populations of fish within the upper tributaries, resulting from
man-made obstacles and habitat degradation. The Yakama Nation Fisheries Program has

1 established as one of its goals the restoration of harvestable populations of fish to their
2 historic ranges in the Upper Columbia and Yakima basins so that the Yakama People can
3 increase their fishing activity in these historic areas.
4

5 **Q: Of what importance is the Upper Yakima River Basin to the Yakama Nation and its**
6 **people with respect to these fishing practices?**

7 A: The Upper Yakima River Basin is crucial to the fishing practices of the Yakama People.
8 Historically it could be considered the most important region for fishing. See Exhibit
9 Two. Although current commercial fishing occurs primarily on the Columbia River
10 mainstem, the Upper Yakima River Basin still supports ceremonial and subsistence
11 fishing, and provides essential habitat for fish necessary for all on reservation fishing
12 activity along the Yakima River and for species which are harvested along the Columbia
13 Mainstem. The Upper Yakima River Basin remains crucial to the survival of the Treaty
14 protected fishing practices and culture of the Yakama people.
15

16 **Q: Are you familiar with the proposed pipeline route in relation to the Usual and**
17 **Accustomed areas of the Yakama people, and the proposed methodologies for**
18 **construction and operation of the pipeline? If so, what stream crossings proposed**
19 **by the pipeline have the potential to affect the Treaty protected fishing rights of the**
20 **Yakama people?**

21 A: Yes I am familiar with both the proposed route of this pipeline with respect to the Usual
22 and Accustomed fishing areas of the Yakama, and with the general proposed methods for
23 construction of these water crossings and operation of the pipeline. The pipeline project
24 has water crossings planned along most of these usual and accustomed fishing waterways
25 and along several tributaries to these waterways. I have identified pipeline stream

1 crossings beginning at number 85 through to the end of the pipeline in Pasco, excepting
2 crossings 123, 125, 146, 149, 171, 188, 189, 194, 198, 203, 207, 225-229, 241, 242, 252-
3 257, 26f/g/h/j, and canal crossings 263-282 and 285 (unless they feed into the Columbia
4 River), as having a potential for direct impact to Yakama Tribal Treaty fishery resources
5 and interests.

6
7
8 **Q: Please explain the foreseeable effects, upon the fishing practices and Treaty**
9 **protected rights of the Yakama people, of construction and operation of this project**
10 **if it is not properly designed and monitored?**

11 A: A direct impact to fish and fish habitat is possible at all crossings where fish and fish
12 habitat are currently found. This impact may result from either construction or operation.
13 Construction impacts include fish mortality and immediate and delayed physical
14 disturbance of fish habitat caused by the trenching and diversion activities, and additional
15 mortality, damage and disturbance caused by the delivery of fine sediment into these
16 waters. Operation impacts include the possibility of the release of fuels into waterways
17 and subsequent damage or mortality to fish and the contamination of their habitat.

18 Fine sediment harms fish in all stages of life, in varying ways. Redds, or salmon
19 eggs, can be smothered by fine sediment, which settles over them in the gravel beds and
20 blocks the delivery of oxygen to the developing eggs. Sac-fry and fry, which are fairly
21 immobile, can be entombed in fine sediment, and thus smothered, or can suffer gill
22 abrasions, which can inhibit their ability to derive oxygen from the water, and can cause
23 death. Juvenile fish can also suffer gill abrasion, feeding can be impacted due to the fine
24 sediment limiting their ability to see, and they can be forced to migrate early in order to
25 escape high levels of fine sediment. Early migration can lead to high mortality rates in

1 juveniles due to increased predation and the inability to replenish used energy supplies
2 due to low food levels. Finally, adult fish will avoid areas with unacceptable levels of
3 fine sediment. This avoidance can cause a delay in or even prevent spawning activity.

4 The fuels intended to be transported in this pipeline are fatal to fish in varying
5 quantities. According to EPA standards, diesel fuel is fatal to fin fish at approximately
6 204 parts per million (ppm). Gasoline is fatal to fin fish at 91 ppm. These substances
7 harm fish in varying ways, which include coating gills, thereby blocking oxygen
8 exchange, and chemically burning fish. Sub-lethal effects could also include the loss of
9 homing ability, thereby preventing fish from returning to natural production areas. These
10 substances can also destroy fish habitat, both spawning, rearing and wintering habitat.
11 The fuels, if leaked into the water, can settle on gravel spawning beds or move down
12 stream and spread out contaminating large areas. They would likely affect the substrate
13 of the beds as well. The substrate is used and inhabited by small insects which are food
14 for salmon and other fish. A spill would likely have a large impact on the fish's food
15 sources. Finally, because these substances have a tendency to agglomerate, they are
16 likely to travel into back water areas and affect wintering habitat.

17 Pipeline stream crossings which occur at locations which do not currently contain
18 fish can still impact fish and fish habitat, as recognized in the DEIS for this project. This
19 impact comes in various forms, depending on the location of the crossing with respect to
20 fish and fish habitat. These impacts can be grouped and summarized as follows:

21
22 1. Crossings Upstream of Fish or Fish Habitat: Crossings which occur
23 upstream of fish and fish habitat can affect fish in the ways described above, due to the
24 likelihood that fine sediment and any leaked fuels will travel considerable distances
25

1 downstream. The magnitude of a leak will obviously impact the distance that spilled
2 fuels will travel. But, even a nearly undetectable leak of less than 1% of volume from the
3 pipeline could harm fish and habitat several miles downstream.

4 2. Crossings Downstream of Fish or Fish Habitat: Crossings located
5 downstream from areas currently containing fish and fish habitat can affect the
6 movements of anadromous fish into spawning areas and can cause fish mortality as they
7 are travelling to spawning areas. Anadromous fish will avoid harmful habitats, such as
8 areas containing unacceptable levels of high turbidity associated with the transport of fine
9 sediment, or harmful toxins such as petroleum based products.

10 3. Water Quality Control: Many of the crossings could have an impact on
11 overall water quality within these basins. Certain areas within the Yakima and Columbia
12 basins are already experiencing significant water quality problems such as high
13 temperatures and fine sediment levels. Even if an impact from an individual stream
14 crossing is deemed insignificant on its own, the cumulative impact of these crossings
15 within the Yakima and Columbia basins could be quite significant.

16 4. Crossings at Locations Which Historically Contained Anadromous Fish:
17 Finally, there are several crossings which occur within the upper tributaries to the
18 Yakima and Columbia Rivers, which historically contained or were utilized by
19 anadromous fish, but which no longer show evidence of fish use or presence. These
20 areas are still of high importance to the future of fish within these basins and the Treaty
21 fishing rights of the Yakama Nation. This pipeline is expected to last for over 50 years.
22 These formerly occupied areas will be of great importance to the future survival and
23 restoration of anadromous fish within these Basins.
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1 The harm to or destruction of fish and fish habitat discussed above, which may
2 result from the construction and operation of this pipeline, if not properly mitigated,
3 would amount to a significant impact to the distinct Treaty fishing resources and interests
4 of the Yakama Nation.

5
6 **Q: You stated earlier that the YIN, as part of its role as a co-manager, has a fish**
7 **production project underway in the Upper Yakima River Basin. Will you describe**
8 **for us the hatchery operations, the purpose and mission of the hatchery, where**
9 **facilities are located, and generally how the project is expected to proceed?**

10 A: The hatchery project is called the Yakima/Klickitat Fisheries Project (YKFP). The
11 purpose of the YKFP is to increase natural production of salmonids in the Yakima River
12 Basin through the use of supplementation. The supplementation experiment employed by
13 the YKFP uses wild fish as the source of its broodstock. Juvenile fish reared by the
14 project are released from three acclimation sites. Once released, these juveniles remain in
15 the area of their release for a short time period before migrating out of the basin. Adult
16 fish are expected to return to the area of their original release to spawn. The eggs from
17 the returning fish will require sufficient suitable habitat to mature and hatch. Once
18 hatched, juvenile fish will require sufficient suitable habitat to support them throughout
19 their rearing period. The rearing period for salmonids varies depending upon species.
20 Coho and spring chinook rear for approximately one year in fresh water before migrating
21 out of the basin. Fall chinook will rear in fresh water for several months.

22 The YKFP presently consists of a central facility referred to as the Cle Elum
23 Research and Supplementation Facility (CERSF) and three acclimation sites. A map of
24 these facilities is attached hereto as Exhibit Three. The CERSF is located on the Yakima
25 River just west of the City of Cle Elum. The Easton Acclimation Site is located on the

1 Yakima River just northwest of the town of Easton. The Jack Creek Acclimation Site is
2 located on the North Fork Teanaway River near its confluence with Jack Creek. The
3 Clark Flat Acclimation Site is located on the Yakima River near the community of Thorp.
4 See Exhibit Three.

5 The YKFP is designed to experimentally evaluate the use of supplementation in
6 rebuilding natural populations of anadromous salmonids. Any reduction in the number of
7 fish released will reduce the statistical validity of the experimental design for the project.
8 As the YKFP's experimental design only allows wild fish to be used as broodstock, the
9 success of the YKFP is highly dependent upon the continued availability of wild Yakima
10 River spring chinook. Should the YKFP lose all or most of its broodstock as a result of
11 pipeline operations, then the YKFP could not operate for that brood year. The loss of a
12 brood year will directly and detrimentally affect the YKFP's future operation by limiting
13 the number of available broodstock that would have returned to the river for spawning.
14 The loss of juvenile fish would have the same effect. The spawning and rearing habitat of
15 the Yakima River and its tributaries is crucial to the success of the YKFP. Contamination
16 of spawning and rearing habitat will detrimentally impact the success of the project.

17
18 **Q: Does the Hatchery rely upon water from any rivers in the Yakima Basin, and if so,**
19 **which rivers, and what use is made of the water body?**

20 **A:** Site selection for the CERSF and the acclimation sites was determined by the availability
21 of surface and ground water supplies. The CERSF and its acclimation sites cannot
22 operate without a reliable water source. The CERSF is operated year-round, and is
23 supplied with a combination of surface and well water. The CERSF's surface water is
24 pumped directly from the Yakima River. The CERSF cannot operate on well water
25 alone. The acclimation sites are operated from January until May of every year, and are

1 supplied with a combination of surface and well water. The surface water for the Easton
2 and Clark Flat sites is diverted directly from the Yakima River. The surface water for the
3 Jack Creek site is diverted directly from the North Fork Teanaway River. No
4 acclimation site can operate on well water alone.

5
6 **Q: Have you reviewed the proposed pipeline route submitted by Olympic Pipeline, and**
7 **if so, can you tell us where that route lies in relation to the hatchery facility**
8 **locations?**

9 A: Yes, I have reviewed the proposed pipeline route. It is my understanding, based upon the
10 documentation provided in the application that the proposed pipeline will cross tributaries
11 of the Yakima River at approximately 51 points above the CERSF. Further, it is my
12 understanding that the pipeline will cross tributaries of the Yakima River at
13 approximately 38 points above the Easton Acclimation Site. The pipeline will cross the
14 Yakima River itself above the Clark Flats Acclimation Site, and will cross tributaries of
15 the Yakima River at approximately 60 points above that site.

16
17 **Q: What are the possible foreseeable effects of a release of gasoline or other fuels into**
18 **the waters upstream of or near a hatchery pond, facility, or water withdrawal site,**
19 **upon the hatchery project and anadromous fish?**

20 A: Petroleum products released into the Yakima River above the CERSF or any of the
21 acclimation sites will have the potential to be pumped or diverted into these facilities.
22 Broodstock and juvenile fish exposed to petroleum can be killed or harmed. Petroleum
23 products spilled or leaked into surface waters of the Yakima River or its tributaries could
24 also contaminate spawning and rearing habitat which are crucial to the success of the
25 project.

1
2 **Q: Have you reviewed the basic construction methodologies for this pipeline, at the**
3 **stream crossings in the Upper Yakima Basin, and if so what are the possible**
4 **foreseeable risks posed by construction activities within waters upstream of or near**
5 **a hatchery pond, facility, or water withdrawal site, upon the hatchery project and**
6 **anadromous fish?**

7 A: It is my understanding that the construction of this pipeline across streams will include
8 the use of several methods including dry and wet trenching, and could result in the
9 delivery of sediment to the streams if it is not adequately monitored and scheduled.
10 Delivery of fine sediment to the surface waters as the result of such construction could
11 reduce the survival of incubating or rearing juvenile salmonids. The spawning and
12 rearing habitat of the Yakima River and its tributaries is crucial to the success of the
13 YKFP. Contamination of spawning and rearing habitat will detrimentally impact the
14 success of the project.

15
16 **Q: You stated earlier that the YIN also has undertaken fish habitat restoration**
17 **activities within the Yakima River Basin. Please describe the restoration activities**
18 **the YIN has completed in this area, and the purpose of those activities?**

19 A: The Yakama Nation Fisheries Program has established as one of its goals the restoration
20 of naturally spawning anadromous salmonid populations to all areas of the Yakima Basin
21 which they historically occupied. Currently, many areas of the upper Yakima Basin are
22 inaccessible to salmon and steelhead due to man-made barriers. The YIN intends to
23 remove these barriers within the future, and to restore spawning, rearing and wintering
24 habitat to its historic range. The YIN is also involved in habitat and stream restoration
25 activities in areas that are currently used by anadromous and resident salmonid

1 populations. There are nine restoration projects which the YIN has recently conducted
2 which could be impacted by the pipeline project if it is not properly designed and
3 monitored. They are as follows:

4 1. Domerie Flats Alcove: South of Cle Elum dam we reconnected a side
5 channel to the Cle Elum River, added in-stream structure and complexity to the
6 system, and plantings along the banks, in order to improve rearing habitat for
7 juvenile chinook salmon.

8 2. Cle Elum Hatchery Fishway: Just West of the town of Cle Elum, near the
9 fish hatchery, we restored access for juvenile salmon up into an off channel
10 rearing area located within the old channel of the Yakima River which is now a
11 large pond-like area.

12 3. Lower Teanaway Instream Flow Project: In conjunction with the Bureau
13 of Reclamation we have been increasing in-stream flows within the lower reaches
14 of the Teanaway River to better provide for adult fish migration.

15 4. Teanaway Junction Boat Ramp: At the junction of the Teanaway and
16 Yakima Rivers we enhanced a side channel, adding complexity and plantings, in
17 order to provide juvenile chinook rearing habitat.

18 5. Severin Bank Restoration Project: Along the Yakima River just south of
19 its junction with Taneum Creek, we facilitated a riparian restoration project in
20 order to improve riparian habitat, bank stability, and water temperature and
21 quality.
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1 6. Brunson Property Project: Along the Yakima River North of Ellensburg
2 we fenced at least a one mile stretch along the river and planted approximately
3 1,000 plants along the river banks in order to improve water quality.

4 7. Wilson Drainage Projects: Within the Wilson drainage, located just South
5 of the pipeline stream crossings of Naneum, Coleman, and Caribou Creeks, we
6 have completed approximately 15 separate restoration projects varying in size
7 from a few hundred feet to over 1 mile in length. These projects included fencing
8 along the waterways, conducting riparian restoration and planting, improving fish
9 passage, and creating in-stream structure and complexity in order to improve
10 rearing habitat for juvenile Chinook.

11 8. Wilson Creek Restoration Project: North of the pipeline crossing of
12 Wilson Creek, for about a half mile stretch we fenced and replanted the banks of
13 the Creek to improve riparian habitat and create rearing habitat for juvenile
14 Chinook.

15 9. Mercer Creek Restoration Project: On Mercer Creek immediately North
16 of the pipeline crossing of that Creek, we have done plantings along the banks to
17 improve rearing habitat for Juvenile Chinook, and in the future will be working to
18 improve fish passage into this area. (This is one of the Wilson Drainage Projects
19 discussed above in subsection G.)
20
21

22
23 **Q: What are the foreseeable effects of the pipeline's construction and operation upon**
24 **these restoration projects?**

25 A: Pipeline stream and river crossing which lie upstream of our restoration project areas
 could cause significant damage to our projects by either a spill or leak of the fuels or by

1 increased sediment from construction. This could potentially destroy the improvements
2 we have made. Pipeline stream crossings which lie downstream from our restoration
3 project areas could directly affect the success and usefulness of our projects through
4 either construction or operation. Delivery of fine sediment downstream of the restored
5 areas, depending on the time of construction, could harm juveniles as they travel
6 downstream, or could deter returning salmon from progressing upstream to spawn.
7 Additionally, any spill or leak downstream from these restored areas could kill juveniles
8 as they travel downstream or make the areas useless and unreachable for returning
9 salmon.
10

11
12 I declare under penalty of perjury under the laws of the State of Washington that the above
13 testimony is true and correct to my best knowledge and belief.
14

15 Dated this 11th day of February, 1999
16

17 _____
Steven S. Parker
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