

THE HONORABLE JAMES A. REDDEN

Brian C. Gruber, WSBA No. 32210
bgruber@zcvbs.com
ZIONTZ CHESTNUT VARNELL
BERLEY & SLONIM
2101 4th Avenue, Suite 1230
Seattle, Washington 98121
Tel. 206 448 1230
Fax 206 448 0962

*Attorneys for Amicus Curiae Confederated
Tribes of the Colville Reservation*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NATIONAL WILDLIFE FEDERATION *et al.*,

Plaintiffs,

vs.

NATIONAL MARINE FISHERIES SERVICE
et al.,

Defendants.

Civ. No. 01-640-RE

**DECLARATION OF WILLIAM T.
TOWEY IN SUPPORT OF
COLVILLE TRIBES'
SUPPLEMENTAL *AMICUS* BRIEF**

I, WILLIAM T. TOWEY, hereby declare as follows:

1. I am Policy Analyst in the Colville Confederated Tribes' (CCT) Fish and Wildlife Department and have been employed in that capacity since 2004. More recently, I became head of the Office of ESA Recovery. In my current position, I provide policy direction to the director of the Fish and Wildlife Department and the chairman of the Colville Business Council's Fish and Wildlife Committee. I am responsible for the oversight and management of the Tribes' Columbia Basin Fish Accord Memorandum of Agreement (MOA), the Pacific Coastal Salmon

Recovery Funding project and Upper Columbia Salmon Recovery programs. I am competent to make this declaration based on my personal knowledge.

2. I represent the Colville Tribes as a member or alternate in various Columbia River Basin policy forums, including the habitat committee of the Grant County PUD Habitat Conservation Plan Committee, Douglas County PUD Aquatic Workgroup, technical committee of the Upper Columbia United Tribes, Mid-Columbia Habitat Conservation Plan Committees, Upper Columbia Salmon Recovery Board, CCT Chief Joseph Dam Steering Committee and the Bonneville Environmental Foundation.

3. My primary responsibility for the Colville Tribes is to manage the implementation of the Colville Tribes' 2008 Columbia Basin Fish Accord MOA with the Federal Columbia River Power System Action Agencies. In this capacity, I work with the Director and Division and Program Leaders within the Tribes' Department of Fish and Wildlife to plan and allocate MOA funding to numerous anadromous fish, resident fish and wildlife projects to achieve the purposes of the MOA. My duties also include ensuring that reporting of project implementation and results is completed through data entry in the Bonneville Power Administration's PISCES information system.

4. The Tribes' MOA includes a commitment of over \$204 million in federal funding to be spent during the ten-year period, 2008 through 2017, with \$141 million going toward actions to increase the abundance, productivity, distribution and diversity of Endangered Species Act (ESA) listed salmon and steelhead in the upper Columbia River (UCR) region. These projects are largely targeted to recover ESA endangered UCR spring Chinook and ESA threatened UCR steelhead in the Okanogan River by addressing habitat factors limiting their population health and viability.

5. One of the most significant benefits of the Accord MOA is the stable funding source for key salmon and steelhead projects. Prior to the Accord, the entire Upper Columbia province (Columbia Cascade) received less than \$3 million per year for fishery programs. Now, the Okanogan Basin alone, which is one of four key watersheds, receives between \$12 and \$15 million per year through the MOA. The stable funding maximizes the time the Tribes' staff spends on meaningful implementation rather than participation in the myriad of regional processes that have historically consumed an inordinate amount of staff time seeking lesser amounts of funding.

6. The core salmon and steelhead projects that are identified in the MOA were designed to restore healthy, sustainable fish populations to the Upper Columbia River Basin. The projects are necessarily tied to the recovery roadmap outlined in 2007 Upper Columbia Salmon Recovery Plan, available online at http://www.nwr.noaa.gov/Salmon-Recovery-Planning/Recovery-Domains/Interior-Columbia/Upper-Columbia/upload/UC_Plan.pdf. The MOA has provided immediate and substantial funding to high priority actions in the areas of land and water acquisition, harvest (selective harvest initiatives), habitat restoration, monitoring and evaluation, production (Chief Joseph and Cassimer Bar hatcheries) and ESA enforcement.

7. The Tribal-Federal partnership represented by the Accord MOA will ensure committed resources to address the ESA requirements for Upper Columbia River salmon and steelhead associated with the operation of the Federal Columbia River Power System. The first three years of implementation have demonstrated the advantages of implementing core recovery projects with a long-term, stable funding approach.

8. Within the Tribes' Accord budget, over \$61 million will be spent on improving the habitat of these ESA-listed spring Chinook and steelhead. Following initial staffing

development and project identification in 2008 and early 2009, the Tribes have proceeded on implementing a number of projects that will immediately improve the viability for UCR steelhead in the Okanogan River. Habitat investments are also being made with a longer term objective of reintroducing UCR spring Chinook using the new Chief Joseph Hatchery (now under construction) as the central propagation facility.

9. One of the Colville Tribes' key Accord projects funds rehabilitation of Omak Creek, where the Tribes have focused their work on correcting the limiting factors of high water temperature and fish passage barriers. The Creek is particularly important to the Tribes because it is located on the Colville Reservation and is a key tributary of the Okanogan River that was historically important UCR steelhead and spring Chinook habitat. The Tribes have placed a high priority on returning spring Chinook to their former habitat on the Reservation. Accord funding has greatly accelerated initial investments in habitat restoration, with additional restoration of riparian vegetation, replacement of numerous undersized-culverts (13 in 2010 alone) preventing road fill from being delivered to spawning habitat if washed-out, and fences to exclude damaging livestock grazing. In 2009, the Tribes purchased private lands along Omak Creek to protect key steelhead habitat. Several additional projects are already scheduled for implementation in 2011.

10. As a result of these ongoing and new habitat actions, summer water temperatures in Omak Creek have been reduced. In the lower five miles, where temperatures once increased by 8° F, mitigation has increased the vegetative canopy closure from 8% to over 75%, shading stream flows and restoring critical summer rearing areas for juvenile steelhead. Adding to previous fish passage improvements that corrected a complete blockage at stream mile 0.5 and provided access to 4.5 miles of spawning and rearing habitat, work will be completed in 2011 on a second partial blockage that will ease steelhead passage to 17 miles of streams. As a result of

these efforts, in 2010, nearly 200 wild steelhead returned to Omak Creek, a stream that had an estimated 20 steelhead return in 1997 (all of hatchery origin), when rehabilitation planning began. Work throughout the basin will continue under the Tribes' MOA to continue recovering habitat in Omak Creek, a tributary critical to recovery of the steelhead population in the Okanogan Basin.

11. On Salmon Creek, another key Okanogan River tributary, the Tribes have used Accord mitigation funds to improve in-channel habitat and annually lease 1,200 acre-feet of irrigation water to restore minimum spring flows in the lower 4.3 miles of the creek. These efforts have reconnected 11 miles of quality steelhead habitat that had been isolated from the Okanogan River by irrigation flow diversions for nearly 90 years. Accord funds have allowed the Tribes to reconstruct a definitive channel downstream of the irrigation diversion, thereby maximizing the amount of leased water and providing adequate migration conditions from the confluence to beyond the irrigation diversion. From no returning steelhead in Salmon Creek, these efforts resulted in 71 adults entering the creek to spawn in 2009 and over 200 steelhead spawning in 2010. Efforts will continue under the MOA to improve habitat through land acquisition, bank stability and water conservation so that UCR spring Chinook can also be reintroduced into their historical habitat.

12. A wide range of projects has been implemented on several smaller streams that are critical to recovery of UCR steelhead. The Tribes applied Accord funds in 2008 to improve flows and reduce livestock damage on Wildhorse Spring and Wanacut Creeks. In 2009, funds were used to purchase and therefore protect key steelhead habitats along tributaries to the Okanogan River such as Omak Creek and Ninemile Creek. On Wildhorse Spring Creek, the Tribes implemented channel realignment, passage barrier removal and habitat complexity

projects. On Bonaparte Creek, the Tribes installed hardened rock crossing, exclusion fencing and alternate watering sites for livestock.

13. In 2010, properties were purchased along with their surface water rights to provide increased stream flows for steelhead spawning and rearing. Major habitat improvements were undertaken along 3,500 feet of Bonaparte Creek and in Wildhorse Spring Creek. For 2011, several additional property purchases are being planned to further reduce water appropriations and increase stream flows for natural steelhead production and potential acclimation for accelerated colonization. Additional habitat improvement projects are scheduled in a number of steelhead-producing tributaries to the Okanogan River, such as Loup Loup Creek, where the Tribes have led restoration efforts to remove two fish passage barriers and an irrigation diversion which will provide access to over 2 miles of spawning habitat.

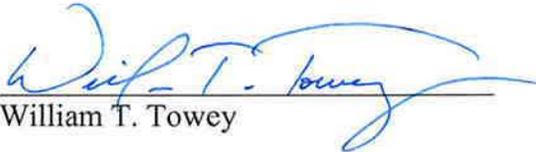
14. In 2010, the Colville Tribes installed a weir in a cross channel near the confluence of the Okanogan River and its primary tributary, the Similkameen River. This structure will prevent annual dewatering of steelhead redds in the Okanogan River during certain low flow conditions.

15 The Tribes' MOA provides critical monitoring and evaluation of important biological, water quality and physical habitat indicators for anadromous fish throughout the Okanogan Basin to establish a long-term status and trend data set and determine responses from habitat restoration efforts. The monitoring and evaluation program is designed to carry out status, trend and effectiveness monitoring. It addresses questions about habitat conditions and abundance, distribution, life-stage survival and age-composition of anadromous fish in the Okanogan River Basin. The monitoring and evaluation program, along with all the other MOA projects, have been fully vetted and approved by the Independent Science Review Panel.

16. The Colville Tribes have now established a comprehensive habitat rehabilitation program that will continue to provide for the yearly identification, planning and implementation of a multitude of projects that will increase natural steelhead production and provide a foundation for future reintroduction of spring Chinook in the Okanogan River Basin.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of December, 2010.


William T. Towey

CERTIFICATE OF SERVICE

Pursuant to Local Civil Rule 100.13(c) and FRCP 5(d), I hereby certify that on the 23rd day of December, 2010, the foregoing Declaration of William T. Towey in Support of Colville Tribes' Supplemental *Amicus* Brief was filed with the Court's electronic filing system which will generate automatic service upon all parties enrolled to receive such service. In addition, a true and correct copy of the foregoing was manually served via first class U.S. mail to the following at the addresses set forth below:

Dr. Howard F. Horton
U.S. Court Technical Advisor
Professor Emeritus of Fisheries
Department of Fisheries and Wildlife
104 Nash Hall
Corvallis, OR 97331-3803

Walter H. Evans, III
Schwabe, Williamson & Wyatt, PC
1600-1900 Pacwest Center
1211 SW Fifth Avenue
Portland, OR 97204

James W. Givens
1026 F Street
P.O. Box 875
Lewiston, ID 83051

Thomas L. Sansonetti
U.S. Department of Justice
P.O. Box 663
Washington, D.C. 20044-0663

Clarkston Golf & Country Club
Hoffman, Hart & Wagner
1000 S.W. Broadway, 20th Floor
Portland, Oregon 97205

Seth M. Barsky
U.S. Department of Justice
Wildlife & Marine Resources Section
Environmental & Nat. Resources Div.
Ben Franklin Station
P.O. Box 7369
Washington, D.C. 20044-7369

s/ Brian C. Gruber

Brian C. Gruber, WSBA No. 32210

bgruber@zcvbs.com

ZIONTZ CHESTNUT VARNELL

BERLEY & SLONIM

2101 4th Avenue, Suite 1230

Seattle, Washington 98121

Tel. 206 448 1230

Fax 206 448 0962

*Attorneys for Amicus Curiae Confederated
Tribes of the Colville Reservation*