

COLUMBIA BASIN FISH ACCORDS
“DOING... NOT SUING”

TIM WEAVER

Title, Affiliation, Address: Attorney for the Confederated Bands and Tribes of the Yakama Indian Nation 402 E. Yakima Avenue, Suite 710 Yakima, WA 98901

Phone: 509.575.1500

Email: weavertimatty@qwestoffice.net

This presentation provides a couple of things to the listener. First is a quick overview of the Yakama Nation’s Treaty rights and its ongoing struggle to protect and enhance those rights. The discussion begins with Article III of the Yakama Treaty, reserving to the Yakama the RIGHT TO TAKE FISH AT ALL USUAL AND ACCUSTOMED FISHING PLACES...IN COMMON WITH CITIZENS OF THE TERRITORY. This language led to six trips to the United States Supreme Court for the Yakamas within the last 100 years. Each time, Yakama has prevailed, protecting this most sacred right to resort to their fishing places on the Columbia and its tributaries.

I next discuss what I have termed the “phases” of Yakama’s efforts to use its treaty rights to enhance its harvest, protect the environment, make sure all harvesters share in the conservation effort, and that the United States fully implements the Endangered Species Act. Again, the Yakamas had much success in the litigation arena, convincing Courts of the righteousness of its cause. While following this exercise, Yakama was also cognizant that its efforts, while usually successful, were not fulfilling its objective---more and better runs of fish.

In spite of having prevailed in overturning three hydro system Biological Opinions in the recent past, tribal fisheries were still restricted due to listed fish and those fish were seeing little success under the litigation solution. Accordingly, tribal leaders from all four tribes met and decided on a change in direction ---- negotiation rather than further continuous litigation. I refer to it as “doing not suing”. This resulted in the negotiation of the Columbia River Accords with the primary federal agencies operating the dams and marketing the power---BPA, COE and BuRec.

While many in the environmental community decried the Accords as a “buy out” of tribal opposition to the new BIOP, this is far from reality. The power point reflects the benefits that flow from the Accords to the fish and to Yakama and the region. The same is true for Umatilla and Warm Springs. At the last moment, Nez Perce opted not to participate in order to reserve its right to argue for Snake River dam removal. The Accords did not waive the right to seek dam removal but did delay, for an eight year period, the right to sue over that issue or to advocate dam removal. If the Accord solutions do not work, then Yakama is free to again join the breaching Brigade.

Posted on the ykfp.org/klickitat website are declarations filed by Bill Bosch and Bob Rose, both Yakama fisheries employees, that were filed with Judge Redden explaining the scientifically based benefits expected to flow from the habitat and supplementation portions of the Accords. These documents are excellent examples of the science the tribes considered in making the decision to enter the Accords. Other benefits are discussed in the power point presentation.

Finally, I will stress the change in attitude and tone of the dialogue between the tribes and the federal agencies. The Accords give the tribes a true seat at the hydro ops table and require consultation on issues impacting the Accords and the fish. This has truly changed the dynamic of the agencies “consulting” the tribes and then doing whatever they planned anyway. Since the signing of the Accords, this has changed dramatically, with the Agencies often asking for and implementing tribal advice on river operations even if it runs contrary to their prior planning. This may be the single most valuable piece of the Accords. I will provide a couple of examples during my talk