

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Sep 15, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOSEPH A. PAKOOTAS, an individual  
and enrolled member of the Confederated  
Tribes of the Colville Reservation; and  
DONALD R. MICHEL, an individual and  
enrolled member of the Confederated  
Tribes of the Colville Reservation; and  
THE CONFEDERATED TRIBES OF  
THE COVILLE RESERVATION,  
Plaintiffs,  
*and*  
THE STATE OF WASHINGTON,  
Plaintiff-Intervenor,  
v.  
TECK COMINCO METALS, LTD., a  
Canadian corporation,  
Defendant.

No. 2:04-CV-00256-SAB

**ORDER DENYING  
DEFENDANT’S MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT ON STANDING**

**ORDER DENYING DEFENDANT’S MOTION FOR PARTIAL SUMMARY  
JUDGMENT ON STANDING \*1**

1 Before the Court is Defendant’s Motion for Partial Summary Judgment on the  
2 Colville Tribes’ Natural Resource Damages Claims for Lack of Standing, ECF  
3 No. 2504. The Court heard oral argument on the motion by Video Conference on  
4 August 11, 2022. Defendant Teck Cominco Metals, Ltd.’s (“Teck”) was represented  
5 by Deborah Baum, Amanda Halter, Deanna Willman, and Bryce Wilcox. Plaintiffs  
6 Joseph A. Pakootas, Donald L. Michel, and the Confederated Tribes of the Colville  
7 Reservation (collectively, “CCT”) were represented by Paul Dayton. Plaintiff-  
8 Intervenor the State of Washington (“Washington State”) was represented by  
9 Andrew Fitz, Joshua Osborne-Klein, Dylan Stonecipher, and Kara Tebeau.

10 Teck’s metallurgical smelter in Trail, British Columbia discharged millions  
11 of tons of slag and liquid effluent directly to the Columbia River. This case concerns  
12 cleanup of that environmental pollution in, and recovery of natural resource damages  
13 for, the upper Columbia River and surrounding lands (the “Site”). The following  
14 facts are pertinent to the present motion for partial summary judgment and derive  
15 from the parties’ respective statements of material facts. For purposes of this motion,  
16 the Court concludes there is no dispute of material fact.

17 CCT is a federally recognized Indian tribe. The United States has granted CCT  
18 reservation lands adjacent to the upper Columbia River and preferred hunting and  
19 fishing rights in the north half of those lands, including the western half of the  
20 Columbia River and paramount rights in Lake Roosevelt adjacent to its current  
21 reservation boundaries. CCT’s reservation abuts the western bank of a portion of  
22 Lake Roosevelt approximately fifty-six river miles downstream of the international  
23 border of Canada, in the southern halves of Okanogan and Ferry Counties.

24 In this phase of litigation, CCT alleges injuries to natural resources it holds in  
25 trust, to wit: (1) sediments in portions of the Upper Reach (*i.e.*, river miles 700–745,  
26 the uppermost riverine portion of the UCR Site); (2) benthic macroinvertebrates in  
27 portions of the Upper Reach; (3) fish, including specific injury to Sturgeon,  
28 throughout the Upper Columbia River/Lake Roosevelt; and (4) tribal services. ECF

**ORDER DENYING DEFENDANT’S MOTION FOR PARTIAL SUMMARY  
JUDGMENT ON STANDING \*2**

1 No. 2511-5 at 27–35. CCT is a member of a four-party Trustee Council in  
2 Washington, which is comprised of the U.S. Department of Interior, the State of  
3 Washington, and the Spokane Tribe of Indians, and in practice, CCT manages  
4 fisheries and restoration efforts in the Upper Columbia River and Lake Roosevelt.

5 Teck argues that CCT lacks standing to sue for natural resource damages  
6 because it is not a trustee authorized to sue under the Comprehensive Environmental  
7 Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9607 *et seq.* It contends  
8 that none of the damages sought by CCT are for natural resources “belonging to,  
9 managed by, controlled by, or appertaining to” CCT, in part because Congress  
10 revoked CCT’s right, title, and interest in the lands in question.

11 Alongside the Plaintiff-Intervenor State of Washington, CCT responds that it  
12 is a co-trustee of the natural resources because the resources are “managed by,  
13 controlled by, or appertaining to” CCT. 42 U.S.C. § 9607(f)(1). CCT contends its  
14 trusteeship derives from its reserved fishing right to a portion of harvestable fish in  
15 the north half of those lands, including the western half of the Columbia River, and  
16 paramount rights in Lake Roosevelt adjacent to its reservation boundaries.

17 Teck’s motion for partial summary judgment is denied. CERCLA provides  
18 that, for injury to natural resources, “liability shall be to . . . any Indian tribe for  
19 natural resources belonging to, managed by, controlled by, or appertaining to such  
20 tribe[.]” 42 U.S.C. § 9607(f)(1). CERCLA does not define “manage,” “control,” or  
21 “appertain,” and authority on the meaning of the terms in § 9607(f)(1) is scarce.  
22 However, the Court finds persuasive that “appertaining to” may include off-  
23 reservation usufructuary rights, such as hunting and fishing rights or paramount use  
24 granting a right of benefit. *See Confederated Tribes and Bands of the Yakama Nation*  
25 *v. Airgas USA, LLC*, 435 F. Supp. 3d 1103 (D. Or. 2019).

26 The Court concludes CCT is a trustee under § 9607(f)(1), because the  
27 resources in question implicate and “appertain[ ] to” CCT’s fishing and paramount  
28 use rights in its sovereign capacity as an Indian tribe. CCT also oversees and

1 manages the natural resources in fact through, for example, its restoration efforts of  
2 fisheries in Lake Roosevelt and white sturgeon in the Upper Columbia River. ECF  
3 No. 2540 at 3–6. These natural resources are similarly “managed by” or “controlled  
4 by” CCT. Relatedly, CCT is the only sovereign entitled to recover damages for and  
5 engage in restoration of its alleged tribal service losses. Granting all reasonable  
6 inferences in favor of CCT, Teck is not entitled to summary judgment.

7 Accordingly, **IT IS HEREBY ORDERED:**

8 1. Defendant’s Motion for Partial Summary Judgment on the Colville  
9 Tribes’ Natural Resource Damages Claims for Lack of Standing, ECF No. 2504, is  
10 **DENIED.**

11 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
12 this Order and to provide copies to counsel.

13 **DATED** this 15th day of September 2022.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

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Stanley A. Bastian  
Chief United States District Judge