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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE, )  
COLUMBIA RIVERKEEPER, SPOKANE )  
RIVERKEEPER, RE SOURCES FOR ) No. 2:13-cv-01839-JCC  
SUSTAINABLE COMMUNITIES, PACIFIC )  
COAST FEDERATION OF FISHERMEN’S )  
ASSOCIATIONS, and INSTITUTE FOR ) DECLARATION OF BART  
FISHERIES RESOURCES, ) MIHAILOVICH IN SUPPORT OF  
Plaintiffs, ) PLAINTIFFS’ MOTION FOR  
SUMMARY JUDGMENT

v.

UNITED STATES ENVIRONMENTAL )  
PROTECTION AGENCY and GINA McCARTHY, )  
Administrator, United States Environmental )  
Protection Agency, )  
Defendants. )

1 I, BART MIHAILOVICH, hereby state and declare as follows:

2 1. I am over the age of 18, have personal knowledge of the following, and could  
3 competently testify if called as a witness in this legal action.

4 2. I have lived in Spokane County for 13 years, and the City of Spokane for 9. I  
5 serve as the Director of Spokane Riverkeeper (“Riverkeeper”) and as the Riverkeeper, and have  
6 been in this role for over three years. Spokane Riverkeeper is located in and is a program of the  
7 Center for Justice, located at 35 West Main, Suite 300, Spokane, Washington, 99201.

8 3. Spokane Riverkeeper is a licensed member of the international Waterkeeper  
9 Alliance, and is dedicated to protecting and restoring the health of the Spokane River watershed.  
10 Riverkeeper was founded to be an advocate for a clean Spokane River, to aid in the long-term  
11 restoration of the River, and to support citizens’ rights to clean water. We seek to achieve our  
12 goals through public education on the importance of protecting watersheds, working with  
13 decision-makers, business owners and public officials and, if necessary, through litigation.

14 4. The primary ways Spokane Riverkeeper seeks to accomplish its mission include:  
15 using the Clean Water Act as a legal tool in advocacy efforts; participating in discussions with  
16 key stakeholders during permitting and other regulatory processes; engaging in communication,  
17 outreach, and education to help citizens understand water quality issues; and working on  
18 restoration projects such as tree planting and river cleanup.

19 5. I also serve as the Riverkeeper, meaning that I am the lead advocate for the health  
20 of the Spokane River and speak for the River when it is implicated in matters of public policy or  
21 legal issues.

22 6. As director of the Riverkeeper program at the Center for Justice, I work with our  
23 executive director, staff and board, direct policy choices and programmatic work of the program,  
24 manage volunteers and interns, and manage the finances of the program.

25 7. A big chunk of my time is dedicated to the creation and implementation of

1 initiatives, programs and actions to fulfill our mission of protecting the Spokane River. This  
2 mostly includes ensuring that dischargers are held accountable under the Clean Water Act. Our  
3 mission of protecting the Spokane River also means that we often work with local, state and  
4 federal agencies to identify and reduce pollution. I also create and manage all communication,  
5 education and outreach efforts of the program.

6 8. As required by Waterkeeper Alliance, I conduct a patrol of the River and/or  
7 tributaries at least three days each month (often times less in winter months). As part of the  
8 patrol, I look for pollution sources and respond to reports of spills or threatened spills. Patrols  
9 are sometimes carried out in cooperation with regulatory agencies or governments. I do my  
10 patrols and travel the River by rubber raft, kayak or motor boat (depending on the stretch of  
11 River or tributary), and often times the patrols double simply as opportunities to observe and  
12 study the River or tributary to gain more knowledge about the different areas and different river  
13 ecology. Patrols are also done as a way to show the River or tributaries to our partner  
14 organizations, business leaders, elected officials or the media. I also travel by bike to investigate  
15 urban areas connected to the Spokane River or tributaries. An example of urban investigation is  
16 stormwater infrastructure like rain gardens, green roofs or grassy swales. These patrols are done  
17 to better understand stormwater management techniques being employed by private development  
18 or local governments and to make sure said techniques are effective and working properly. The  
19 patrols are also great opportunities to engage citizens and outreach with neighborhoods that  
20 aren't directly connected to the River but whose actions impact water quality.

21 9. This declaration supports the lawsuit Riverkeeper and other parties filed against  
22 the U.S. Environmental Protection Agency ("EPA") for its violations of a non-discretionary duty  
23 under the Clean Water Act to issue necessary standards to meet the requirements of the Clean  
24 Water Act and to protect designated uses including the consumption of fish. That action aligns  
25 with Riverkeeper's mission to protect the Spokane River, restore its waters, and defend all life

1 connected to it, from the headwaters in Idaho to the Columbia River. This litigation is also  
2 important to my professional and personal concern about the Spokane River and connected  
3 waters, along with the fish, wildlife, and communities that depend on it. Some of the types of  
4 fish found in the Spokane River that we seek to protect are our native redband trout, as well as  
5 other resident fish.

6 10. I believe Washington’s fish consumption rate—and therefore the related current  
7 human health criteria—are inadequate. I have formed that opinion through our collaborative  
8 research and advocacy work with our allies around the state, through discussions and  
9 understanding of cultures, habits and science of the local Native American tribes in the Spokane  
10 River watershed who we collaborate with, and through a general understanding of the current  
11 studies, science and surveys that exist and have existed for some time that show the actual  
12 consumption rate much higher than what is assumed in current regulations.

13 11. I follow this issue closely and have engaged in advocacy on this topic for several  
14 years and am aware of EPA’s repeated communications of disapproval of Washington’s fish  
15 consumption rate based on the National Toxics Rule. EPA has communicated these  
16 determinations to the Washington Department of Ecology (“Ecology”).

17 12. Spokane Riverkeeper’s mission of protecting and restoring the River, the species  
18 that rely on clean water, and the human health of those who use the River—whether for  
19 recreation or sustenance—is made more difficult by EPA’s failure to comply with the Clean  
20 Water Act and promulgate an accurate fish consumption rate and accompanying human health  
21 criteria for Washington.

22 13. The need for an accurate fish consumption rate also stretches to communities near  
23 the River and/or closely tied to it, communities like Nine Mile Falls, Tumtum, Ford, Wellpinit,  
24 Miles, Seven Bays and more. Many members of these communities are members and supporters  
25 of Spokane Riverkeeper and are therefore members Riverkeeper advocates on behalf of. I am

1 also concerned all populations living or recreating in the counties of Spokane, Stevens and  
2 Lincoln along the Spokane River, specifically those who consume locally-caught fish, thus  
3 relying on clean and safe water. This includes the heavily recreated areas of Lake Roosevelt and  
4 Lake Spokane, areas known for their sport fishing. Furthermore, my concern is strongest for the  
5 area tribal members and their consumption of fish from the Spokane River and neighboring  
6 waterbodies, including the Spokane Tribe of Indians and the Confederated Tribes of the Colville  
7 Reservation.

8 14. My concerns for these populations primarily are exposure to chemicals like PCBs,  
9 PBDEs, dioxins, furans and others that bioaccumulate in the environment and create health  
10 concerns and are cancer causing. This exposure comes in the way of eating fish and recreation.  
11 Heavy metals are also present in the environment, and like chemicals, are found in not only  
12 legacy pollution but new sources of pollution, i.e. polluted urban runoff. As part of  
13 Riverkeeper's education and outreach programs, I often find myself in front of classrooms or  
14 community groups having to explain that there are health and environmental concerns with  
15 certain activities tied to the River. An accurate fish consumption rate would protect fish-eating  
16 and recreating populations.

17 15. A big part of our mission at Riverkeeper is to encourage and promote the use of  
18 the River in hopes that river users will turn into river protectors. This encouragement starts by  
19 advocating for people to understand the River better, so they can create that personal and  
20 emotional attachment to it and the work to protect it. Toxic pollution due to inadequate  
21 standards degrades the River experience for current and future river users, and river pollution  
22 degrades the River's importance as a resource, as an attraction and as a part of the region's  
23 commercial draw and recreation economy.

24 16. Spokane was recently named "one of the best towns to live in" by Outdoor  
25 Magazine, based, in part, on Spokane's reputation as being a great place for outdoor enthusiasts.

1 This designation encourages people and businesses to relocate here or stay here because of a  
2 particular way of life.

3 17. The celebrated and ever growing outdoor-recreation industry needs a healthy  
4 Spokane River to prosper. This economy includes companies that guide kayaking trips, rafting  
5 trips, and fishing trips for trout, along with other tours of the Spokane River. It also includes any  
6 business tied to tourism in the region, from hotels to restaurants to entertainment, as river users  
7 and river tourists spend their money where they're playing.

8 18. I live about a mile north of the Spokane River, and I see and travel by it daily  
9 during my commute to my office, which is about a quarter mile south of the River. I kayak or  
10 raft on the River with friends and family members almost every week, and I swim in the River a  
11 couple of times each summer.

12 19. I fish at the Nine Mile Reservoir on the Spokane River a few times per year, and I  
13 fly fish on other sections of the Spokane River, mostly on the lower River, several times per  
14 year. I intend to do that next year, and the year after that and to continue to make this a habit for  
15 as long as I live here. I mostly fish for native trout or other trout species in the lower and upper  
16 River, and I fish for pike, walleye and bass on Lake Spokane. I'm currently a catch and release  
17 fisherman and I do not eat fish I catch in the Spokane from those sections. This is based on  
18 ethics and fishing regulations. When it comes to fish on the lower sections of the River like  
19 Lake Spokane, I do not eat those fish either, but this is due to my understanding of pollution and  
20 fear of exposure.

21 20. However, when it comes to fish in my diet, I do buy and eat Washington-caught  
22 fish (mostly salmon) from the market and will continue to do so, although likely in quantities  
23 less than if I knew there were better standards that were more protective of my consumption. I  
24 grew up in Montana where I fished and kept a lot of the fish I caught to eat. Part of what made  
25 me stop doing that was moving to Washington and learning about pollution issues. I stopped

1 eating fish I caught locally because I knew too much about toxic pollution levels in the Spokane  
2 River in particular and the risk to health.

3 21. My estimate is that I currently eat about two fish meals per month of locally  
4 caught fish, where in the past in Montana that number was more like five fish meals per month.  
5 I would likely still eat fish for about five meals per month if it were not for my concerns about  
6 toxics in Washington fish.

7 22. My wife and I are the only members of my family who live in Washington and  
8 who eat locally caught fish. However, I would like to start a family soon, and I would anticipate  
9 the desire to include healthy fish as a part of my future children's diets. However, knowing what  
10 I know about current pollution levels, I would be very concerned and likely would not include  
11 locally-caught fish in that diet.

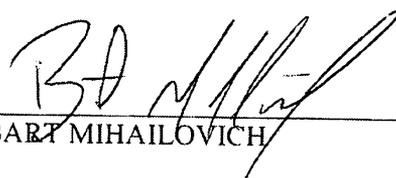
12 23. I am increasingly concerned that inadequate water quality standards are affecting  
13 my health and safety, and that of my family and friends, through our water-contact activities in  
14 the Spokane River. My knowledge of the inadequate water quality standards due to inaction  
15 from Ecology and EPA impairs my present enjoyment of the activities I described above and  
16 causes me to consider the need to limit my engagement in them in the future to avoid exposure to  
17 toxics. I want to be able to continue to engage in these activities without concern for the  
18 negative effects that pollution in the water poses to my health and that of my family and friends,  
19 as well as the health of the fish and wildlife that depend on the River, but I remain concerned  
20 given the inadequate fish consumption rate.

21 24. The underprotective health standards EPA has allowed Washington to maintain,  
22 despite its determination that they are underprotective, will continue to harm my enjoyment of  
23 the Spokane River, will harm me professionally and the work of Spokane Riverkeeper, has  
24 caused me to limit the amount of fish I eat, and has put my health at risk along with the health of  
25 others when we eat fish caught in Washington. Unless the Court requires EPA to issue an

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accurate fish consumption rate, this harm will continue.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 22nd day of January, 2014, in Spokane, Washington.

  
BART MIHAILOVICH