

**STATEMENT FOR THE RECORD  
CAROL EVANS  
CHAIRWOMAN  
SPOKANE TRIBE OF INDIANS**

BEFORE THE  
HOUSE NATURAL RESOURCES SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF  
THE UNITED STATES  
ON  
S. 216 THE SPOKANE TRIBE OF INDIANS OF THE SPOKANE RESERVATION GRAND  
COULEE DAM EQUITABLE COMPENSATION ACT

September 19, 2019

Thank you Honorable Chairman Gallego and Ranking Member Cook, and members of the Subcommittee. My name is Carol Evans. I am the Chairwoman of the Spokane Tribe of Indians. I appreciate the opportunity to appear before the House Natural Resources Subcommittee for Indigenous Peoples of the United States to testify on S. 216. Accompanying me is the entire Spokane Tribe Business Council, and Members of the Spokane Tribe.

**SUMMARY**

I am here today on behalf of the Spokane Tribe to ask that you act on behalf of the United States to finally treat the Spokane Tribe honorably for the use of our lands for the production of hydropower and for injury to our Tribe and Reservation caused by the Grand Coulee Project. The Grand Coulee Dam flooded the lands of two adjoining Indian reservations that held great economic, cultural, and spiritual significance for the people residing thereon. Ours is one of those reservations. The other is the Confederated Tribes of the Colville Reservation.

Our life, culture, economy, and religion centered around our rivers. We depended heavily on the rivers and the historic salmon runs they brought to us. Neighboring tribes referred to the Spokane as “the Salmon Eaters.” The Spokane River, which was named after our people, was and continues to be the center of our world. We know it as the Path of Life. In 1881, President Rutherford B. Hayes agreed with our ancestors understanding of the importance and significance of the Spokane and Columbia rivers to the Spokane Tribe by expressly including the entire adjacent riverbeds within our Reservation. But the natural banks of the Spokane and Columbia Rivers now lie beneath Grand Coulee’s storage waters. Today our best lands and fishing sites lie at the bottom of Lake Roosevelt.

The proposed legislation is designed to end a lengthy chapter in American history, in which the United States and American citizens reaped tremendous rewards from the Grand Coulee Dam at the expense of the Spokane Tribe and the Confederated Tribes of the Colville Reservation. The severe devastation wrought upon both tribes was unprecedented. And though the affected land areas held by the Spokane Tribe were roughly only 40% of that held by the Colville Tribes, a portion of the Colville’s salmon fishery continues to reach their Reservation, while the Spokane’s

fishery was lost entirely. Additionally, the Spokanes lost forever two prime sites on the Spokane River that it could have developed for hydropower. Ultimately, both tribes suffered severely. We continue to be greatly impacted by the operation of Grand Coulee Dam each and every year.

Prior to its construction, during its operation and with the completion of the Third Powerplant in 1974, the United States has acknowledged its responsibility to fairly and honorably address the losses suffered by the Spokane Tribe and the Colville Tribes related to Grand Coulee. The Colville Tribes secured a settlement with the United States in 1994, while the Spokane claims remain unresolved. Our bill is consistent with Congressional policy towards tribes impacted by federal hydro projects, as reflected in the Colville legislation and five pieces of legislation enacted between 1992 and 2000 to provide additional, equitable compensation for the Sioux Nations impacted by the Pick Sloan Project.<sup>1</sup>

Finally, I would like to thank Senator Cantwell for sponsoring our Bill. As many Members are aware, this is not our first time before the Committee on this issue. In fact, the Tribe has been working with Congress and various administrations since 1941 in an attempt to resolve this painful issue. Most recently, under Senator Cantwell's strong leadership, and with the tireless efforts of her staff, we have worked hard with the Administration and stakeholder agencies to address any and all concerns. Critically, our Tribal membership made the difficult decision to forego back payments in hope that the Spokane Tribe can finally achieve a semblance of justice moving forward.

As each year passes, we lose more Spokane elders who were alive to witness the initial flooding of our lands and complete loss of our salmon fishery. Only a handful remain. It is my great hope that Congress and this Administration will allow me to bring them home a bill signed into law.

## HISTORICAL CONTEXT

From time immemorial, the Spokane River has been the heart of Spokane's aboriginal territory.

In 1877, an agreement was negotiated between the United States and the Spokane to reserve for the Tribe a portion of its aboriginal lands approximating the boundaries of the present Spokane Indian Reservation.

On January 18, 1881, President Rutherford B. Hayes issued an Executive Order confirming the agreement, and with exacting language, expressly included the Spokane and Columbia Rivers within the Spokane Indian Reservation

Section 10(e) of the Federal Power Act (16 U.S.C. 803(e)) requires that when licenses are issued for a hydropower project involving tribal land within an Indian reservation, a reasonable annual charge shall be fixed for the use of the land, subject to the approval of the Indian tribe having jurisdiction over the land. Had a state or a private entity developed the site as originally

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<sup>1</sup> See Attachment A (July 22, 2013 Letter from Chairman Peone to Senator Cantwell).

contemplated, the Spokane Tribe would have been entitled to a reasonable annual charge for the use of its land. The Federal Government is not subject to licensing under the Federal Power Act.

Numerous statements made by federal officials acknowledged the need for the Spokane Tribe to receive fair compensation for the use of its land and water. In one example, William Zimmerman, Assistant Commissioner of Indian Affairs, wrote:

*"the matter of protecting these valuable Indian rights will receive active attention in connection with applications filed by the interested parties before the Federal Power Commission for the power development." 2*

A letter approved by Secretary Ickes, from Assistant Commissioner Zimmerman to Dr. Elwood Mead, Commissioner of Reclamation, stated in connection with the "rights of the Spokane Indians," that the Grand Coulee project, as proposed:

*"shows the cost of installed horsepower to be reasonable and one that could bear a reasonable annual rental in addition thereto for the Indians' land and water rights involved."3*

The United States Department of Justice has recognized these promises as an undertaking of a federal obligation, which promises were made to both the Colville and Spokane Tribes.

*"The government began building the dam in the mid-1930's. A letter dated December 3, 1933, to the Supervising Engineer regarding the Grand Coulee and the power interests of the Tribes, with the approval signature of Secretary of the Interior Ickes states:*

*This report should take into consideration the most valuable purpose to which the Indians' interests could be placed, including the development of hydro-electric power.*

*We cannot too strongly impress upon you the importance of this matter to the Indians and therefore to request that it be given careful and prompt attention so as to avoid any unnecessary delay.*

*Also, a letter dated December 5, 1933, to the Commissioner of the Bureau of Reclamation and endorsed by Interior Secretary Ickes, stated that 'it is necessary to secure additional data before we can advise you what would constitute a reasonable revenue to the Indians for the use of their lands within the [Grand Coulee] power and reservoir site areas.' And a letter dated June 4, 1935 from the Commissioner of the Bureau of Reclamation requested that additional data be secured to determine 'a reasonable revenue to the Indians for the use of their lands*

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2 Letter from William Zimmerman to Harvey Meyer, Colville Agency Superintendent, dated September 5, 1933.

3 Letter from William Zimmerman to Elwood Mead, dated Dec. 5, 1933.

*within the power and reservoir site areas.”<sup>4</sup>*

As stated in the testimony of the Assistant Secretary for Indian Affairs, concerning the 1994 Colville Settlement legislation, approved in P.L. 103-436: “Over the next several years the Federal Government moved ahead with the construction of the Grand Coulee Dam, but somehow the promise that the Tribe would share in the benefits produced by it was not fulfilled.”

Pursuant to the Act of June 29, 1940 (16 U.S.C. 835d et seq.), the Secretary paid to the Spokane Tribe \$4,700. That is the total compensation paid by the United States to the Spokane Tribe for the use of our tribal lands for the past seventy-nine years.

When the waters behind the Grand Coulee Dam began to rise, the Spokane people were among the most isolated Indian tribes in the country. The tribe’s complete reliance on the Spokane and Columbia River system had remained largely intact since contact with non-Indians. That, however, would be completely and irreversibly changed forever. The backwater of the dam, Lake Roosevelt, floods significant areas of the Tribe’s Reservation, including the Columbia and Spokane boundary rivers within the Reservation. A 1980 Task Force Report to Congress explains the historical context of the Tribe in relation to the Grand Coulee Dam:

*“The project was first authorized by the Rivers and Harbors Act of 1935 (49 Stat. 1028, 1039). In spite of the fact that the Act authorized the project for the purpose, among others, of ‘reclamation of public lands and Indian reservations . . . ,’ no hydroelectric or reclamation benefits flow to the Indians. Hardly any were employed at the project site. Indeed, the Tribes have presented evidence that even unskilled workers were recruited from non-Indian towns far away. The irrigation benefits of the project all flowed south ...*

*Furthermore, the 1935 enactment made no provision for the compensation of the [Spokane and Colville] Tribes. It was not until the Act of June 29, 1940 (54 Stat. 703) – seven years after construction had begun – that Congress authorized the taking of any Colville and Spokane lands . . . . Section 2 [of that Act] required the Secretary to determine the amount to be paid to the Indians as just and equitable compensation. Pursuant to this authorization the Secretary condemned thousands of acres of Indian lands, primarily for purposes of inundation by the planned reservoir.*

*Apart from the compensation for those lands, which the Tribes claim was inadequate, no further benefits or compensation were paid to the Indians. Nothing was provided for relocation of those Indians living on the condemned lands; and tribal lands on the bed of the original Columbia River were not condemned at all.*

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<sup>4</sup> Statement of Peter R. Steenland, Appellate Section Chief, Environment and Natural Resources Div., Dept. of Justice (Joint Hearing on S.2259 before the Subcomm. on Water and Power of the Comm. on Energy and Natural Resources and the Comm. on Indian Affairs, S. Hrg. 103-943, Aug. 4, 1994, at 16).

*Worst of all, Grand Coulee Dam destroyed the salmon fishery from which the Tribes had sustained themselves for centuries. The salmon run played a central role in the social, religious and cultural lives of the Tribes. The great majority of the population of the Tribes lived near the Columbia and its tributaries, and many were driven from their homes when the area was flooded. While Interior Department officials were aware that the fishery would be destroyed, the technology of the time did not permit construction of a fish ladder of sufficient height to allow the salmon to bypass towering Grand Coulee Dam.*

*The project also resulted in the influx of thousands of non-Indian workers into the area. Prior to contemplation of the project very few non-Indians lived in the region. Indeed, anthropologist Verne F. Ray, who began his field studies in 1928, reports that there were no more than a handful of white families in the vicinity of the future site of the Grand Coulee Dam, and that in 1930 the Colville and Spokane were among the most isolated Indian groups in the United States. Their aboriginal culture and economy were largely intact up to that time, little reliance having been placed on white trading posts. The subsistence economy of the Indians had continued to focus on the salmon.*

*Another principal aboriginal pursuit of the Colville and Spokane Indians involved the gathering of roots and berries on lands south of the rivers. That activity was largely curtailed after the construction of the project because of the influx of non-Indians on to those southern lands and because the river was widened to such an extent that crossing it became very difficult. Before the reservoir there were many places where the river could be forded. Similarly, hunting south of the river was also curtailed. Thus, the Grand Coulee project had a devastating effect on their economy and their culture.”<sup>5</sup>*

The salmon runs were entirely and forever lost to the upstream Spokane Tribe. Furthermore, there existed on the Spokane River – within the Spokane Reservation – two prime dam sites the Spokane Tribe could have used for generating hydroelectric power. Like the Spokanes’ salmon runs, these sites were lost forever to Grand Coulee.

In the 1940 Act, Congress also directed the Secretary of the Interior to “set aside approximately one-quarter of the entire reservoir area for the paramount use of the Indians of the Spokane and Colville Reservations for hunting, fishing, and boating purposes, which rights shall be subject only to such reasonable regulations as the Secretary may prescribe for the protection and conservation of fish and wildlife.”<sup>6</sup>

In an extraordinary move, the Tribe sent a delegation cross-country in December 1941 to meet on the issues with Commissioner John Collier. Unfortunately, the meeting took place on December 10 — just three days following the bombing of Pearl Harbor. The Commissioner and his

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<sup>5</sup> Final Report, Colville/Spokane Task Force, Directed by the Senate Committee on Appropriations in its 1976 Report on the Water and Power Public Works Appropriations Bill, S.Rep.94-505. (September, 1980).

<sup>6</sup> 16 U.S.C. § 835(d).

representatives committed to the Tribal delegation they would do all they could in aid of the Tribe, but that the national priorities of war meant that redress would have to wait until its conclusion.

In 1946, the Interior Secretary designated areas within Lake Roosevelt as “Indian Zones” to fulfill the requirements of the 1940 Act’s “paramount use” provisions in recognition of tribal lands inundated by Lake Roosevelt. The “Spokane Indian Zone” and the “Colville Indian Zone” were located generally within the reservations of those tribes. The Spokane Zone also extended up the inundated Spokane River, within the Spokane Reservation, which today is known as the “Spokane Arm” of Lake Roosevelt.

## INDIAN CLAIMS COMMISSION FILINGS

In 1946, Congress enacted the Indian Claims Commission Act (“ICC Act”).<sup>7</sup> Pursuant to that Act, there was a five-year statute of limitations to file claims before the Indian Claims Commission (“Commission”) which expired August 13, 1951. It was under the Indian Claims Commission Act that the Colville Tribes were able to settle their claims in 1994. And it was due to a quirk of circumstances that the Spokanes were not.

In 1951, both the Spokane Tribe and the Colville Tribes filed land claims with the Commission prior to the August 13, 1951 Statute of Limitations deadline. Neither tribe filed claims seeking compensation for the use of their lands for the production of hydropower at Grand Coulee before the deadline. Neither tribe understood, nor were they advised, that they would need to even file such claims. After all, beginning in the 1930s and then resuming through the 1970s, the historical and legal record is replete with high level agency correspondence, Solicitor’s Opinions, inter-agency proposals/memoranda, Congressional findings and directives and on-going negotiations with the affected tribes to come to agreements for the share of Grand Coulee revenue which should go to the tribes for the use of their respective lands. The Tribes had every reason to believe that its Trustee, the United States, was, although belatedly, going to act in good faith to provide fair and honorable compensation.

The ICC Act imposed a duty on the Bureau of Indian Affairs (“BIA”) to apprise the various tribes of the provisions of the Act and the need to file claims before the Commission. While the BIA was well aware of the potential claims of the Spokane Tribe to a portion of the hydropower revenues generated by Grand Coulee, there is no evidence that the BIA ever advised the Tribe of such claims. As the Tribe’s long-time attorney explained in 1981:

*“The writer was employed in 1955 as the Tribe’s first General Counsel. The tribal leaders of 1951 were still in office. When asked why they had not filed claims for the building of Grand Coulee, the destruction of their fishery and loss of their lands, they were thunderstruck. They had no knowledge at all that they might have filed such claims. They told the writer that no one had alerted them to the possibility of such claims. They did not know that these potential claims might be governed by the Claims Commission Act. They assumed that their rights were still alive, and*

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<sup>7</sup> Act of August 13, 1946 (60 Stat. 1049).

*well they may be. The Superintendent had approached them in about 1949 with the Tri-partite agreement between the BIA, Bureau of Reclamation, and the National Parks Service for the establishment of and administration of the Indian Zones pursuant to the Act of 1940. While he got them to sign pre-written resolutions approving this agreement [so] vital to their river and lake rights, not a word was spoken of the possibility of the tribe filing claims. The deadline of August 13, 1951 was therefore allowed to pass without the claims having been filed.”<sup>8</sup>*

Thus, the Spokane Tribe in 1967 settled its ICCA claims, while the expectation of fair treatment for Grand Coulee’s impacts continued. Ironically, the Spokane Tribe’s willingness to resolve its differences with the United States would later be used as justification for the United States’ refusal to deal fairly and honorably with the Tribe.

Meanwhile, the Colville Tribes, who had not settled their ICCA claim, continued that litigation against the United States. In 1975, the Indian Claims Commission ruled for the first time ever that it had jurisdiction over ongoing claims as long as they were part of a continuing wrong which began before the ICCA’s enactment and continued thereafter. *Navajo Tribe v. United States*, 36 Ind. Cl. Comm. 433, 434-35 (1975). Over objections by the United States, the Colville Tribes sought, and in 1976 obtained, permission from the Commission to amend their complaint to include for the first time their Grand Coulee claims. With new life breathed into their claims, the Colville Tribes pursued litigation of their amended claims to the Federal Circuit Court of Appeals, which held that the ICCA’s “fair and honorable dealings” standard may serve to defeat the United States’ “navigational servitude” defense.<sup>9</sup> In light of this ruling, the United States negotiated with the Colville Tribes to resolve the Tribe’s Grand Coulee-related claims. Unfortunately, however, because the Spokane Tribe in 1967 had acted in cooperation with the United States to settle its ICCA case, it lacked the legal leverage to force settlement.

In 1967, construction of six new generating units began on the Grand Coulee Dam. That construction prompted a thirteen-year flurry of activity by the United States to address the claims of the tribes to a share of the benefits of the Grand Coulee Project.

## NEGOTIATIONS WITH BOTH TRIBES CONTINUE

In 1972, the Secretary of the Interior’s Task Force began negotiation with the tribes through multiple policy, legal and technical committees to address the tribes’ claims. The “Secretaries Task Force” engaged the tribes on a full range of issues, including compensation, riverbed ownership and tribal jurisdiction over the inundated Indian Zones. In 1974 the Solicitor of the Department of the Interior issued an Opinion, which concluded, among other things, that the Spokane and Colville Tribes each retained ownership of the lands underlying the Columbia River and, in the case of the Spokane Tribe, the lands underlying the Spokane River. The Solicitor found the United States intent to reserve those riverbeds in the Spokane Tribe clear. The Opinion suggested that the resource interests of the tribes were being utilized in the production of

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<sup>8</sup> Memorandum of January 12, 1981 with Final Report, Colville/Spokane Task Force (September 1980).

<sup>9</sup> *Colville Confederated Tribes v. United States*, 964 F.2d 1102 (Fed. Cir. 1992).

hydroelectric power at Grand Coulee.

In December 1975, Congress directed the Secretaries of Interior and the Army to establish a Task Force and to open discussions with the tribes:

*“to determine what, if any, interests the Tribes have in such production of power at Chief Joseph and Grand Coulee Dams, and to explore ways in which the Tribes might benefit from any interest so determined.”*<sup>10</sup>

While these high-level negotiations were taking place, construction of the third power plant at Grand Coulee continued. The first generating unit of six came into service in 1974.

In May of 1979, following two years of negotiations among federal agencies and the tribes, the Solicitor for Interior proposed to the Secretary of Interior a legislative settlement of the claims of the Colville Tribes and the Spokane Tribe, stating

*“I firmly believe that a settlement in this range is a realistic and fair way of resolving this controversy. The representatives of the Departments of Energy and Army who participated on the Federal Negotiating Task Force concur. It adequately reflects the relatively weak legal position of the tribes. (If the tribes could get around the Government’s defenses they conceivably could establish a case for from 15% to 25% of the power of the Grand Coulee and Chief Joseph dams.) In addition to the threat of legal liability to the federal government, there is the undeniable fact that the Colville and Spokane people have been treated shabbily throughout the 40-year history of this dispute. To this day they have received little benefit from these projects on their lands which totally destroyed their fishery (no fish ladders were included) and inalterably changed their way of life. It has been the non-Indian communities and irrigation districts who have benefited from these projects. Much reservation land remains desert, while across the river irrigated non-Indian lands bloom.*

*I am also hopeful that this is one “pro-Indian” bill that the Washington State congressional delegation will support as a fair resolution of a sorry chapter of our history. The tribes have tried recently to cultivate support for such a settlement proposal among key members of the delegation. My understanding is that the delegation’s concerns have focused on the size of a settlement award (tribal demands have referred to hundreds of millions of dollars) and a tribal proposal for allocation of a firm power supply in the 1980’s an allocation which might be seen as a threat to domestic users in times of shortage.”*<sup>11</sup>

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<sup>10</sup> S. Rep, 94-505, Dec. 4, 1975, at 79.

<sup>11</sup> Legislative Proposal on Settlement of the Claims of the Colville and Spokane Tribes, Memorandum of Leo M. Krulitz to Eliot Cutler, May 7, 1979.



We do not know what happened to this Interior Solicitor proposal to settle the claims of both tribes. We do know that the sixth and final unit of the third power plant was completed in 1980. In that same year, the congressional Task Force completed its work. In spite of Congresses' direction, rather than determine the tribal interests involved in Grand Coulee and the benefits they might derive from those interests, for the first time in nearly 50 years of promises and negotiations with both tribes, the task force asserted legal arguments which the United States might use to defend against or forestall any tribal claims for a share of the hydropower generated by or the revenues derived from the Grand Coulee Project. The report concluded the United States may not be required by law to provide compensation at the same time that the project's ability to provide benefits to the United States and the region was taking a quantum leap.

The third powerhouse alone provides enough electricity to meet the combined power demand of the cities of Portland, Oregon and Seattle, Washington. However, its contribution to the Federal Columbia River Power System and the inter-connected electric systems serving the western United States goes far beyond the amount of hydropower that is generated.

With completion of the third powerhouse, the Grand Coulee Project was positioned to play a pivotal role in the creation of downstream hydropower benefits from releases from large Canadian storage reservoirs. Grand Coulee became the critical link between water storage facilities in the upper reaches of the Columbia River Basin and downstream generating assets. Rated at 6,809,000 kilowatts capacity, the power-generating complex at Grand Coulee became the largest hydropower facility in the United States. It now produces about 21 billion kilowatt hours annually, four times more electricity than Hoover Dam on the Colorado River, and is the least-cost power source in the region's resource stack.

In addition to power production, Grand Coulee is the key to maintaining operating flexibility and, most important, the reliability of the Federal Columbia River Power System and inter-connected systems.

Without the third power plant in particular, and the Grand Coulee Project in general, the configuration and operation of the Federal Columbia River Power System would be very different. The electric systems serving the Pacific Northwest (and western United States) would be less efficient, have much higher average system costs and be far less reliable.

In a sad twist of historical events, two tribes — each feeling the irreversible pain of Grand Coulee's devastation — found themselves on separate paths. The Colville Tribes were able to continue their legal battles with the United States through settlement in the mid-1990s, while the Spokane Tribe's uninformed willingness to settle its ICC claims in the 1960's cost it substantial legal and political leverage in future dealings with the United States.

The Tribe notes here that this legislation is not a settlement of legal claims. Rather, it is “to provide for equitable compensation. . . for the use of tribal lands for the production of hydropower by the Grand Coulee Dam. . .” Congress has an established policy of providing subsequent equitable compensation for tribes impacted by federal hydroelectric projects. In the case of Pick-Sloan, Congress passed five acts between 1992 and 2000 that acknowledged decades-prior federal

compensation as inadequate and established trust funds for affected tribes seeded by Pick-Sloan revenues. In the case of Pick-Sloan, there was no pending litigation that spurred Congress to act: the relevant statutes of limitation had long since run.

Similar to Pick-Sloan equitable compensation acts, the Colville settlement was also not a settlement of legal claims. The Department of Justice took the express position before Congress that the Colville also had no legal claim; only a “moral claim”. The settlement was based on the history and record of dealings with the Tribe. This history and record includes the repeated promises made by the U.S. to provide compensation to both tribes.

*“While plaintiff had no legal and equitable claim based on the navigational servitude, they did have a viable moral claim based on the “fair and honorable dealings” provision of the Indian Claims Commission Act of 1946.*

*The resolution reached in the proposed settlement does not constitute an admission of liability. . . . But, we are prepared to recognize that the record, in this timely filed claim, can be read to reflect an undertaking by the United States with respect to power values. Because of that we think it is fair and just to fashion a complete resolution of this longstanding claim.”<sup>12</sup>*

#### CONTINUING RECOGNITION OF THE TRIBE’S INTERESTS

In 1990, the federal government and the Tribes entered into the Lake Roosevelt Cooperative Management Agreement, which states that “[t]he Spokane Tribe shall manage, plan and regulate all activities, development, and uses that take place within that portion of the Reservation Zone within the Spokane Reservation in accordance with applicable provisions of federal and tribal law, and subject to the statutory authorities of Reclamation . . . to carry out the purposes of the Columbia Basin Project.”

Litigation over the ownership of the original Spokane Riverbed resulted in a separate federal court opinion,<sup>13</sup> a court order,<sup>14</sup> and a separate settlement agreement:<sup>15</sup> all of which provide and affirm that the Spokane Tribe holds full equitable title to the original Spokane Riverbed.

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<sup>12</sup> Statement of Peter R. Steenland, Appellate Section Chief, Environment and Natural Resources Div., Dept. of Justice (Joint Hearing on S. 2259 before the Subcomm. on Water and Power of the Comm. on Energy and Natural Resources and the Comm. on Indian Affairs, S. Hrg. 103-943, Aug. 4, 1994. at 17).

<sup>13</sup> *Washington Water Power v. F.E.R.C.*, 775 F.2d 305, 312 n. 5 (D.C. Cir. 1985).

<sup>14</sup> *Spokane Tribe of Indians v. State of Washington, Washington Water Power Company and United States of America*, No. C-82-753-AAM, Judgment and Decree Confirming Disclosure and Quieting Title to Property (U.D. Dist. Ct., E.D. Wash., September 14, 1990).

<sup>15</sup> *Spokane Tribe of Indians v. Washington Water Power Company*, No. C-82-AAM, Judgment (U.S. Dist. Ct. E.D. Wash., March 3, 1995).

In 1994 Congress passed the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act<sup>16</sup> to provide compensation to the Colville Tribes for the past and future use of reservation land in the generation of electric power at Grand Coulee Dam.

- A. For past use of the Colville Tribes' land, a payment of \$53,000,000.
- B. For continued use of the Colville Tribes' land, annual payments of \$15,250,000, adjusted annually based on revenues from the sale of electric power from the Grand Coulee Dam project and transmission of that power by the Bonneville Power Administration.

In 1994 Congress also directed the Bonneville Power Administration, Department of Interior and the relevant federal agencies, under the "fair and honorable dealings" standard, to negotiate with the Spokane Tribe to address the Tribe's comparable claims for the construction and operation of Grand Coulee Dam.

During the hearing on the Colville Settlement Bill, the Spokane Tribe sought an amendment that would have waived the Indian Claims Commission Act's statute of limitations to enable the Spokane to pursue its Grand Coulee claims through litigation. In the words of then Tribal Chairman Warren Seyler, "We believe it would be unprecedented for Congress to only provide relief to one tribe and not the other when both tribes were similarly impacted."<sup>17</sup>

Colville Tribal leaders and the bill's Congressional sponsors asked the Spokane to withdraw the request for an amendment to waive the statute of limitations. The Spokane complied, with the understanding that good faith negotiations to reach a fair and honorable settlement with the United States would be imminent. As a result, the following statements were made in a colloquy accompanying the Colville Tribes' Grand Coulee Settlement legislation:<sup>18</sup>

Senator Bradley stated:

*"S. 2259 settles the claims of the Confederated Tribes of the Colville Reservation, yet the claims of the Spokane Tribe which are nearly identical in their substance, remain unsettled. The historic fishing sites and the lands of the two tribes were inundated by the Grand Coulee Project. It is clear that hydropower production and water development associated with the Project were made possible by the contributions of both tribes. Thus, I believe it is incumbent that the United States address its obligations under the Federal Power Act to both Tribes."*

Senator Murray stated:

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<sup>16</sup> P.L. 103-436; 108 Stat. 4577, 103d Congress, November 2, 1994.

<sup>17</sup> Hearing Record, Colville Tribes Grand Coulee Settlement, H.R. 4757, pp. 56-61 (August 2, 1994).

<sup>18</sup> Colloquy to Accompany S. 2259, A Bill Providing for the Settlement of the Claims of the Confederated Tribes of the Colville Reservation Concerning Their Contribution to the Production of Hydropower by the Grand Coulee Dam, and for Other Purposes.

*“The settlement of the claims of the Colville Tribes is long overdue. The claim, first filed by the Colville Tribes over forty years ago, is based upon the authority the Congress vested in the Indian Claims Commission, which provided a five-year period during which Indian tribes could bring their claims against the United States.*

*Unfortunately, the Spokane Tribe did not organize its government in time to participate in the claims process.*

*The fair and honorable dealings standard established in the Indian Claims Commission Act should clearly apply to the United States’ conduct and relationship with both the Colville and Spokane Tribes. I would urge, in the strongest possible terms, that the Department of the Interior and other relevant federal agencies enter into negotiations with the Spokane Tribe that might lead to a fair and equitable settlement of the tribe’s claims.”*

Senator Inouye stated:

*“I fully support the notion that the United States has a moral obligation to address the claims of the Spokane Tribe, and I would be pleased to join you in a letter to Interior Department Secretary Babbitt urging that negotiations be undertaken by the Department.”*

Senator Bradley added:

*“Under the Federal Water Power Act, which is now referred to as the Federal Power Act, where an Indian Tribe’s land contributes to power production, the licensee must pay an annual fee to the Indian Tribe which represents the tribe’s contribution to power production. I too, would be pleased to join Senator Murray and Chairman Inouye in urging the Interior Department and the Bonneville Power Administration to enter into negotiations with the Spokane Tribe to address the tribe’s claims.”*

Senator McCain stated:

*I also want to join my colleagues in urging the Department of the Interior to seize this opportunity to address the Spokane Tribe’s comparable and equitable claims for damages arising out of the inundation of their lands for the construction and operation of Grand Coulee Dam.”*

Thus, as the Colville Tribes’ claims were being addressed, the United States Congress made clear its intent that the Spokane Tribe be treated fairly and honorably in connection with its claims for Grand Coulee damages through prompt, good faith negotiations with the Administration.

The Spokane Tribe adhered to the spirit of good faith negotiations over the next several years. While the Administration in general continued its refusal to take Congress' direction to negotiate fully a fair and honorable settlement with the Spokane Tribe, the Administration lead shifted from the Department of the Interior to the Bonneville Power Administration.

For the next six years, from 1998 to 2004, the Tribe engaged in very difficult negotiations with BPA. Finally, in 2004, the provisions of a settlement bill were arrived at in which BPA had no objections.

## LEGISLATIVE HISTORY

Legislation to compensate the Spokane Tribe of Indians ("Tribe") for its losses related to the Grand Coulee Dam has been introduced in the 106<sup>th</sup>, 107<sup>th</sup>, 108<sup>th</sup>, 109<sup>th</sup>, 110<sup>th</sup>, 111<sup>th</sup>, 112<sup>th</sup>, 113<sup>th</sup>, 114<sup>th</sup>, 115<sup>th</sup>, and this 116<sup>th</sup> Congress. In the 108<sup>th</sup> Congress, a legislative hearing on H.R. 1753 was held before the House Resources Subcommittee on Water and Power on October 2, 2003. In the 109<sup>th</sup> Congress, the House Natural Resources Committee held a committee consideration and Mark-up on H.R. 1797 on May 18, 2005. The House of Representatives ultimately passed H.R. 1797 on July 25, 2005.

Hearings were also held before the Indian Affairs Committee on the Senate bill S. 1438, on October 2, 2003 in the 108<sup>th</sup> Congress. The United States Senate approved S. 1438 on November 19, 2004. In the 110<sup>th</sup> Congress, the Senate Committee on Indian Affairs held a legislative hearing on S. 2494, on May 15, 2005. In the 112<sup>th</sup> Congress, the Senate Committee on Indian Affairs held a legislative hearing on S. 1345, on October 20, 2011. In the 113<sup>th</sup> Congress, the Senate Committee on Indian Affairs held a legislative hearing on S. 1448, on September 10, 2013. In the 115<sup>th</sup> Congress, S. 995 was reported favorably by the Senate Committee on Indian Affairs on February 14, 2018. On October 4, 2018, S. 995 passed the Senate by Unanimous Consent.

In the 116<sup>th</sup> Congress, S. 216 was introduced on January 24, 2019 by Senators Maria Cantwell (D-WA) and Patty Murray (D-WA). The Senate Committee on Indian Affairs reported S. 216 favorably on January 29, 2019. On June 27, 2019, the United States Senate passed S. 21 by Unanimous Consent and referred the bill to the House Natural Resources Committee.

## AMENDMENTS AND SUPPORT

The Spokane Tribe thereafter agreed to modify the proposed legislation to address various concerns related to the return to Tribal ownership of lands taken for the Grand Coulee Project.

Spokane Tribal acreage taken by the United States for the construction of Grand Coulee Dam equaled approximately 39 percent of Colville acreage taken for construction of the dam. The Spokane settlement previously was based on 39 percent of the Colville settlement. At the request of members of Congress, the payment provisions for the Spokane settlement bill were reduced to

29 percent of the Colville settlement in exchange for return of the Tribe's lands taken for the Grand Coulee Project.

In 2007, the Spokane Tribe met with the State of Washington Department of Fish and Wildlife and the Washington Office of the Governor to address their concerns with the settlement bill. The Tribe and State entered into an "Agreement in Principle on May 1, 2007" to resolve those concerns.

The Tribe and the Lincoln County Commissioners held meetings to address the concerns of the Commissioners with provisions of the bill affecting the Spokane River. The Tribe agreed to amend the bill to address these concerns. In 2007, Section 9(a)(2) was removed, thereby excluding transfer to the Tribe of the south bank of the Spokane River, which is located outside Reservation boundaries. Section 9(a) confined the land to be restored to the Tribe to "land acquired by the United States. . . that is located within the exterior boundaries of the Spokane Indian Reservation." On June 4, 2007, the Commissioners endorsed by letter "strong support" for the settlement legislation as amended.<sup>19</sup> By letter dated December 18, 2017, the Commissioners reiterated their support for the bill.<sup>20</sup>

The Stevens County Commissioners in letters of December 18, 2007 and December 26, 2017, expressed "renewed support" for the Tribe and the settlement: "Please continue in your efforts to get legislation passed which finally settles this debt owed to the Spokane Tribe."<sup>21</sup> The Tribe also met with landowners concerned about this provision in the bill. The above amendment regarding Section 9(a)(2) resolved their stated concerns.

The Eastern Washington Council of Governments, pursuant to letters of January 23, 2008, by Chairman Ken Oliver, provides: "We urge your strongest support and consideration for this issue."<sup>22</sup>

The Governor of the State of Washington, Christine Gregoire, by letter dated December 14, 2007, to Senator Cantwell and Congressman Dicks, also voiced strong support for the settlement legislation, stating that it is "clearly appropriate" and "long overdue."<sup>23</sup> By letter dated June 29, 2009 to President Obama, Governor Gregoire explained that "this legislation [then S. 1388] will correct a longstanding wrong" and "request[ed] the support of your administration in righting this injustice and securing enactment of the legislation."<sup>24</sup>

The Mayor of the City of Spokane, Mary Verner, by letter to the Washington Congressional delegation on August 25, 2009, stated "strong support for the Spokane Tribe" settlement legislation, finding that the Tribe had "suffered devastating impacts" while recognizing the Tribe's "generous efforts to address ... the previously stated concerns of affected State and local governments, Indian tribes and individual landowners as well as federal agencies."<sup>25</sup>

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19 See Attachment 2.

20 Id.

21 See Attachment 3.

22 See Attachment 4.

23 See Attachment 5.

24 Id.

25 See Attachment 6.

The Spokane Tribe also reached an agreement with the Colville Tribe dated May 22, 2009, providing for a disclaimer provision in the prior bill (S.1388) regarding adjoining Reservation boundaries.<sup>26</sup>

In light of the foregoing support, Section 9 of the prior 2009 bill (S. 1388) provided for the return to Tribal ownership of lands within the Spokane Reservation taken by the United States for the Grand Coulee Project. DOI's Bureau of Reclamation (BOR) thereafter expressed concerns about the extent of continuing federal liability under that return of ownership provision, citing potential liability for erosion and landslides. After extensive Tribal-BOR discussions, the Tribe agreed to remove language in Section 9 providing for the return of taken Reservation lands to Tribal trust status. In exchange, BOR agreed to a new Section 9(a) of Bill S. 1345 that would have confirmed the delegation of Secretarial authority to the Spokane Tribe as set forth in the 1990 DOI-Tribal Agreement.<sup>27</sup>

The Spokane Tribe has made numerous and significant concessions over the course of negotiations on the provisions of the Bill. When members of Congress so requested, the Tribe agreed that compensation to the Spokane Tribe could be reduced to 29% of the Colville settlement even though Spokane lands taken for Grand Coulee amounted to about 39% of Colville lands so taken. That significant payment reduction was in exchange for the return to Spokane Tribal trust ownership of taken lands. Thereafter, at BOR's request, the Tribe relinquished its demand that the BOR land within the Spokane Reservation Zone be transferred to the BIA to be placed in trust for the benefit of the Tribe, in exchange for Congressional confirmation of the delegation of authority by the Secretary of the Interior to the Spokane Tribe under the 1990 DOI-Tribal Agreement.<sup>28</sup> In testimony before this Committee on S. 1345, the Administration expressed concern over the delegation provided for in Section 9(a). In response to that concern, the Tribe has reluctantly agreed to remove any reference to federal delegation of authority over those Reservation lands in S. 1448 and reduced the back-pay amount from over \$100 million to \$53 million.

The current bill contains still more concessions. For instance, the current bill contains no reference to federal delegation of authority and entirely removes back pay. The current bill sets Spokane's annual payments at 25% of the Colville Tribes' annual payment until 2029 and thereafter sets Spokane's annual payments at 32% of the Colville Tribe's annual payments. The current bill remains consistent with the 2004 agreement between the Spokane Tribe and the Bonneville Power Administration regarding such payments and thereby renders the payments revenue neutral.

The Tribe has reached agreement with members of Congress, federal agencies, the State and county governments, the Colville Tribe, as well as private individuals, to resolve their concerns or objections to the bill. We again wish to acknowledge Senator Cantwell's strong leadership and the considerable efforts of her staff in bringing the stakeholders together to resolve any remaining concerns.

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<sup>26</sup> See Attachment 7.

<sup>27</sup> See Attachment 8.

<sup>28</sup> Id.

## CONCLUSION

The Tribe has exerted significant efforts to retain its homelands, to receive the benefit of the promises made by the United States to reserve our lands, and to fairly compensate us for the use of our lands for the production of hydropower. Our people have endured enormous past and present impacts to their resources, their way of life and their culture due to operation of the project. Over the past eighty years, we have demonstrated our persistence and our good faith.

Grand Coulee delivers enormous benefits to the United States and the region. The Colville Tribes, similarly situated directly across the Columbia River, share in the benefits of the project. Spokane deserves the same fair and honorable treatment Congress has provided to Colville and to the tribes affected by Pick-Sloan.