S. HRG. 108–375

SPOKANE TRIBE OF INDIANS OF THE SPOKANE RESERVATION GRAND COULEE DAM EQUITABLE COMPENSATION SETTLEMENT ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

S. 1438

TO PROVIDE FOR EQUITABLE COMPENSATION OF THE SPOKANE TRIBE OF INDIANS OF THE SPOKANE RESERVATION IN SETTLEMENT OF CLAIMS OF THE TRIBE CONCERNING THE CONTRIBUTION OF THE TRIBE TO THE PRODUCTION OF HYDROPOWER BY THE GRAND COULEE DAM

OCTOBER 2, 2003
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE

89–744 PDF WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON INDIAN AFFAIRS

BEN NIGHTHORSE CAMPBELL, Colorado, *Chairman*
DANIEL K. INOUYE, Hawaii, *Vice Chairman*

JOHN McCAIN, Arizona,
PETE V. DOMENICI, New Mexico
CRAIG THOMAS, Wyoming
ORRIN G. HATCH, Utah
JAMES M. INHOFE, Oklahoma
GORDON SMITH, Oregon
LISA MURKOWSKI, Alaska

KENT CONRAD, North Dakota
HARRY REID, Nevada
DANIEL K. AKAKA, Hawaii
BYRON L. DORGAN, North Dakota
TIM JOHNSON, South Dakota
MARIA CANTWELL, Washington

PAUL MOOREHEAD, *Majority Staff Director/Chief Counsel*
PATRICIA M. ZELL, *Minority Staff Director/Chief Counsel*

CONTENTS

SPOKANE TRIBE OF INDIANS OF THE SPOKANE RESERVATION GRAND COULEE DAM EQUITABLE COMPENSATION SETTLEMENT ACT

THURSDAY, OCTOBER 2, 2003

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:08 p.m. in room 485, Russell Senate Building, Hon. Daniel K. Inouye (vice chairman of the committee) presiding.

Present: Senators Inouye and Cantwell.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. The Committee on Indian Affairs meets this afternoon to receive testimony on S. 1438, a bill to provide for the equitable compensation of the Spokane Tribe in settlement of the tribe's claims relating to the use of tribal lands for the production of hydropower.

Seventy years ago, the United States began construction of the Grand Coulee Dam in Washington State. In 1940, lands belonging to the Confederated Tribes of the Colville Reservation and the Spokane Tribe were acquired by the United States for its hydropower project, and some minimal compensation was authorized to be paid to the tribes.

Those tribal lands were directly affected by the construction and operation of the Grand Coulee Dam. Some lands were inundated with water; others were affected by the production of hydropower, and salmon fisheries on which the tribes were dependent both for subsistence and economically were destroyed.

Fifteen years ago, the Congress enacted a settlement for the Confederated Tribes of the Colville Reservation based upon the tribe's legal claims which had been pending for 43 years before the Indian Claims Commission, the United States Court of Federal Claims, and finally the U.S. Court of Appeals for the Federal Circuit.

At that time, recognizing that the Spokane Tribe's legal claims for the loss of tribal lands and resources were barred by the applicable statute of limitations, several senators joined me in calling upon the Departments of the Interior and Justice to work with the Spokane Tribe to develop a settlement of the tribe's equitable claims.

That process did not come to fruition, but today I am pleased to report that the good and worthy Senators from the State of Washington have not forgotten the history of the Grand Coulee Dam, and the losses suffered by the Spokane Tribe. We are here today to receive testimony on the bill that they have introduced to provide equitable compensation to the Spokane Tribe for its losses.

[Text of S. 1438 follows:]

II

108TH CONGRESS
1ST SESSION

S. 1438

To provide for equitable compensation of the Spokane Tribe of Indians of the Spokane Reservation in settlement of claims of the Tribe concerning the contribution of the Tribe to the production of hydropower by the Grand Coulee Dam, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 22 (legislative day, JULY 21), 2003

Ms. CANTWELL (for herself, Mr. INOUYE, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To provide for equitable compensation of the Spokane Tribe of Indians of the Spokane Reservation in settlement of claims of the Tribe concerning the contribution of the Tribe to the production of hydropower by the Grand Coulee Dam, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) From 1927 to 1931, at the direction of Congress, the Corps of Engineers investigated the Columbia River and its tributaries to determine sites at which power could be produced at low cost.

(2) The Corps of Engineers—

(A) identified a number of sites, including the site at which the Grand Coulee Dam is located; and

(B) recommended that power development at those sites be performed by local governmental authorities or private utilities under the Federal Power Act (16 U.S.C. 791a et seq.).

(3) Under section 10(e) of that Act (16 U.S.C. 803(e)), a licensee is required to compensate an Indian tribe for the use of land under the jurisdiction of the Indian tribe.

(4) In August 1933, the Columbia Basin Commission, an agency of the State of Washington, received a preliminary permit from the Federal Power Commission for water power development at the Grand Coulee site.

(5) In the mid-1930's, the Federal Government, which is not subject to the Federal Power Act (16 U.S.C. 791a et seq.)—

(A) federalized the Grand Coulee Dam project; and

(B) began construction of the Grand Coulee Dam.

(6) At the time at which the Grand Coulee Dam project was federalized, the Federal Government recognized that the Spokane Tribe and the Confederated Tribes of the Colville Reservation had compensable interests in the Grand Coulee Dam project, including compensation for—

(A) the development of hydropower;

(B) the extinguishment of a salmon fishery on which the Spokane Tribe was almost completely financially dependent; and

(C) the inundation of land with loss of potential power sites previously identified by the Spokane Tribe.

(7) In the Act of June 29, 1940, Congress—

(A) in the first section (16 U.S.C. 835d) granted to the United States—

(i) all rights of Indian tribes in land of the Spokane Tribe and Colville Indian Reservations that were required for the Grand Coulee Dam project; and

(ii) various rights-of-way over other land under the jurisdiction of Indian tribes that were required in connection with the project; and

(B) in section 2 (16 U.S.C. 835e) provided that compensation for the land and rights-of-way was to be determined by the Secretary of the Interior in such amounts as the Secretary determined to be just and equitable.

(8) In furtherance of that Act, the Secretary of the Interior paid—

(A) to the Spokane Tribe, $4,700; and

(B) to the Confederated Tribes of the Colville Reservation, $63,000.

(9) In 1994, following 43 years of litigation before the Indian Claims Commission, the United States Court of Federal Claims, and the United States Court of Appeals for the Federal Circuit, Congress ratified an agreement between the Confederated Tribes of the Colville Reservation and the United States that provided for damages and annual payments of $15,250,000 in perpetuity, 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.

(10) In legal opinions issued by the Office of the Solicitor of the Department of the Interior, a Task Force Study conducted from 1976 to 1980 ordered by the Committee on Appropriations of the Senate, and hearings before Congress at the time at which the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (Public Law 103–436; 108 Stat. 4577) was enacted, it has repeatedly been recognized that—

(A) the Spokane Tribe suffered damages similar to those suffered by, and had a case legally comparable to that of, the Confederated Tribes of the Colville Reservation; but

(B) the 5-year statute of limitations under the Act of August 13, 1946 (25 U.S.C. 70 et seq.) precluded the Spokane Tribe from bringing a civil action for damages under that Act.

(11) The inability of the Spokane Tribe to bring a civil action before the Indian Claims Commission can be attributed to a combination of factors, including—

(A) the failure of the Bureau of Indian Affairs to carry out its advisory responsibilities in accordance with that Act; and

(B) an attempt by the Commissioner of Indian Affairs to impose improper requirements on claims attorneys retained by Indian tribes, which caused delays in retention of counsel and full investigation of the potential claims of the Spokane Tribe.

(12) As a consequence of construction of the Grand Coulee Dam project, the Spokane Tribe—

(A) has suffered the loss of—

(i) the salmon fishery on which the Spokane Tribe was dependent;

(ii) identified hydropower sites that the Spokane Tribe could have developed; and

(iii) hydropower revenues that the Spokane Tribe would have received under the Federal Power Act (16 U.S.C. 791a et seq.) had the project not been federalized; and

(B) continues to lose hydropower revenues that the Federal Government recognized were

owed to the Spokane Tribe at the time at which the project was constructed.

(13) More than 39 percent of the land owned by Indian tribes or members of Indian tribes that was used for the Grand Coulee Dam project was land of the Spokane Tribe.

SEC. 3. STATEMENT OF PURPOSE.

The purpose of this Act is to provide fair and equitable compensation to the Spokane Tribe, using the same proportional basis as was used in providing compensation to the Confederated Tribes of the Colville Reservation, for the losses suffered as a result of the construction and operation of the Grand Coulee Dam project.

SEC. 4. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(2) CONFEDERATED TRIBES ACT.—The term ''Confederated Tribes Act'' means the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (Public Law 103–436; 108 Stat. 4577).

(3) FUND ACCOUNT.—The term ''Fund Account'' means the Spokane Tribe of Indians Settlement Fund Account established under section 5(a).

(4) SPOKANE TRIBE.—The term ''Spokane Tribe'' means the Spokane Tribe of Indians of the Spokane Reservation, Washington.

SEC. 5. SETTLEMENT FUND ACCOUNT.

(a) ESTABLISHMENT OF ACCOUNT.—There is established in the Treasury an interest-bearing account to be known as the ''Spokane Tribe of Indians Settlement Fund Account''.

(b) DEPOSIT OF AMOUNTS.—

(1) INITIAL DEPOSIT.—On the date on which funds are made available to carry out this Act, the Secretary shall deposit in the Fund Account, as payment and satisfaction of the claim of the Spokane Tribe for use of land of the Spokane Tribe for generation of hydropower for the period beginning on June 29, 1940, and ending on November 2, 1994, an amount that is equal to 39.4 percent of the amount paid to the Confederated Tribes of the Colville Reservation under section 5(a) of the Confederated Tribes Act, adjusted to reflect the change, during the period beginning on the date on which the payment described in subparagraph (A) was made to the Confederated Tribes of the Colville Reservation and ending on the date of enactment of this

Act, in the Consumer Price Index for all urban consumers published by the Department of Labor.

(2) SUBSEQUENT DEPOSITS.—On September 30 of the first fiscal year that begins after the date of enactment of this Act, and on September 30 of each of the 5 fiscal years thereafter, the Secretary shall deposit in the Fund Account an amount that is equal to 7.88 percent of the amount authorized to be paid to the Confederated Tribes of the Colville Reservation under section 5(b) of the Confederated Tribes Act through the end of the fiscal year during which this Act is enacted, adjusted to reflect the change, during the period beginning on the date on which the payment to the Confederated Tribes of the Colville Reservation was first made and ending on the date of enactment of this Act, in the Consumer Price Index for all urban consumers published by the Department of Labor.

(c) ANNUAL PAYMENTS.—On September 1 of the first fiscal year after the date of enactment of this Act, and annually thereafter, the Secretary shall pay to the Spokane Tribe an amount that is equal to 39.4 percent of the annual payment authorized to be paid to the Confederated Tribes of the Colville Reservation under section 5(b) for the Confederated Tribes Act for the fiscal year.

SEC. 6. USE AND TREATMENT OF SETTLEMENT FUNDS.

(a) TRANSFER OF FUNDS TO SPOKANE TRIBE.—

(1) INITIAL TRANSFER.—Not later than 60 days after the date on which the Secretary receives from the Spokane Business Council written notice of the adoption by the Spokane Business Council of a resolution requesting that the Secretary execute the transfer of settlement funds described in section 5(a), the Secretary shall transfer all or a portion of the settlement funds, as appropriate, to the Spokane Business Council.

(2) SUBSEQUENT TRANSFERS.—If not all funds described in section 5(a) are transferred to the Spokane Business Council under an initial transfer request described in paragraph (1), the Spokane Business Council may make subsequent requests for, and the Secretary of the Treasury may execute subsequent transfers of, those funds.

(b) USE OF INITIAL PAYMENT FUNDS.—Of the settlement funds described in subsections (a) and (b) of section 5—

(1) 25 percent shall be—

(A) reserved by the Spokane Business Council; and

(B) used for discretionary purposes of general benefit to all members of the Spokane Tribe; and

(2) 75 percent shall be used by the Spokane Business Council to carry out—

(A) a resource development program;

(B) a credit program;

(C) a scholarship program; or

(D) a reserve, investment, and economic development program.

(c) USE OF ANNUAL PAYMENT FUNDS.—Annual payments made to the Spokane Tribe under section 5(c) may be used or invested by the Spokane Tribe in the same manner and for the same purposes as other tribal governmental funds.

(d) APPROVAL BY SECRETARY.—Notwithstanding any other provision of law—

(1) the approval of the Secretary of the Treasury or the Secretary of the Interior for any payment, distribution, or use of the principal, interest, or income generated by any settlement funds transferred or paid to the Spokane Tribe under this Act shall not be required; and

(2) the Secretary of the Treasury and the Secretary of the Interior shall have no trust responsibil-

ity for the investment, supervision, administration, or expenditure of those funds after the date on which the funds are transferred to or paid to the Spokane Tribe.

(e) TREATMENT OF FUNDS FOR CERTAIN PURPOSES.—The payments and distributions of any portion of the principal, interest, and income generated by the settlement funds described in section 5 shall be treated in the same manner as payments or distributions under section 6 of the Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act (Public Law 99–346; 100 Stat. 677).

(f) TRIBAL AUDIT.—After the date on which the settlement funds described in section 5 are transferred or paid to the Spokane Tribe, the funds—

(1) shall be considered to be Spokane Tribe governmental funds; and

(2) shall be subject to an annual tribal governmental audit.

SEC. 7. SATISFACTION OF CLAIMS.

Payment by the Secretary under section 5 constitutes full satisfaction of the claim of Spokane Tribe to a fair share of the annual hydropower revenues generated by the Grand Coulee Dam project from June 29, 1940, through

the fiscal year preceding the fiscal year in which this Act is enacted.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

○

Senator INOUYE. In order to provide a sharpened focus on the testimony of the Spokane Tribe, the committee has called upon the Bonneville Power Administration, the General Accounting Office [GAO] and the Department of the Interior to submit written testimony for the record of the hearing today.

Now it is my pleasure to call upon the authors of the measure, my distinguished colleagues from the State of Washington, Senator Patty Murray and Senator Maria Cantwell.

Senator Cantwell.

STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman.

I greatly appreciate your willingness to hold this important hearing and for your cosponsorship of this legislation. You have been a consistent champion for establishing a fair and equitable settlement process and to compensate sovereign Indian nations harmed by actions of the U.S. Government and those that we represent. For this and the other efforts on Washington State tribes, Senator Murray and I greatly thank you.

I would also like to thank my friend and colleague, Senator Murray, for her important efforts on this legislation. As you all are aware, Senator Murray was instrumental in providing the Colville's with a fair and equitable settlement in 1994 for nearly identical impact to their reservation. I look forward to working with her as we move through this settlement agreement.

And of course, I would like to thank Warren Seyler and the other Spokanes and their representatives for coming today. I know you have been fighting for just compensation for a long period of time, and the damages to your reservation way of life that have been that way since the construction of the Grand Coulee Dam in 1933.

I recognize that this has been a long and extremely frustrating process. I hope that this hearing will provide the necessary information for us to move forward and once and for all resolve the Spokane claims against the U.S. Government.

I would also like to take this opportunity to reiterate my condolences to the tribe regarding the death of Bruce Wynne. Bruce obviously was very dedicated to this community and was invaluable. His loss will not just be felt in Washington State, but across the country. My thoughts and prayers are with his family. I know that Bruce spent a great deal of time trying to solve this issue, so it is my hope that we can give some quick action to this and the longstanding grievances that have been here, so that we can move forward and make that a legacy to Bruce's leadership.

Mr. Chairman, my goal for this hearing is to establish for the record the harm done to the Spokane Tribe, and the damage that was done following the construction of the Grand Coulee Dam and the legal and moral obligation that I believe that we have as a Federal Government to compensate the Spokane's for those damages.

For more than one-half century, as you mentioned, the Grand Coulee Dam project has been an extraordinary contribution to our Nation. It helped pull the economy out of the Great Depression. It provided the electricity that produced the aluminum industry required for airplanes and weapons, and it ensured our national se-

curity. The project continues to provide enormous revenues for the United States and is a key component of our agricultural economy in Eastern Washington.

However, these benefits have come at direct cost and expense to tribal property that have been inundated when the United States built the Grand Coulee Dam. Before dam construction, the free-flowing Columbia River supported a very robust and plentiful salmon run and provided virtually all of the subsistence needed by the Spokane Tribe. After that construction, the Columbia and Spokane River tributary flooded tribal communities, schools, roads, and causing problems with stagnant water and still erosion problems on the reservation today.

The legislation that Senators Inouye, Murray, and I have introduced, which was done in July, is similar to the legislation that Senator Murray did in 1994, a bill that codified the settlement and provided perpetual payments to the neighboring Confederated Colville Tribes. To date, the Colvilles have received over $180 million in payments for their land inundated by Lake Roosevelt.

This bill provides the framework for the success that was the same for that settlement, providing the Spokanes with compensation that is directly proportional to the settlement afforded the Colville Tribes.

Specifically, the Spokane Tribe would receive 39.4 percent of the past and future compensation awarded the Colville Tribes pursuant to the 1994 legislation. This percentage is based on the proportion of tribal lands impacted after the Federal Government built the Grand Coulee project.

S. 1438 also outlines the facts of the Spokane claims and describes how the tribe can use that compensation that is forthcoming.

Mr. Chairman, I will enter the rest of my statement for the record, but I just want to say that I very much appreciate the fact that you have given time for this hearing on this important issue. When Federal actions take physical and economic impacts on our tribes, we need to respond. So I applaud the leadership that you and Senator Murray and others are using on this legislation.

Thank you.

[Prepared statement of Senator Cantwell appears in appendix.]

Senator INOUYE. I thank you very much. Your full statement will be made part of the record.

Now it is my great honor to recognize the distinguished senior Senator of the State of Washington, the Honorable Patty Murray.

STATEMENT OF HON. PATTY MURRAY, U.S. SENATOR FROM WASHINGTON

Senator MURRAY. Good afternoon, Mr. Chairman. It is a delight to call you Mr. Chairman. Thank you very much for having this very important hearing today.

And Senator Cantwell, thank you for your leadership on this and the many tribal issues that affect our State, our region and, really, our Nation. I look forward to working with you on this. I appreciate all your work on this.

I am really proud to be here today to introduce to the committee the distinguished chairman of the Spokane Tribal Business Coun-

cil, Chairman Warren Seyler. He is a leading figure in Washington's tribal communities and I know his testimony will be of great value to this committee.

Before I introduce him, I would like to share a few ideas about S. 1438. Earlier this year, I joined with Senators Cantwell and Inouye in offering legislation that would finally compensate the Spokane Tribe for its contribution to the hydropower that is generated by the Grand Coulee Dam. You will recall I introduced similar legislation in the 106th and 107th Congresses. The Grand Coulee Dam is the largest electricity producer in the United States. It provides electricity and water to the Columbia Basin Project, which is one of the world's largest irrigation projects.

For more than 60 years, the Grand Coulee has been the backbone of the Northwest Federal power grid and our agricultural economy. But for the Native peoples of this region, construction of the Grand Coulee Dam came at a very high price. For the Spokane Tribe in particular, it brought an end to a way of life. The Spokane River was once a free- flowing waterway that supported plentiful salmon runs. It became a barren stretch of slack water that now erodes the southern lands of the reservation. In fact, the tribe's reservation has been flooded on two sides.

Mr. Chairman, S. 1438 is not the first piece of legislation seeking to compensate a tribe for losses brought by the construction of Grand Coulee Dam. In 1994, Congress passed similar settlement legislation to compensate the neighboring Confederated Colville Tribes. Since the 1970's, the Congress and Federal agencies have indicated that both the Colville and Spokane Tribes should be compensated for their losses. This legislation will provide a long overdue settlement to the Spokane Tribe.

Mr. Chairman, it is now my pleasure to introduce Chairman Seyler to the committee. He was first elected to the Spokane Tribal Business Council in 1990. Chairman Seyler also serves on the board of the Upper Columbia United Tribes, which is involved in fish and management issues along the Columbia River. He is also active in management issues at Lake Roosevelt, a reservoir created when the Grand Coulee Dam was constructed.

Finally, Mr. Chairman, I would like to join with Senator Cantwell in offering my condolences to the tribe. Last week they lost, and indeed all of Indian Country, lost a great deal with the passing of former Chairman Bruce Wynne. He led with his heart and had a remarkable ability to bridge generations. His leadership, knowledge of history and warm personality will be missed. I must say his legacy continues in leaders like Chairman Seyler, and I am proud to introduce him to the committee today.

Thank you very much.

[Prepared statement of Senator Murray appears in appendix.]

Senator INOUYE. Chairman Seyler, with that introduction, you can't lose. [Laughter.]

Before you proceed, just for the record, you are accompanied by Howard Funke of Funke and Work Law Offices, Coeur d'Alene, ID; and Charles E. Pace, president and CEO, Regional Services, Challis, ID.

Would you gentlemen like to join Chairman Seyler at the table?

STATEMENT OF WARREN SEYLER, CHAIRMAN, SPOKANE TRIBAL BUSINESS COUNCIL, ACCOMPANIED BY HOWARD FUNKE, ESQUIRE, FUNKE AND WORK LAW OFFICES, COEUR D'ALENE, ID; AND CHARLES E. PACE, PRESIDENT AND CEO, REGIONAL SERVICES, CHALLIS, ID

Mr. SEYLER. Thank you, Mr. Chairman and members of the Committee on Indian Affairs for the opportunity to testify on S. 1438. As stated, accompanying me is Howard Funke, our attorney, and Charles Pace, our economist. Also joining us today in the audience is Vice Chairman Greg Abrahamson, tribal council member, Dave Wynekoop, Jr., and tribal attorney, Margo Hill.

I am here today on behalf of the Spokane Tribe to ask for your help as representatives of the United States of America. I ask that you act on behalf of the United States to finally treat the Spokane Tribe fairly and honorably for the injury to our tribe and reservation caused by the Grand Coulee project.

My testimony today summarizes the critical need for this important legislation. We are also providing briefing books for the record and a video. I ask that they be put in the record also.

The Spokane Tribe is an honorable tribe. We are a strong tribe, a trusting tribe. We are good for our word and strong in our commitment to this Nation. Grand Coulee's waters flooded the lands of two sister Indian reservations that held great economic, cultural and spiritual significance. Ours is one of those reservations.

Let me just state one issue that I just mentioned, being sister Indian reservations. That is exactly what we are even today. Today, you can find family members, one enrolled on the Colville Reservation as a brother, and on the Spokane Reservation a sister may be enrolled. Aunts and uncles, one may be enrolled on the Spokane, another on the Colville. That is just historic. It has always been that way, even when we had free use of the river.

Our life, culture, economy and religion centered around the river. We were river people. We were fishing people. We depended heavily on the rivers and historic salmon runs that were brought to us. We were known by our neighboring tribes as the salmon eaters. The Spokane River, which was named after our people, was and is the center of our universe. We call it the Path of Life.

President Rutherford B. Hayes in 1881 recognized the importance and significance of these rivers by expressly including the entire adjacent river beds of the Spokane and Columbia Rivers within our reservation. But the Spokane and Columbia Rivers are now beneath Grand Coulee's waters.

The other reservation flooded by Grand Coulee is that of the Colville. The waters that rose behind Grand Coulee brought similar fates to our reservations. Burial sites, village sites, spiritual sites, all lost to the rising waters, lost so this country could benefit. The river banks which provided us plants for foods and medicines were forever flooded. Homes, gardens, farms, ranches our people had worked hard to build on our reservation are now under water. The free-flowing Columbia River and our Path of Life is now under the water behind Grand Coulee Dam.

The dam also destroyed our salmon runs, which from time immemorial had given us life and identity. While the Colville lost most of their runs, salmon were still able to reach the Colville Reserva-

tion. But upstream to our reservation, the salmon was entirely lost. For decades, the Colville and Spokane Tribes shared similar histories and dialogue in connection with the Grand Coulee issue and were subjected to identical misconduct by the U.S. Government.

When the project first began, it was to be a State project governed by the Federal Power Act, which required annual compensation to impacted Indian tribes. Later, after the project was Federalized and no longer fell under the Federal Power Act, Government officials promised and acknowledged that the tribes still should be compensated.

When the construction on Grand Coulee Dam began, the Commissioner of Indian Affairs recommended in writing that both tribes receive annual payments for the dam's operations. The Secretary of the Interior and other high-level Federal official knew the tribe should receive compensation, but this never happened.

In 1941, the tribes renewed their efforts, taking the extraordinary step of sending a joint delegation cross country by train to meet in Washington, DC. This meeting was with the Commissioner of Indian Affairs, the issue, Grand Coulee Dam. The meeting was held on December 10, 3 days after Pearl Harbor was bombed. The Commissioner and his staff explained that the war had become the Nation's priority and that Congress could not be expected at such times to address the tribes' needs, but they promised to do so. They promised they would help. When our leaders returned home, they trusted that things would be made right once the war was over, and this is the same war that we sent our young men and women to help fight.

Understand, for the Spokane Tribe these were times our people were completely dependent on the Bureau of Indian Affairs [BIA]. We were allowed to do nothing without the BIA or their approval. In words of one of the spiritual people back in our tribe, in many of his comments, unfortunately he has passed away recently, he would state that back then, BIA was God. We could do nothing without asking their permission. We could do nothing without them leading the way.

We were not experienced in the ways of American law, politics and business. At that time, we were among the most isolated tribes in the Nation. We were a ward of the Department of Interior and the BIA. We were beginning to farm and ranch, but our subsistence ways depended heavily on the river's salmon, and this was most prominent.

At that time, we had no constitutionally formed government. Even though the BIA's nearest agency was 100 miles away on the Colville Reservation, we relied on the BIA officials for managing details as simple as taking minutes at tribal meetings. And put forth at that time, many of our elders still did not speak English. They spoke in our Salish tongue.

So when the Commissioner of Indian Affairs told our people he would do all he could to help, it carried great weight back home. Most of the communication at this time was done in letter form, so it had to be interpreted or read to our people.

Soon after the war's end in 1946, Congress enacted the Indian Claims Commission Act. The ICCA allowed Indian tribes to bring historic legal claims against the U.S. Government. Several obsta-

cles, unique to our tribe, made the task of filing the ICCA claims unusually difficult. First, although the Act required the Commission and the BIA to notify all tribes of the claim that should be filed, we received no such notice. This was due to the very remoteness of our tribe.

We learned of the ICCA only from the neighboring tribe. I believe it was the Colville or the Kalispel and Coeur d'Alene Tribes, by happenstance. This was only months before the 1951 deadline. Second, our leadership acted to retain a lawyer once they learned of the ICCA, but the Commissioner of Indian Affairs withheld his approval several months, costing our tribe much critical time. Also, our constitutional government was only finally formed 60 days prior to the 1951 deadline.

Eventually, the Spokanes filed the standard ICCA claim, much like the claim filed by the Colville Tribe, but no mention of Grand Coulee was ever made. It was understood to apply only to historic claims, rather than claims for wrongful conduct that was ongoing.

In 1972, the Secretary of the Interior established a task force to address the Spokane and Colville Tribes, but unfortunately the only thing that came out of this task force was legal defenses. We trusted that the right thing would be done when the task force report came out. It was not. We trusted that the Congress would help by addressing our claims side by side with the Colvilles. This has not happened yet.

Grand Coulee's impacts on the Spokane and Colville Tribes is virtually identical, as were the tribes' histories of dealing with the United States throughout all of the years. While the tribes have survived decades of lost hope and broken promises, we continue to fight for this today.

There is a simple historical fact that separates the two tribes. It is the fact that led ultimately to the Colville settlement of its claim. The settlement under the Colvilles received $53 million in back damages and annual payments in perpetuity that since 1994 have been $15 million to $20 million each year. I think it would be unprecedented for one tribe to receive such compensation from the United States on the exact identical issue that a sister tribe would receive nothing.

In the mid-1960's, the Spokane Tribe, a trusting tribe that had always come to the aid of the U.S. Government whenever asked, entered into a cooperative relationship with the United States, and in 1967 the tribe settled its Indian Claims Commission case. The Colville's did not. Instead, the Colville's persisted with their legal battles through the 1960's and beyond the days of the task force.

The Colville's had not raised the Grand Coulee claim either in their original ICCA case any better than the Spokanes, but their decades-long resistance to settlement enabled them to benefit from a 1970's Indian Claims Commission case. In 1975, the Commission ruled for the first time ever that it had jurisdiction over cases where the wrong continued beyond the ICCA's 1951 statutory deadline.

From this point forward, it seems our trusting ways have been working against us, because the Colvilles, armed with that new decision, in 1976 had sought and obtained permission to amend their claim to include for the first time the Grand Coulee. Our tribe, hav-

ing come to terms with the United States in the 1960's, had no case to amend.

In 1978, the Indian Claims Commission ruled that the United States' conduct in building Grand Coulee Dam was unfair and dishonorable. Therefore, they awarded the Colville Tribes over $3 million for fisheries. In 1992, the Federal Circuit Court of Appeals ruled that the Colvilles' claim for power values based on the same standard was not barred. With that leverage, the Colville's secured a settlement which in 1994 the Congress approved Public Law 103–436.

Nine years ago, in the context of the Colville settlement, I came here and testified to you, Congress, on my tribe's behalf. I asked Congress to include our settlement with the Colville's or to waive the statute of limitations so we may also present our case. But rather than providing our requested relief, Congress again directed the United States to negotiate a fair settlement. Unfortunately, again Congress' directive never happened.

Since then, I have participated in virtually all discussions held between the tribe and the three separate BPA administrators that had represented the United States. During the past nine years, we have been forced to confront countless tactics that run directly counter to Congress' direction and intent, that our Grand Coulee claim be negotiated in good faith and on its merits.

For the first several years, we met nothing but delay and assertion of technical legal defenses. Members of Congress who had been made aware of these failings admonished the United States, stating in clear terms that the negotiation must be on the merits of our claim without consideration of legal defenses, and that definition negotiations must involve flexibility.

After 9 years of fruitless negotiations, 9 years of broken promises and delays, I am back here today requesting that justice not go unanswered; that the U.S. Government recognize our contributions and sacrifices to this great Nation. To compensate one of two tribes devastated by Grand Coulee and not the other has only compounded the injustice to our people and prolonged this conflict. We believe it would be unprecedented for Congress to only provide relief to one tribe and not the other, when both are so similarly impacted.

We also make two quotes: Acting Associate Solicitor Aschenbrenner, quote, "The government overlooked the prohibition against a guardian seizing property of its own ward, and then profiting from the seizure." Also a quote from Chief Justice Blackmun, "Great nations like great men should honor their word."

In closing, Mr. Chairman and honorable members of the committee, I ask that you listen to your hearts. We have no place to turn, we have no place to go. We ask for our day of justice. We have waited for this day for over 60 years. One last comment from the words of the Spokane Tribe and in our language, that goes [remarks in native tongue], listen to your hearts what is on your heart.

Thank you.

[Prepared statement of Mr. Seyler appears in appendix.]

Senator INOUYE. Thank you very much.

I have been advised that Mr. Funke would like to say a few words.

Mr. FUNKE. Thank you Mr. Chairman.

Just a few words. Just to give you a sense of what was going on in the 1930's on the Spokane Indian Reservation before Grand Coulee was visited on these people. They were one of the most isolated tribes in America. They were sitting there on the shores of the Columbia River and the Spokane River. Their reservation is bordered by and includes within the description of the reservation the Columbia River and the Spokane River. It is very unusual for the United States to do that. They did that for the specific reason that these people were so tied to those rivers that they included them within the boundary of the Spokane Reservation. Very unusual.

Sitting there very isolated, intact Indian communities, virtually untouched, and in come 7,800 non–Indian workers plopped right in the middle of that whole operation to build Grand Coulee. As the United States is moving to build Grand Coulee as a public works project, and to begin production of energy, they made promises to the tribe about how they would protect their interests. They made promises to the tribe that they would get a share of the power revenues. And then they went ahead and built Grand Coulee and they have not paid the tribe anything. They started flooding their lands and people were being driven out of their homes.

As that was occurring their cemeteries were being buried, their cultural sites and the best land on that reservation was being inundated, then Congress saw fit to direct the Secretary to designate a taking of those lands. It was not a bargain deal. It was not a sale. It was a taking of Indian lands as directed by Congress. Go in and designate what you want and what you need, and then you, Secretary, determine what that is worth. What he thought it was worth, thousands of acres of land, cutting off their fish runs, disrupting their culture, their economy, their health system, their social systems, their entire life-way, what he thought that was worth was $4,700.

Well, then they turned around and started reaping billions annually from the value of Grand Coulee. We are not against people and so-called progress and the generation of value from hydropower. But this Nation has benefited tremendously from the generation of hydropower at Grand Coulee. It is called the "economic engine" of the Northwest.

I could spend hours telling you the value of Grand Coulee. It is the keystone in the Federal Columbia River Power System. It regulates water supply all the way from Canada into the United States, all the way to the southern end. It regulates the Transmission Inter-tie. It generates billions of kilowatts. The only group that I can identify that really does not share in the value of the generation of this power is the people that this land was stolen from to build it. They are the only people that do not benefit from it. Everybody else reaps millions, billions. They got $4,700. That is atrocious.

Larry Aschenbrenner says that was an act of confiscation by the guardian from land that belonged to the ward. And then the United States turned around and converted it to their own use.

That is what the U.S. Associate Solicitor for Indian Affairs had to say about that activity and about that transfer.

A lot is made about the fact, Senator, that the tribe did not file Grand Coulee claims on time back in 1951; that the Colvilles filed in 1951, why didn't the Spokanes? If they could do it, why didn't you do it? Well, the fact of the matter and if the truth were really revealed, neither tribe filed in 1951 to beat that statute of limitations. The Colvilles did not and neither did the Spokane. Neither one of them did because they were in discussions with the United States. They were being represented by the United States saying their interests would be protected. The United States was telling them they would provide compensation and protect their interests. They were in negotiation with the United States for management of the Grand Coulee Reservoir. Nothing was being said about filing claims through this entire period.

When the United States started asserting legal defenses in the 1960's and 1970's, well, in 1967 the Spokane Tribe settled their claims case, a claims case based on land. It did not have anything to do with hydropower. At that point in the late 1960's and 1970's, neither tribe had filed. Then the United States started for the first time to assert defenses. Instead of continued negotiating, they began to both negotiate and start to erect defenses against the tribes.

In 1975, the Navajo case was decided, which allowed claims that had not been filed in 1951 by the statute, you could take those claims and if you could relate them back to a wrong occurring in 1951, you could add those to claims you did file in 1951. So the Colvilles had not yet settled their case. They went into the court and asked the court to amend their petition to add Grand Coulee claims in 1976, not in 1951, but in 1976. That is the legal difference between this tribe and the Colvilles. They had an active case that they could amend in 1976 to relate back to 1951 or they would have been out of luck probably, too.

So that is the only difference legally between these two tribes. So one is compensated; the other is told, you did not put that postage stamp on that envelope back in 1951, so you are out of luck. We now have a defense against you called navigational servitude. It does not have anything to do with fairness. It does not have anything to do with honor. All it has to do with is, navigational servitude, a defense. Fairness and honor are not on the table where you are concerned because you did not make that filing, or you did not have a case to amend.

So just to illustrate the legal difference between the two and why one is compensated today and Congress has settled with one tribe, and the United States has not settled with the Spokane.

Thank you.

Senator INOUYE. Thank you very much, Mr. Funke.

Dr. Pace, would you care to add something to this?

Mr. PACE. Thank you, Mr. Chairman and members of the committee. I will be very brief.

In terms of the benefits that have been derived, Senator Cantwell mentioned the contribution in World War II. That was the aircraft. The electricity that was produced at Grand Coulee was used to produce the aircraft that turned the tide in the Pacific. Another

thing that the project contributed at that time was readily available power to build the atomic bomb at Hanford, so there was a national security contribution there.

I don't know if we have mentioned the Columbia Basin Project. I have done some estimation. I think the fact that a full water supply is provided for 500,000 acres has caused an increase in the valuation of land on the order of $2.5 billion. There are another 500,000 acres that potentially could have a full water supply. So there have been significant benefits to Eastern Washington.

The support the project provides for the electric system serving the Western United States is unparalleled by any other asset. There simply is no substitute for Grand Coulee. If Grand Coulee was not available, the system operators would have far less flexibility. The system would be far less reliable, much less efficient, and be much more costly. So those are very significant national, regional and extra-regional benefits that are conferred by this project.

At the same time, I have worked for the Spokane Tribe on their TANF program. I can tell you that the Spokane tribal government is essentially on life support. They have slashed millions of dollars out of their budgets between fiscal year 1999 and fiscal year 2002. Over $1.3 million has come out of those budgets. That has impacted their ability to deliver services to their tribal membership. It has impacted their ability to perform a number of other governmental functions. Their most recent round of budget cuts, looking forward to fiscal year 2004, have again devastated the tribe, with another $1.3 million coming out of their general fund just to balance their budget.

Their health care facility operates on priority one status. You cannot even get service unless you are essentially dying or about to die. That is the state of affairs there.

So there are dramatic contributions that Chairman Seyler and the people that have gone before him have made, and that the people who come after him will make from the Spokane Tribe. They have not shared in the substantial benefits of this project.

Thank you.

Senator INOUYE. I thank you very much, Dr. Pace.

Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman.

I wondered if I could, Chairman Seyler, go back over a few things, because I think it is important for people to understand the damage that actually has been done in the area. While we are talking about the Colville Federation and the restitution that was given to them, sometimes we get lost in all the numbers. Could you provide the committee some detail about the tribal assets that have been inundated because of the rising river?

Mr. SEYLER. The Spokane Tribe, being historically living along the river, only naturally started developing through the years those farms, the orchards, those families as they built their homes, used the cemeteries that historically lay our ancestors were all covered over. Every year, that water as it has fluctuated for the Nation's use opens those graves up, opens up those village sites, opens up the cultural and spiritual sites. Within the records, you will see that there were other hydropower sites that could have been built

benefiting the Spokane Tribe. Those have been covered over. That is probably some of the most.

Senator CANTWELL. Was there any attempt to relocate the graves during the construction of the dam?

Mr. SEYLER. More so for the Colville Tribe because they had more notice that it was going to happen. A few graves did get relocated, just on a last minute, maybe 1 week before they were covered over. But every year, we have people down on the boats walking the shores, trying to protect those graves. That water fluctuates on most years 90 feet. If you take 90 feet in a valley, sometimes you have a 1-mile long beach, for 18 miles, sometimes narrower, but sometimes 1 mile of beach. The Spokane River is about 15 miles like that, so it is a constant looking for those graves, because we do not know where they are at, because historically we have been there for over 10,000 years.

Senator CANTWELL. So compared to the Colvilles, you think that maybe what, 90 percent of those graves were not moved?

Mr. SEYLER. They are still there.

Senator CANTWELL. And have been affected and continue to be affected.

Mr. SEYLER. As of last month, I can attest that graves, we still had to relocate some as we found them coming up open.

Senator CANTWELL. And Chairman Seyler, what about the economic loss from salmon as a mainstay for the tribe?

Mr. SEYLER. Both economically and just for life itself, economically we cannot fish salmon. We have no place to go get salmon if we wanted. The Colvilles do. They can go to Chief Joseph and pull those fish out of the river. Other tribes can go to where the Klamath Falls used to be, where the other fishing sites used to be, and fish for those salmon. We do not have that right anymore, unless we buy a State permit. We should not have to do that.

Senator CANTWELL. Prior to the construction of the dam, though, the mainstay of economic resource for the tribe was salmon fishing?

Mr. SEYLER. Centered around salmon. Prior to the construction, salmon benefited the tribes not just in sustenance, but also it was a trading item. When times were tough, we could take the salmon and trade with other tribes. The economic value, we never sold the salmon because in our teachings, you do not take anything more than you can eat. So it is hard to put an economic value as far as sales of the salmon because that was not our heritage. We were not allowed to take something from the river if it was not for our own provision. That is just our cultural way.

Senator CANTWELL. In the 1940 directive by the Secretary of the Interior on what is just and equitable compensation, I think they came up with some number.

Mr. SEYLER. $4,700.

Senator CANTWELL. $4,700. I don't know if under any scenario $4,700 would have been equitable justification. But what do you think the number should be as far as payment to the tribe as it relates to the impact of the Grand Coulee Dam and the Federal Power Act?

Mr. SEYLER. I think fairness would go back to the process that was developed, and we know that there was also a tie to the Colville legislation through the years. I have had to deal with that.

We feel that even they were cut short of what they deserved. The $39.4 million that has been mentioned over the years by the tribe is fair to us, not that it based on the Colvilles is probably not enough, but that is something that we could move forward with.

Over the years, we have had negotiations, and following the identical discussions that the Colville Tribal Council had with the U.S. Government, when they came to a loggerhead, the Colville Tribe had a high, I guess BPA or the Government had a low figure, and they just cut the baby right in half. That is where they come up with their $57 million and their $15.25 million annually. There was no formula. They had no formula. There was a formula created later to work around that number. That came directly from their economist. My good friend and chairman at that time, Eddie Pomantier, that came from them directly and that was the method that was used.

Senator CANTWELL. The damage done by Lake Roosevelt, which has been specified as it related to the Colvilles and their payments, was similar to the damage done from Lake Roosevelt to the Spokanes?

Mr. SEYLER. Identical, if not worse for the Spokanes, because of the no-notice. I saw there was a video that was done, and I cannot recall even what it was. Actually, it was the first camera that came out of California, a video camera that was colored. It showed the Colville Tribes taking the time to remove those graves, taking the time to relocate their homes and their churches and that. Where the Spokanes as the water rose, we had to watch ours float down river.

Senator CANTWELL. Thank you, Mr. Chairman.

Senator INOUYE. Thank you very much.

I gather, Mr. Chairman, that at this moment the negotiations between BPA and your tribe are not going on.

Mr. SEYLER. That is correct.

Senator INOUYE. Do you intend to resume these negotiations?

Mr. SEYLER. This morning, both BPA and the Spokane Tribe testified over at the House on this issue, and both parties were asked that same question. Both parties indicated that they would like to go back to the negotiating table. My comment to that is that the tribe has been trying to negotiate this for the last 60 years and just with one understanding is that whoever negotiates for the Federal Government on this is that they really understand what the term "negotiation" means. That is not what we have found in the past, a take-it-or-leave-it offer, but both parties show willingness at this time.

Senator INOUYE. On the payment of the compensation, I presume part of that will come from the Bonneville Power Administration and part of it from the Government.

Mr. SEYLER. Up until this point, it has been looked at just from Bonneville. I think just recently they looked at other forums. The Spokane tribal members do not care where it comes from. They just feel that things need to be fairly and honorably addressed. I think there are some real avenues that could resolve this issue. Part of that answer, because of who is receiving the rewards, Bonneville is part of that; maybe the water and land settlement could be used.

We have other thoughts and ideas, but it is getting those onto the table and really looked at carefully.

Senator INOUYE. The bill, as you know, does not establish the source of compensation payment. I presume that was done to give you the flexibility to negotiate. If this committee can do anything to bring this about or to expedite it, we would be very happy to help.

Mr. SEYLER. That is very much appreciated.

Senator INOUYE. Do you have further questions?

Senator CANTWELL. Mr. Chairman, if I could, to followup on your comment, I believe that there have been many benefits from the establishment of the Grand Coulee Dam, and obviously, a history here that we have had the opportunity to look back on both from the Colvilles and the experience that the Spokanes have. So I guess at this point in time I am interested in looking at restitution to the Spokanes. If that means looking broader at the Treasury as opposed as to the Bonneville Power Administration as a source, I am happy to consider a variety of options.

What I think is important for today's hearing is that we have had two courses of history here, two entities, sovereign nations impacted in similar ways. I am not sure if we actually weighed actual damages, we might have the most damage done right before us today. And yet, the restitution was not paid. So not only do we want to see that restitution, we want to look back on Indian country history and say that there was equitable access to restitution, equitable results, and not see future generations viewing the films of a lost opportunity to preserve the heritage and the history of a culture within the State of Washington.

So I very much appreciate your attention to this important issue and to Senator Murray being here as well today.

Senator INOUYE. The record of this hearing will be kept open for 2 weeks just in case you want to supplement your remarks or to add anything.

Mr. SEYLER. Just one last comment. I think it would only be appropriate that not only everything be expected out of BPA, because this country, the great country of the United States of America, has also benefited from what the tribe lost, what we gave. We gave everything for this country to survive the war, to help it come out of the Depression and many other things.

Thank you.

Senator INOUYE. I thank all of you very much for this most enlightening hearing. I thank Senator Cantwell. I think this has been very helpful. You have me very eager to move forward.

Senator CANTWELL. Thank you, Mr. Chairman.

Senator INOUYE. Thank you very much.

The hearing is adjourned.

Mr. SEYLER. Thank you, Mr. Chairman. Thank you, committee.

[Whereupon, at 3 p.m. the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Thank you, Senator Inouye, I greatly appreciate your willingness to hold this important hearing and for your cosponsorship of this legislation. You have been a consistent champion for establishing fair and equitable settlements agreements that compensate sovereign Indian nations harmed by actions of the U.S. Government. For this and other efforts on behalf of Washington State tribes, I thank you.

I would also like to thank my friend and colleague Senator Murray for her remarks in support of this bill. As you are all aware, Senator Murray was instrumental in providing the Confederated Colville Tribe with a fair and equitable settlement in 1994 for nearly identical impacts to its reservation. I look forward to working with her as we move this settlement agreement forward.

And of course I would like to thank Warren Seyler and the other members of the Spokane Tribe and their representatives for coming today. I know you have been fighting for just compensation for the damages to your Reservation and way of life since construction of the Grand Coulee Dam began in 1933. I recognize that it has been an extremely frustrating process, and I hope this hearing will provide the necessary catalyst to once and for all resolve the Spokanes claim against the U.S. Government.

I would also like to take this opportunity to reiterate my condolences to you and the tribe regarding the death of Bruce Wynne. Bruce's dedication to his community was legendary, and his loss will be felt not just in Washington State, but across the country. My thoughts and prayers are with his family and the tribe at this difficult time. I know Bruce spent a great deal of time trying to solve this very issue, so it is my hope that we can act quickly to settle this long-standing grievance which could serve as a legacy to Bruce's leadership.

Mr. Chairman, my goal for this hearing is to establish for the record the harm done to the Spokane Tribe following construction of the Grand Coulee Dam, and the obligation the Federal Government has to compensate the Spokanes for these damages.

For more than one-half century, the Grand Coulee Project has made an extraordinary contribution to this Nation. It helped pull the economy out of the Great Depression. It provided the electricity that produced aluminum required for airplanes and weapons that ensured our national security. The Project continues to produce enormous revenues for the United States, it is a key component of the agricultural economy in eastern Washington, and plays a pivotal role in the electric systems serving the entire western United States.

However, these benefits have come at a direct cost to tribal property that became inundated when the U.S. Government built the Grand Coulee dam. Before dam construction, the free flowing Columbia and Spokane Rivers supported robust and plentiful salmon runs and provided for virtually all of the subsistence needs of the Spokane Tribe. After construction, the Columbia and Spokane rivers flooded tribal communities, schools, and roads, and the remaining stagnant water continues to erode reservation lands today.

The legislation that Senators Inouye, Murray, and I introduced in July is similar to Senator Murray's 1994 bipartisan bill codified a settlement and provided perpetual payments to the neighboring Confederated Colville Tribes. To date, the Colville Tribes have received over $180 million in payments for their lands inundated by Lake Roosevelt.

This bill builds on the success of that successful settlement by providing the Spokane Tribe of Indians' with compensation that is directly proportional to the settlement afforded the Colville Tribes. Specifically, the Spokane Tribe would receive 39.4 percent of the past and future compensation awarded the Colville Tribes pursuant to the 1994 legislation. This percentage is based on the proportion of tribal lands impacted after the Federal Government built the Grand Coulee Project. S. 1438 also outlines the facts of the Spokane claim and describes how the tribe will use any forthcoming compensation funds.

Mr. Chairman, if you will indulge me, I would like to read for the record the findings forwarded by this legislation:

From 1927 to 1931, at the direction of Congress, the U.S. Army Corps of Engineers investigated the Columbia River and its tributaries to determine sites at which power could be produced at low cost.

The Corps of Engineers identified a number of sites, including the site at which the Grand Coulee Dam is located; and recommended that power development at those sites be performed by local governmental authorities or private utilities under the Federal Power Act.

Under section 10(e) of that act, a licensee is required to compensate an Indian tribe for the use of land under the jurisdiction of the Indian tribe.

In August 1933, the Columbia Basin Commission, an agency of the State of Washington, received a preliminary permit from the Federal Power Commission for waterpower development at the Grand Coulee site.

In the mid-1930's, the Federal Government, which is not subject to the Federal Power Act, Federalized the Grand Coulee Dam project and began construction of the Grand Coulee Dam.

At the time at which the Grand Coulee Dam project was Federalized, the Federal Government recognized that the Spokane Tribe and the Confederated Tribes of the Colville Reservation had compensable interests in the Grand Coulee Dam project, including compensation for the development of hydropower; the extinguishment of a salmon fishery on which the Spokane Tribe was almost completely financially dependent; and the inundation of land with loss of potential power sites previously identified by the Spokane Tribe.

In the act of June 29, 1940, Congress granted to the United States all rights to Spokane Tribe and Colville Indian Reservations lands that were required for the Grand Coulee Dam project; and various rights-of-way over other land under the jurisdiction of Indian tribes that were required in connection with the project. Additional provisions provided that compensation for the land and rights-of-way was to be determined by the Secretary of the Interior in such amounts as the Secretary determined to be just and equitable.

In response to these provisions, the Secretary of the Interior paid to the Spokane Tribe $4,700, and $63,000 to the Confederated Tribes of the Colville Reservation.

In 1994, following 43 years of litigation before the Indian Claims Commission, the United States Court of Federal Claims, and the United States Court of Appeals for the Federal Circuit, Congress ratified an agreement between the Confederated Tribes of the Colville Reservation and the United States that provided for damages and annual payments of $15,250,000 in perpetuity, 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 legal opinions issued by the Office of the Solicitor of the Department of the Interior, a Task Force Study conducted from 1976 to 1980 ordered by the Committee on Appropriations of the Senate, and hearings before Congress at the time at which the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act was enacted, it has repeatedly been recognized that the Spokane Tribe suffered damages similar to those suffered by, and had a case legally comparable to that of, the Confederated Tribes of the Colville Reservation; but that the 5-year statute of limitations under the act of August 13, 1946 precluded the Spokane Tribe from bringing a civil action for damages under that act.

The inability of the Spokane Tribe to bring a civil action before the Indian Claims Commission can be attributed to a combination of factors, including the failure of the Bureau of Indian Affairs to carryout its advisory responsibilities in accordance with that act; and an attempt by the Commissioner of Indian Affairs to impose improper requirements on claims attorneys retained by Indian tribes, which caused

delays in retention of counsel and full investigation of the potential claims of the Spokane Tribe.

As a consequence of construction of the Grand Coulee Dam project, the Spokane Tribe has suffered the loss of the salmon fishery on which the Spokane Tribe was dependent; identified hydropower sites that the Spokane Tribe could have developed; and hydropower revenues that the Spokane Tribe would have received under the Federal Power Act had the project not been Federalized; and continues to lose hydropower revenues that the Federal Government recognized were owed to the Spokane Tribe at the time at which the project was constructed.

More than 39 percent of the land owned by Indian tribes or members of Indian tribes that was used for the Grand Coulee Dam project was land of the Spokane Tribe.

Mr. Chairman, the United States has a trust responsibility to maintain and protect the integrity of all tribal lands within its borders. When Federal actions physically or economically impact harm, our nation has a legal responsibility to address and compensate the damaged parties. Unfortunately, despite countless efforts, one-half century has passed without justice to the Spokane people.

The time has come for the Federal Government to finally meet its fiduciary responsibility for converting the Spokane tribe's resources to its own benefit. I believe that the legislation we are proposing today will catalyze the completion of a fair and equitable settlement and put a closure to these matters. I was pleased to see similar bipartisan legislation introduced earlier this year in the U.S. House of Representatives and I am glad to see that the House bill also received a hearing just this morning.

Again, thank you Mr. Chairman for holding this hearing and support this important legislation. I look forward to working with you, the Indian Affairs Committee, our Senate colleagues, and the Spokanes as endeavor to develop a satisfactory and permanent settlement with all parties involved.

PREPARED STATEMENT OF HON. PATTY MURRAY, U.S. SENATOR FROM WASHINGTON

Good morning, Mr. Chairman, and thank you for this opportunity. I'm proud to introduce to the committee the distinguished chairman of the Spokane Tribal Business Council, Chairman Warren Seyler. He's a leading figure in Washington's tribal communities, and I know his testimony will be of great value to this committee.

Before I introduce him, I'd like to share a few ideas about S. 1438. Earlier this year, I joined with Senators Cantwell and Inouye in offering legislation that would finally compensate the Spokane Tribe for its contribution to the hydropower that is generated by the Grand Coulee Dam.

Some of you will recall that I introduced similar legislation in the 106th and 107th Congresses.

The Grand Coulee Dam is the largest electricity producer in the United States. It provides electricity and water to the Columbia Basin Project, which is one of the world's largest irrigation projects. For more than 60 years, the Grand Coulee has been the backbone of the Northwest's Federal power grid and our agricultural economy.

But for the Native peoples of this region, construction of the Grand Coulee Dam came at a very high price. For the Spokane Tribe in particular, it brought an end to a way of life.

The Spokane River was once a free-flowing waterway that supported plentiful salmon runs. It became a barren stretch of slack water that now erodes the southern lands of the reservation. In fact, the tribe's reservation has been flooded on two sides.

Mr. Chairman, S. 1438 is not the first piece of legislation seeking to compensate a Tribe for losses brought by construction of the Grand Coulee Dam. In 1994, Congress passed similar settlement legislation to compensate the neighboring Confederated Colville Tribes.

Since the 1970's, the Congress and Federal agencies have indicated that both the Colville and Spokane Tribes should be compensated for their losses. This legislation will provide a long overdue settlement to the Spokane Tribe.

Mr. Chairman, it is now my pleasure to introduce Chairman Seyler to the committee. First elected to the Spokane Tribal Business Council in 1990, Chairman Seyler also serves on the board of the Upper Columbia United Tribes, which is involved in fish and management issues along the Columbia River. He is also active in management issues at Lake Roosevelt, a reservoir created when the Grand Coulee Dam was constructed.

Finally, Mr. Chairman, I'd like to offer my condolences to the Spokane Tribe. Last week the tribe—and indeed all of Indian country—suffered a great loss with the passing of former Chairman Bruce Wynne. Bruce led with his heart and had a remarkable ability to bridge generations. His leadership, knowledge of history, and warm personality will be missed, but his legacy continues in leaders like Chairman Seyler.

Thank you.

SUPPLEMENTAL STATEMENT OF HOWARD FUNKE
ATTORNEY, SPOKANE TRIBE OF INDIANS
FOR THE RECORD IN REFERENCE TO
THE SENATE COMMITTEE ON INDIAN AFFAIRS HEARING ON S. 1438,
SPOKANE TRIBE OF INDIANS OF THE SPOKANE RESERVATION
GRAND COULEE DAM EQUITABLE COMPENSATION ACT
OCTOBER 2, 2003

Mr. Chairman and members of the Senate Committee on Indian Affairs, my name is Howard Funke and I am an attorney for the Spokane Tribe of Indians. I submit this additional statement for the Hearing record on S. 1438 which, if enacted, would compensate the Spokane Tribe for losses it has suffered as a result of the Grand Coulee Project. This statement is supplementary to my oral testimony before the Committee on October 2, 2003.

In 1946, Congress enacted the Indian Claims Commission Act. Act of August 13, 1946 (60 Stat. 1049). Pursuant to that Act, there was a five year statute of limitations to file claims before the Commission which expired August 13, 1951.

Neither the Colville Tribes nor the Spokane Tribe filed Grand Coulee claims with the Commission prior to the 1951 expiration of the statute of limitations. In 1976 the Colville Tribes were able to amend their complaint before the Commission to include for the first time their Grand Coulee claims. Why didn't the Spokane Tribe amend its complaint before the Commission to add its Grand Coulee claims?

The ICC Act imposed a duty on the Bureau of Indian Affairs to apprize the various tribes of the provisions of the Act and the need to file claims before the Commission. 25 U.S.C. § 70l (repealed). Unfortunately, the BIA agency responsible for the Spokane Tribe was located 100 miles away on the Colville Indian Reservation. According to a 1981 memorandum to the Chairman of the Senate Appropriations Committee:

> "There is no record of the Claims Commission or the Indian Bureau notifying or dealing with the Spokane Tribe in any way regarding its right to file claims before the Indian Claims Commission. During the Calvin Coolidge administration a bill had passed through Congress permitting it and the neighboring Kalispel Tribe to file claims for their ceded aboriginal lands, but that bill was vetoed by the president. That potential claim for the cession of its land was the only Claim that the Tribe had knowledge that it had.
>
> At about the time of the approval of its tribal government in June 1951 the tribal leaders heard from their neighboring Kalispels and Coeur d'Alenes of their having filed claims for the

> cession of their aboriginal lands. They hastened back to Washington, D.C. and belatedly employed the same claims attorneys these tribes had. These just hired attorneys had no time to investigate other claims and filed only one claim, that for the cession of their approximately 3.5 million acres of aboriginal land."

See Memorandum of January 12, 1981 with Final Report, Colville/Spokane Task Force (September 1980). (Attachment 5 to Spokane Tribe of Indians' Written Materials submitted October 2, 2003). 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. Thus, the Tribe had no way of knowing that its Grand Coulee claims should, or could, have been brought under the ICCA.

Although the Indian Claims Commission statute of limitations expired in August 1951, neither the Colville Confederated Tribes nor the Spokane Tribe knew then or for many years thereafter were aware that there would be a need to even file claims related to the use of their tribal land and water resources for the construction and operation of the Grand Coulee Dam for power production and reclamation. Instead, they were led by their federal trustee to believe that the United States would address their claims. Beginning in the 1930s and 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 upon the share of revenue generated by Grand Coulee which should go to the Tribes for the use of their respective resources.

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 to the Tribes for the United States' proportionate use of their Tribal resources for revenue generated by the Grand Coulee Dam. Thus, while the Spokane Tribe in 1967 settled the ICCA claims, 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.

In addition to these points, no case law under the ICCA supported claims that had not fully accrued before 1951. Claims for wrongful conduct that began before 1951 and continued beyond that date were not recognized as legally viable until nearly a decade after the Spokane Tribe's settlement. The Colvilles, who had not settled their ICCA claim, continued their litigation against the United States. In 1975, the Indian Claims Commission ruled for the first time ever on a jurisdictional question, left open since 1956, that controlled the Colvilles' Grand Coulee claim. The Commission held 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). With this major legal question answered, the Colvilles 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 Colvilles pursued litigation 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. *Colville Confederated Tribes v. United States*, 964 F.2d 1102 (Fed. Cir. 1992). In light of this ruling, the United States in earnest renewed negotiations with the Colvilles to resolve that Tribe's Grand Coulee-related claims. Unfortunately 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 meaningful negotiations.

Numerous historical occurrances factored into the different legal postures held under the ICCA by the Colville and Spokane Tribes. Key among them was the Spokane Tribe's inability to amend its original petition to include Grand Coulee-related claims. The Spokane Tribe was not advised by its federal trustee, as required by statute, of its potential ICCA claims related to Grand Coulee. The Tribe was misled by continuing representations by its federal trustee that the United States would fairly and honorably address its Grand Coulee claims. And, finally, no ICCA case recognized the Commission's jurisdiction over such ongoing claims until 1975, eight years after the Spokane Tribe's claims were settled.

Statement for the Record of

Steven G. Hickok, Deputy Administrator

Before the Senate Committee on Indian Affairs

Hearing on S. 1438, the Spokane Tribe of Indians of the Spokane

Reservation Grand Coulee Dam Equitable Compensation Settlement Act

October 2, 2003

Mr. Chairman, my name is Steven G. Hickok. I am the Deputy Administrator of the Bonneville Power Administration (Bonneville). It is my pleasure to appear before the Committee on Indian Affairs. Bonneville appreciates the opportunity to comment on S. 1438, the Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act.

My testimony today will focus on the discussions Bonneville has had with the Spokane Tribe and the proposal the prior Administration made to the Spokane Tribe in response to its request for compensation related to the construction of Grand Coulee Dam. I will also compare that proposal to what would result for the Spokane Tribe if S. 1438 were enacted. Finally, I will address the present Administration's concerns with the proposed legislation. Although the Administration is committed to appropriate compensation for the Spokane Tribe, it is unable to support the legislation.

First, let me set out the factual background that gave rise to the Spokane Tribe's request for compensation, which affects our view of the current situation.

Factual Background

This matter arose out of representations made by Federal officials to the Spokane Tribe and the Confederated Tribes of the Colville Reservation when Grand Coulee Dam was under construction in the 1930s. Approximately 2,500 acres of land within the Spokane Reservation and 6,900 acres of land within the Colville Reservation were taken for use in the Grand Coulee Project. Originally, the State of Washington planned to develop a hydroelectric project at Grand Coulee. An agency of the state obtained a preliminary permit under the Federal Power Act to develop the site. Had the state built the project, a license issued under the Federal Power Act would have provided the Spokane Tribe and the Colville Tribes compensation for use of their lands in the Grand Coulee Project. In 1933, however, Congress authorized Federal construction of Grand Coulee Dam as part of the Columbia Basin Project, to be developed and administered by the U.S. Bureau of Reclamation. Federal projects are not subject to licensing under the Federal Power Act.

That same year, Secretary of the Interior Harold Ickes approved two letters from the Department of the Interior—one to the Supervising Engineer of the Grand Coulee Project and one to the Commissioner of Reclamation—indicating that, because Spokane and Colville Tribal land would be taken for the project, each of the Tribes should receive a share of the revenue from the sale of power produced by the dam. The following year, the Assistant Director of Irrigation wrote the Commissioner of Indian Affairs, proposing that the Tribes be paid an appropriate percentage of the "profits" of the project based on the amount of Reservation land beneath the dam and the reservoir. He proposed that half of the value of the project be ascribed to the dam and half to the

reservoir, and that the Spokane Tribe participate in proportion to the Reservation's contact with the reservoir only, as the Spokane Tribe had no land under the dam.

The Government did not act on this proposal, nor did it determine what might be an appropriate share of revenues for either Tribe. In 1946 Congress passed the Indian Claims Commission Act (ICC), creating a five-year window in which Indian tribes could sue the United States for past harms. The Colville Tribes brought suit under the Act for a share of the power revenues of Grand Coulee Dam. Although the Spokane Tribe brought suit against the Government under the Act for other claims, it did not bring a suit or amend its claim for a share of Grand Coulee's revenues prior to settling its ICC claim.

Settlement With the Colville Tribes

Bonneville has marketed the power from Grand Coulee Dam since the dam began operations in 1942. Therefore, although Bonneville was not a named party to the Colville Tribes litigation, Bonneville understood that the power function – among the other, multiple functions of Grand Coulee – and its users (the Bonneville ratepayers) would likely be expected to bear a share of any judgment in the case. Together with the Department of Justice, Bonneville entered into discussions with the Colville Tribes to settle the Colvilles' lawsuit. The parties reached agreement in 1993, and legislation was passed in 1994 approving the settlement and directing payment of the settlement amounts to the Colville Tribes.

The settlement value was based largely on a formula that had been used to compensate the Flathead Indian Tribe when the Tribe's land was taken by a private entity for the development of Kerr Dam. It also included a litigation risk premium in recognition of the financial risk to the Government in proceeding to trial if the case did not settle. The settlement payments included two elements. First, the Colville Tribes in total were paid a lump sum of $53 million from the Judgment Fund (a fund available to pay certain court judgments against the United States, and any Justice Department settlements of litigation) to compensate them for use of their land from 1942, when Grand Coulee began operations, to the time of settlement. Bonneville was not obligated to reimburse the Judgment Fund for any of this amount.

Second, Bonneville agreed to make annual payments to the Colville Tribes going forward. These payments represent a share of the revenue from the sale of the power from the dam. The first payment was for $15.25 million for fiscal year 1995. Subsequent payments have been governed by a formula based on the annual value of power produced by Grand Coulee. Under the 1994 legislation enacting the settlement and a subsequent 1996 amendment, Bonneville receives an annual credit for its repayment to the Treasury that covers a portion of Bonneville's payment to the Colville Tribes. The credit was $15.86 million in fiscal year 1997, and increased annually until fiscal year 2001, when it was $18.55 million. Since fiscal year 2001 the credit has been fixed at $4.6 million, and Bonneville will receive an annual credit of $4.6 million as long as it continues making payments to the Colville Tribes. Therefore, the percentage of the Bonneville payment that the credit covers is changing through time. These credits, together with the amount paid by the Judgment Fund, achieve the contribution of the U.S. taxpayers to the

settlement—30 percent of the settlement's value. Bonneville's ratepayers are contributing 70 percent of the value of approximately $570 million.

Discussions With The Spokane Tribe

On August 4, 1994, the Senate Indian Affairs Committee and the Senate Energy and Natural Resources Committee held a joint hearing on S. 2259, a bill that endorsed the settlement agreement with the Colville Tribes. A representative of the Spokane Tribe testified at the hearing, seeking an amendment to the bill to address the Spokane Tribe's claims of damage from the project.

During full Senate consideration of the bill, which took place during the prior Administration, Senators Daniel Inouye, Bill Bradley, John McCain, and Patty Murray engaged in a colloquy urging the Department of the Interior and other relevant Federal agencies to enter into negotiations with the Spokane Tribe to conclude a fair and equitable settlement of the Tribe's claims. On August 5, 1994, Interior Solicitor John Leshy wrote Senator Bill Bradley, indicating that the Department of the Interior was reviewing information submitted by the Spokane Tribe and would continue its examination. Subsequently, representatives of the Department of the Interior and the Spokane Tribe met on a number of occasions to discuss the Spokane Tribe's claims.

Bonneville then entered into discussions with the Spokane Tribe. In 1998 Bonneville representatives traveled to the Spokane Reservation to explain the formula used in the Colville

Tribal settlement and how it might be applied to the Spokane Tribe's compensation request. In doing this, Bonneville recognized the Spokane Tribe's current and future contributions to the value of the project (from the continuing use of former Reservation lands), but, because of the absence of a claim and the lack of access to the Judgment Fund, indicated that it would not address any past contributions.

Since 1998 Bonneville and the Spokane Tribe have met a number of times to discuss appropriate compensation. Unfortunately, the two have been unable to reach agreement. In the end the Spokane Tribe was not satisfied with the going-forward payments that resulted when the formula used to compensate the Colville Tribes was applied, and was unhappy with the Administration's resistance to paying past damages.

On May 2, 2000, Bonneville Administrator Judi Johansen reiterated the prior Administration's position on compensation in a letter to Senator Murray. In the letter, Ms. Johansen underscored that the Administration did not support payments for any past periods, but was prepared to discuss again the possibility of prospective annual payments of a share of Grand Coulee power revenues, based on the methodology employed in the Colville Tribes' settlement. She added that it would also be reasonable to discount these payments because, unlike the Colville Tribes, the Spokane Tribe had no legal claim. Finally, she stated that it was the then Administration's position that, consistent with the cost-sharing arrangement between ratepayers and taxpayers adopted in the Colville Tribes legislation, 70 percent of the value of any compensation to the Spokane Tribe should come from Bonneville ratepayers and 30 percent from U. S. taxpayers.

S. 1438

If enacted, S. 1438 would compensate the Spokane Tribe at a level that appears to be substantially in excess of the amount that the prior Administration considered in previous negotiations. The bill would establish in the Treasury an interest-bearing account called the Spokane Tribe of Indians Settlement Fund Account. Section 5(b)(1) of the bill would require the Secretary of the Treasury (Secretary) to deposit into this account an amount equal to 39.4 percent of the lump sum paid to the Colville Tribes, adjusted for inflation, to compensate the Spokane Tribe for use of its land from June 29, 1940, to November 2, 1994.

The bill also would require the Secretary to make two series of payments. First, section 5(b)(2) would require the Secretary to deposit into the account each year for six years an amount equal to 7.88 percent of the total annual payments made to the Colville Tribes from 1996 (when the first annual payment was made to the Colville Tribes) through the end of the fiscal year during which S. 1438 is enacted, adjusted for inflation. Second, section 5(c) of the bill would require the Secretary to pay the Spokane Tribe on an annual basis, an amount equal to 39.4 percent of each annual payment that Bonneville is making to the Colville Tribes in fiscal years after the date of enactment of the Act.

Finally, Section 8 of the bill would authorize an appropriation of such sums as are necessary to carry out the Act.

In contrast to the payments that would be provided the Spokane Tribe under S. 1438's provisions, Bonneville's estimate of going-forward payments to the Spokane Tribe – based on the methodology employed in the Colville Tribes settlement and taking into account the difference between the amount of acreage taken from the Colville Reservation and the amount taken from the Spokane Reservation – is about 19 percent of those provided to the Colville Tribes. During most of our discussions with the Spokane Tribe we have also assumed that this number should be discounted to reflect the lack of any claim filed under the ICC.

More Discussions With the Spokane Tribe

During the Bush Administration and Administrator Steve Wright's tenure, Bonneville continued discussions with the Spokane Tribe. Bonneville advanced a number of its own proposals to the Spokane Tribe that were outside the framework approved by the prior Administration in the hope that these proposals could bring prompt resolution of this issue. None of these proposals were embraced by the Spokane Tribe as acceptable for settlement, and so Bonneville has not pursued approval of them in the present Administration. None of these proposals remain on the table. We advanced them in a spirit of reaching closure promptly. Bonneville did not advance them as proposals the Spokane Tribe could accept as a starting point and then build on to pursue additional compensation. Without agreement of all the Federal and non-Federal parties, the Administration is without a proposal for an appropriate settlement. The Administration is willing to resume working with the tribe to reach a fair settlement. At the appropriate time, the Administration would want to discuss the potential funding mechanisms.

Conclusion

Mr. Chairman, in closing I want to reiterate that the Bush Administration is supportive of reaching a fair and final settlement with the Spokane Tribe. I stand ready to answer any questions you may have.

SUPPLEMENTAL STATEMENT OF CHARLES E. PACE, PH. D.
ECONOMIST, SPOKANE TRIBE OF INDIANS
FOR THE RECORD IN REFERENCE TO
THE SENATE COMMITTEE ON INDIAN AFFAIRS HEARING ON S. 1438,
SPOKANE TRIBE OF INDIANS OF THE SPOKANE RESERVATION
GRAND COULEE DAM EQUITABLE COMPENSATION ACT
OCTOBER 2, 2003

Mr. Chairman and members of the Senate Committee on Indian Affairs, my name is Charles E. Pace and I am the Spokane Tribe of Indians' economist. I submit this additional statement for the Hearing Record on S. 1438 which, if enacted, would compensate the Spokane Tribe for losses it has suffered as a result of the Grand Coulee Project. This statement is supplementary to my oral testimony before the Committee on October 2, 2003.

With the widespread unemployment in the 1930's and severe economic distress of the Great Depression, construction of the Grand Coulee Project began as part of the federal government's efforts to jump start the nation's failing economy, revive its flagging industry and create employment opportunities for people who were otherwise unable to find work. Ironically, by eliminating the salmon runs upon which tribal people depended, by destroying tribal communities that had existed along the banks of the Columbia River and Spokane River since time immemorial and by inundating tribal lands, flooding thousands of tribal burial sites and destroying tribal infrastructure, the industrial recovery and "new deal" which the Grand Coulee Project promised to provide for the nation and its army of unemployed workers utterly destroyed the very basis of the tribal people's historic economy and eliminated virtually all employment opportunities available to tribal members.

This is, in fact, the dominant "economic" characteristic of the Grand Coulee Project: the enormous national and regional benefits provided by the Grand Coulee Project have been derived at each and every stage of the project's development by unparalleled destruction, loss and injury to the tribal people whose lands were seized without just compensation by the United States for the project. The losses which the Spokane Tribe suffered in terms of the destruction of its way of life have been devastating to its people. My statement touches briefly on the enormous benefits which have been derived by the nation and the Pacific Northwest in contrast to the huge losses suffered by the Spokane. I'll conclude by providing a brief sketch of economic conditions on the Reservation and the challenges which confront the Spokane Tribe which, in large part, would be ameliorated if the Spokane people were provided just compensation for past damages and a fair, proportional share of the project's benefits.

During WWII, the Grand Coulee Project made a substantial contribution to the nation's security. The hydroelectric power produced at Grand Coulee was used to manufacture the aircraft that were essential for the war effort. This, more than any other factor, provided a decisive advantage in conflicts within the Pacific theatre. The aircraft that were produced using electricity generated at Grand Coulee, as much as the pilots that flew them, made a heroic contribution to this nation's security. At the same time, electricity generated at Grand Coulee was used to produce the atomic bomb at Hanford and bring the conflict to an earlier conclusion than might have otherwise been possible. However, these enormous contributions to the security of our nation were derived at great expense to the Spokane people. In short, the future security of our nation was enhanced but only by undermining the security and future well-being of the Spokane people.

Following WWII, the inexpensive and readily available electricity provided by the Grand Coulee Project made a key contribution to building the economy of the Pacific Northwest, particularly the shipyards and ports at Portland, Oregon and Seattle, Washington. With construction of the third powerplant at Grand Coulee, the project became the critical link between water storage facilities in the upper reaches of the Columbia River Basin and downstream generating assets on the mainstem Columbia River. Grand Coulee became the regulating reservoir for power production and the single most important "peaking" asset for the region. This positioned the Pacific Northwest and the nation to secure the maximum value of the US/Canada Treaty and made possible the inter-regional exchange of electricity via the Pacific Northwest-Southwest Intertie.

With completion of the third powerplant, the Grand Coulee project provided the bulk of the operating flexibility for Federal Columbia River Power System. Without the reserves provided by Grand Coulee, voltage regulation and other system-wide contributions which are unique to the project, the configuration of electric systems serving the Pacific Northwest and the western United States would be much different. Specifically, our electric system would be less efficient, average system costs would be much higher and the electric system would be far less reliable.

The Grand Coulee Project also provides local and regional benefits above and beyond the hydroelectric power that is generated and coordinated system operations that are made possible. For example, Grand Coulee provides a full water supply for over 500,000 acres of land in the Columbia Basin Project without which irrigated agriculture in eastern Washington State would not be possible. It has been estimated that each 160-

acre farm in the Columbia Basin Project has received direct subsidies in excess of $1.2 million. The fact that the 500,000 acres of farm land currently irrigated in the Columbia Basin Project receive a full water supply means that land values in eastern Washington State have, as a result of the Columbia Basin Project, increased by an estimated $2.4 billion.

The Grand Coulee Project also shoulders a disproportionate share of the responsibility for providing system-wide flood control and support for endangered species. The flood control benefits which are provided as far downstream as Portland, Oregon require seasonal drawdown of storage in Lake Roosevelt. Depending upon water conditions, the flood control benefits that are provided can amount to over $200 million annually. However, these system-wide benefits are derived at a significant cost to the Spokane as seasonal water evacuation exposes tribal lands and burial sites to erosion, impairs water quality in the reservoir, harms resident fish and wildlife and impairs the Tribe's economic enterprises on the River.

Similarly, Grand Coulee shoulders a disproportionate share of the burden of providing water for threatened and endangered species of fish which are the "icon" of the Pacific Northwest. Water which is released to meet the needs of threatened and endangered species also exposes tribal lands and burial sites, harms resident fish and wildlife and adversely impacts other tribal rights and interests. It is, to say the least, ironic that the Spokane would first see their anadromous fish runs destroyed by Grand Coulee and then be asked to suffer increasing losses so that Grand Coulee can shoulder more than its fair share of the burden of meeting the needs of fish stocks downstream.

In summary, the Grand Coulee Project, more than any other asset available to Washington State and the Pacific Northwest, has provided extraordinary levels of benefits. At the same time, the Spokane Tribe has suffered enormous and catastrophic losses as a result of the project. The complete loss of salmon runs devastated the Spokane culture, economy, health system and lifeways. Over 3000 acres of tribal lands along the mainstem Columbia River and Spokane River were flooded. These were the most valuable lands available to the Spokane. They contained the fishing sites that were central to tribal subsistence. These were inundated, along with tribal communities, schools, roads and other tribal infrastructure. Tribal lands which contain burial sites were flooded. Fords across the river which had always provided the Spokane with access to both sides of the river were inundated. The historic role of trade and commerce that the Spokane people had always performed was lost. The forced physical relocation of tribal households had devastating political, social and economic consequences.

In short, the construction of the Grand Coulee Project was deadly for members of the Spokane Tribe. And these impacts continue to this day. For the Spokane Reservation population (which includes both Indians and non-Indians), the 2000 Census reported that 28.7% live in poverty compared to 10.6% statewide. Eight percent (8%) of Reservation households have no telephone and 4.8% do not have access to a vehicle. Only 56% of the civilian labor force on the Spokane Reservation over the age of 16 is employed. One percent of Reservation households have no plumbing. The median value of housing on the Reservation is only 60% of the median value of housing units for the United States. Median household income on the Spokane Reservation is just 66.5% of the median household income for the United States and, on a per capita basis, income on

the Spokane Reservation is just 47% of per capita national income. The 2000 Census reported an unemployment rate for the Reservation as a whole of 20%, roughly double the unemployment rate for surrounding counties in eastern Washington. Note, however, that this includes both Indians and non-Indians. Focusing only on tribal members, the unemployment rate on the Reservation in 2001 was 75%.

The inability of the Spokane Tribe to receive just compensation for the seizure of its lands for the Grand Coulee Project has severely impacted the ability of the tribal government to provide for the needs of its members. Between fiscal years 1999 and 2003, the Spokane Tribal Council had to slash budgets by about $1.37 million, making it impossible for the Tribe to adequately fund maintenance, management and accounting services, property management, planning and administration. Funding for tribal programs during this period were cut to the bone and tribal governmental services have essentially been reduce to "life support" status. Currently, budgets only include line items for personnel, supplies and training. Everything else has been cut.

And, looking forward to fiscal year 2004, the situation worsens dramatically. In order to balance the general fund budget, the Tribal Council has had to direct additional cuts of over $1.27 million in education, health and human services and other critical programs compared to fiscal year 2003. Most of this has come out of social programs that provide direct services to tribal people in need. Overall, this represents a 54% reduction in funding for FY 2004 compared to FY 2003. The situation currently facing tribal programs is truly desperate and the Tribal Council has had to make draconian choices. Funds for the Tribal Fire Department, Youth and Indian Child Welfare Attorney have been totally eliminated. These programs have been "zeroed out" for FY 2004, i.e.,

cut by 100%. Other programs have been slashed by over 50%. These include Health and Human Services Operations, Education, Community Services, and the Personal Care Program. Funding for the Tribe's Food Distribution Support Program was reduced by 43%. The Senior Liaison Program was cut by 44%. FY 2004 funding for Senior Services and Elderly Meals was cut by 35%. The Tribe's Head Start Support Program was slashed by 45%. If the Spokane Tribe had been fairly compensated for its losses, none of these cuts would have been necessary. With a fair and honorable settlement, the Spokane Tribe would have been well positioned to create additional employment opportunities for its people, to jump-start the tribal economy on the Reservation through tribal initiatives. It would not have been forced to eliminate necessary services such as fire protection. It could have provided for the needs of its youth and its elderly members rather than slashing resources available for people who need it most.

As an economist I am absolutely appalled by the extreme disparity between the losses suffered by the Spokane people in contrast to the enormous benefits that the Grand Coulee Project has provided for our nation and the Pacific Northwest. The legislation which the Committee is considering doesn't even begin to compensate the Spokane Tribe for the wanton destruction of a way of life and the historic losses that its people have suffered at the hands of the United States. There is simply no way that the United States can ever make up for the damages. What this legislation will do, however, is provide the Spokane Tribe with a small proportion of the benefits that the Grand Coulee Project provides. It will assist in healing the grave injustice that these people have suffered and, most important, it will provide a source of revenue which the tribal government can use to meet the contemporary needs of its people.

TESTIMONY OF WARREN SEYLER
CHAIRMAN, SPOKANE TRIBE OF INDIANS

ON S. 1438

To provide for equitable compensation of the Spokane Tribe of Indians of the Spokane Reservation in settlement of claims of the Tribe concerning the contribution of the Tribe to the production of hydropower by the Grand Coulee Dam, and for other purposes.

BEFORE THE
Committee on Indian Affairs

October 2, 2003

Thank you Mr. Chairman and members of the Committee on Indian Affairs for the opportunity to testify on S. 1438. Accompanying me are Howard Funke, our attorney, and Dr. Charles Pace, our economist, who are available for questions and may have a few comments.

I am here today on behalf of the Spokane Tribe to ask for your help as representatives of the United States of America. I ask that you act on behalf of the United States to finally treat the Spokane Tribe fairly and honorably for the injury to our Tribe and Reservation caused by the Grand Coulee Project. My testimony today summarizes the critical need for this important legislation. We are also providing briefing books for the record which give greater detail on our issues.

Grand Coulee's waters flooded the lands of two sister Indian reservations that held great economic, cultural and spiritual significance. Ours is one of those reservations.

Our life, culture, economy and religion centered around the rivers. We were river people. We were fishing people. We depended heavily on the rivers and the historic salmon runs they brought to us. We were known by our neighboring tribes as the Salmon Eaters. The Spokane River — which was named after our people — was and is the center of our world. We called it the "Path of Life." President Rutherford B. Hayes in 1881 recognized the importance and significance of the rivers by expressly including the entire adjacent riverbeds of the Spokane and Columbia Rivers within our Reservation. But the Spokane and Columbia Rivers are now beneath Grand Coulee's waters. Today our best lands and fishing sites lie at the bottom of Lake Roosevelt.

The other Reservation flooded by Grand Coulee's waters is that of the Colville Confederated Tribes. The waters that rose behind Grand Coulee Dam brought similar fates to both our Reservations. Our burial sites — the places our ancestors were laid to rest — were lost to the rising waters. The river banks, which provided us plants for foods and medicines were

forever flooded. The homes, gardens, farms and ranches our people had worked hard to build on our Reservation are now under water. The free-flowing Columbia River and our "Path of Life" are now slack water behind Grand Coulee. The Dam also destroyed our salmon runs, which from time immemorial had given us life and identity. While the Colville lost most of their runs, salmon still were able to reach the Colville Reservation up to the Grand Coulee Dam. But upstream, at our Reservation, the salmon were entirely lost.

For decades, the Colville and Spokane Tribes shared similar histories and dialogue in connection with the Grand Coulee issue, and were subjected to the identical misconduct by the United States Government. When the project first began, it was to be a state project, governed by the Federal Power Act which required annual compensation to impacted Indian tribes. Later, after the Project was federalized and no longer fell under the Federal Power Act, Government officials continued to recognize that the Tribes should be compensated. When construction on Grand Coulee began, the Commissioner of Indian Affairs recommended, in writing, that both Tribes receive annual payments for the dam's operations. The Secretary of the Interior and other high level federal officials knew the Tribes should receive compensation. But it never happened. Both Tribes were equally deceived.

In 1941, our Tribes renewed their efforts, taking the extraordinary step of sending a joint delegation cross-country to meet in Washington, D.C. with the Commissioner of Indian Affairs on Grand Coulee. The meeting was held on December 10 — three days after Pearl Harbor was bombed. The Commissioner and his staff explained that the war had become the nation's priority, and that Congress could not be expected during such times to address the Tribe's needs. But they committed to do what they could to help, and our leaders returned home trusting that things would be made right once the war was over — the same war we sent our young to fight.

These were times when our people were almost completely dependent on the Bureau of Indian Affairs for protecting our Reservation and resources. Our great white father was BIA. We were allowed to do nothing without the BIA. We were not experienced in the ways of American law, politics and business. At that time, we were among the most isolated of tribes in the nation. We were beginning to farm and ranch, but our subsistence ways — depending on the Rivers' salmon — was most prominent. At that time, we also had no constitutionally formed government. And even though the Bureau of Indian Affairs' nearest agency was 100 miles away on the Colville Reservation, we relied on BIA officials for managing details like recording the minutes of Tribal meetings. So when the Commissioner of Indian Affairs told our people he would do all he could to help, it carried great weight. Being a trusting people, we took the government representatives' word.

Soon after the War's end, in 1946, Congress enacted the Indian Claims Commission Act. The ICCA allowed Indian tribes to bring historic legal claims against the United States government. Several obstacles unique to our Tribe made the task of filing our ICCA claims unusually difficult. First, although the Act required the Commission and BIA to notify all tribes of claims that should be filed, we received no such notice. We learned of the ICCA from neighboring tribes only months before the 1951filing deadline. Second, our leadership acted to retain a lawyer once they learned of the ICCA. But the Commissioner of Indian Affairs withheld his approval for several months, costing our Tribe much critical time. Also, our Constitutional government was first formed only 60 days before the 1951 deadline for filing. Eventually, the Spokanes filed a standard ICCA claim much like the claim filed by the Colville Tribes. No mention of Grand Coulee was made in either since the ICCA was understood to apply to historic claims rather than claims where wrongful conduct was ongoing.

In 1972, the Secretary of the Interior established a Task Force to address the Spokane and Colville Tribes' Grand Coulee issues, and later, in 1976, the Senate Appropriations Committee renewed the hope of both Tribes by directing the Secretaries of the Interior and the Army to "open discussions with the Tribes to determine what, if any, interest the Tribes have in such production of power and to explore ways in which the Tribes might benefit from any interest so determined." During the next several years, numerous meetings were held. Both the Colvilles and the Spokanes participated in earnest, fully believing that the Government would satisfy Congress' directive. When the Task Force's report came out, however, it was nothing more than a legal position: the United States has legal defenses and, therefore, there is no requirement to compensate the Tribes. After several years of work, the Report, which is included in our briefing materials, failed to consider the Tribal interests involved in the process. And it completely ignored Congress' mandate that benefits associated with those interests be explored. We had trusted that Congress would help by addressing our claim side by side with the Colvilles.

As I said earlier, Grand Coulee's impacts on the Spokane and Colville Tribes was virtually identical, as were the Tribes' histories of dealing with the United States. While the Colvilles may have lost more land, the Spokane lost our salmon fisheries entirely. And both Tribes have survived decades of lost hope and broken promises.

There is a simple historical fact that separates the Colville and Spokane Tribes. It is that fact that led ultimately to the Colville Tribe's settlement of its claims — a settlement under which the Colvilles received $53 million in back damages, and annual payments in perpetuity that since 1994 have been $15-20 million each year.

We believe it is unprecedented for one tribe to receive compensation from the United

States while a similar tribe receives nothing.

In the mid-1960s, the Spokane Tribe — a trusting tribe that has always come to the aid of the U.S. — entered a cooperative relationship with the United States government, and in 1967 the Tribe settled its Indian Claims Commission case. The Colvilles did not. Instead, the Colvilles persisted with their legal battles through the 1960s, and beyond the days of the Task Force. The Colvilles' hadn't raised Grand Coulee claims in their original ICCA case any better than had the Spokanes. But their decades-long resistance to settlement enabled them to benefit from a mid-1970s Indian Claims Commission case. In 1975, the Commission ruled for the first time ever that it had jurisdiction over cases where the wrongful conduct continued beyond the ICCA's 1951 statutory deadline.

Armed with that new decision, the Colvilles by 1976 had sought and obtained permission to amend their ICCA claim to include for the first time their Grand Coulee case. Our Tribe, having come to terms with the United States in the 1960s, had no case left to amend. In spite of that, both tribes continued to negotiate and meet with the United States.

In 1978, the Indian Claims Commission ruled that the United States' conduct in building Grand Coulee Dam was unfair and dishonorable and, therefore, awarded the Colville Tribes over $3 million for fisheries losses. In 1992, the Federal Circuit Court of Appeals ruled that the Colvilles' claim for power values, based on the same standard, was not barred. With that leverage, the Colvilles secured a settlement which, in 1994 the Congress approved in Public Law Number 103-436.

Nine years ago, in the context of the Colvilles' settlement, I came here and testified to Congress on my Tribe's behalf. I asked Congress to include our settlement with the Colvilles, or to waive the ICCA statute of limitations so we might be able to present our case. But rather than providing our requested relief, Congress again directed the United States to negotiate with us a fair settlement.

Since then, I have participated in virtually all discussions held between our Tribe and three BPA administrators representing the United States. During the past nine years, we have been forced to confront countless tactics that ran directly counter to the Congress' direction and intent that our Grand Coulee claims be negotiated in good faith and on the merits. As Senator Patty Murray stated:

> "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."

For the first several years we met nothing but delay and the assertion of technical legal defenses.

Members of Congress who had been made aware of these failings, admonished the United States, stating in clear terms that the negotiations must be on the merits of our claim without consideration of legal defenses, and that by definition, negotiations must involve flexibility. We were advised that an offer was being developed, but that it had to go through several levels of federal approval. We were concerned that there would be little room for negotiation. As we awaited the offer, we continuously sought and obtained assurances from BPA and others that once presented, there would be sufficient flexibility for negotiations. But when the offer finally came five years later, it was presented as an ultimatum — "take it or leave it."

The offer fell far short of what we felt represented a fair settlement. Since 1992, we had sought a settlement that was proportionate to the Colvilles' based on lands used by the Project. So again we regrouped, and enlisted the assistance of Congressman Nethercutt to moderate a negotiation session with BPA. At the end of that session, both sides had made concessions, as occur during good faith negotiations. BPA committed to examining ways to make the agreement in principle work, and promised to get back to us in a couple of weeks. Then came more delay. After more than a year of waiting for BPA to follow through, we were stunned when BPA backed altogether away from the agreement in principle. Since then, we have tried numerous approaches on numerous occasions to make the agreement work — and each time BPA has rejected our efforts.

After nine years of fruitless negotiations, nine years of broken promises and delays, I am back here today requesting that this injustice not go unanswered. That the United States Government recognize our contributions and sacrifices. To compensate one of the two Tribes devastated by Grand Coulee, and not the other has only compounded the injustice to our people and prolonged this conflict. We believe it would be unprecedented for Congress to only provide relief to one tribe — and not the other — when both are so similarly impacted.

In closing, Mr. Chairman, and honorable members of the Committee, I ask you to listen with your hearts. We have no place to turn. We have no place to go. We ask for our day of justice. We have waited for this day for over sixty years.

SUMMARY

October 2, 2003

IMPACTS AND HISTORY OF GRAND COULEE DAM

- Since time immemorial, fishing the Spokane and Columbia Rivers was central to the Spokane people's economy, religion and culture. Destruction of this fishery made the Spokane dependent upon the United States, the entity who destroyed the fishery.

- The Spokane Reservation boundaries *expressly* include the entire riverbeds of the Spokane and Columbia Rivers.

- In 1939, Grand Coulee — the largest concrete dam in the world — flooded the western and southern boundaries of the Spokane Reservation, inundating critical riparian ecosystems and forever blocking upstream fish migration.

- Documents show that throughout Grand Coulee's development, the Secretary of the Interior knew the Spokanes should be compensated for the sacrifice of their salmon runs, and supported paying annual rental to the Spokane Tribe because of the federal government's taking of valuable power sites on Indian lands.

- These promises were broken. Instead, the Spokane Tribe received only $4,700 in compensation. This is a paltry sum compared to the enormous profit and benefits the United States and the Pacific Northwest have gained from the Grand Coulee Project:

  - It is one of the nation's largest producers of electricity, it was vital in helping win World War II.

  - It helped jump start the country to rebound from the Great Depression by providing thousands of jobs and electricity for industry.

  - It is the economic engine for the northwest Federal Power System, as witnessed recently it helped the entire Western United States overcome a power crisis.

  - It provides billions of dollars every year in economic benefits to the nation.

  - It helps irrigate ½ million acres of crop land in the Columbia basin and provides food that is needed around the world.

- It is the primary flood control pool (a 185 mile lake) that keeps cities like Portland, Oregon and Vancouver, Washington from being flooded every year.

- The very fish (Salmon) that was cut off from the Spokane's way of life now benefits as a major tool in recovering and restoring these endangered fish for the nation to enjoy.

- For more than six decades, the Spokane Tribe has tirelessly sought fair treatment for its losses, enduring numerous delays with causes ranging from historical events like WWII to negotiation tactics, failures of its trustee the United States to provide critical, legally-mandated information, and to deal and negotiate with the Tribe in good faith, as well as other unforeseeable legal and historical developments that served to undermine the Tribe's efforts to achieve fair treatment.

- Enormous benefits to Pacific Northwest and nation continue to accrue while the Spokane people live in poverty, and their tribal government struggles to provide essential services.

- The proposed legislation can end one of the most difficult chapters in American history.

COLVILLE TRIBE COMPENSATED FOR GRAND COULEE

- In 1994, Congress enacted legislation to compensate the Colville Tribe for impacts to its lands and people from the Grand Coulee Project. This legislation, P.L. 103-436, provided for a $53 million lump sum for past damages and $15 million annually in perpetuity that can increase over time according to a formula.

- This compensation arose out of a 1993 U.S. Claims Court ruling that the United States could be held liable to the Colvilles for failing to deal "fairly and honorably" by expropriating the power value of the Columbia River for itself.

- Yet, the Colville and Spokane Tribes were subject to identical dishonorable conduct by the United States government.

- This compensation to the Colville is in addition to the $3.2 million the Indian Claims Court awarded the Colville in 1978 for the destruction of its fishery caused by the Grand Coulee Dam.

JUSTICE CALLS FOR COMPENSATION FOR BOTH IMPACTED TRIBES

- Here, it would be patently unjust to allow one of the two tribes impacted by Grand Coulee to be compensated while the other tribe's economy and culture remain devastated without compensation (due to identical misconduct by the United States government).

- At the time the deadline for filing suit expired in 1951, the Spokane tribal government was just being organized. The claims attorneys, whose approval was delayed by the Commission of Indian Affairs until just before the deadline, did not have adequate time to evaluate a claim for Grand Coulee. The BIA provided no assistance to the Tribe in bringing such a claim, though it was required by the ICCA to do so.

- Despite years of effort by the Spokane Tribe, federal negotiations have been less than good faith, taking instead the form of "take it or leave it" offers.

United States General Accounting Office

GAO

Testimony
Before the Committee on Indian Affairs, U.S. Senate

For Release on Delivery
Expected at 2:00 p.m. EDT
Thursday, October 2, 2003

INDIAN ISSUES

Spokane Tribe's Additional Compensation Claim for the Grand Coulee Dam

Statement for the Record by Robert A. Robinson,
Managing Director, Natural Resources and Environment

GAO-04-125T

GAO
Accountability · Integrity · Reliability
Highlights

Highlights of GAO-04-125T, a statement for the record for the Committee on Indian Affairs, United States Senate

Why GAO Did This Study

The Grand Coulee Dam was constructed on the Columbia River in northeastern Washington State from 1933 to 1942. The reservoir behind the dam covers land on the Colville Reservation along the Columbia River and land on the adjacent Spokane Reservation along both the Columbia and Spokane rivers. Under a 1940 act, the federal government paid $63,000 and $4,700 to the Colville and Spokane tribes, respectively, for the land used for the dam and reservoir. Subsequently, the Colville tribes pursued additional claims for their lost fisheries and for "water power values" and in 1994 were awarded a lump sum payment of $53 million and, beginning in 1996, annual payments that have ranged between $14 million to $21 million. The Spokane tribe is currently pursuing similar claims.

S. 1438, introduced in July 2003, is a proposed legislative settlement for the Spokane tribe's claims. While settlement proposals introduced in the 106th and 107th Congresses directed the settlement costs to be split between Bonneville and the Treasury, S. 1438 provides that the settlement be paid entirely from the Treasury.

This statement for the record addresses the (1) impact of a settlement on Bonneville if the costs were split between Bonneville and the Treasury and (2) possible allocation of these costs between Bonneville and the Treasury.

www.gao.gov/cgi-bin/getrpt?GAO-04-125T

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robert A. Robinson at (202) 512-9894 or robinsonr@gao.gov.

October 2, 2003

INDIAN ISSUES

The Spokane Tribe's Additional Compensation Claim for the Grand Coulee Dam

What GAO Found

A settlement with the Spokane tribe along the lines provided to the Colville tribes would likely necessitate a small increase in Bonneville's rates for power. While the rate increase would amount to less than 20 cents per month per household, it comes at a time when (1) Bonneville's customers have already absorbed rate increases, including those announced on October 1, 2003, of over 40 percent and (2) the economy of the northwestern region, Bonneville's primary service area, is experiencing difficulties. However, the bulk of Bonneville's obligations in any settlement similar to the Colville settlement will occur in the future, when the conditions causing Bonneville's current financial difficulties—such as costly long-term contracts to purchase power from other suppliers—will probably have abated. Therefore, Bonneville's current financial difficulties should not unduly influence current discussions about how to compensate the Spokane tribe.

A reasonable case can be made to settle the Spokane tribe's case along the lines of the Colville settlement—a one-time payment from the U.S. Treasury for past lost payments for water power values and annual payments primarily from Bonneville. Bonneville continues to earn revenues from the Spokane Reservation lands used to generate hydropower. However, unlike the Colville tribes, the Spokane tribe does not benefit from these revenues. Spokane does not benefit because it missed its filing opportunity before the Indian Claims Commission. At that time, it was pursuing other avenues to win payments for the value of its land for hydropower. These efforts would ultimately fail. Without congressional action, it seems unlikely that a settlement for the Spokane tribe will occur.

Mr. Chairman and Members of the Committee:

We are pleased to have the opportunity to comment on the Spokane tribe's additional compensation claim for the Grand Coulee Dam and the proposed legislative settlement, S. 1438. As you know, the Grand Coulee Dam was constructed on the Columbia River in northeastern Washington State from 1933 to 1942. When finished, the 550-foot high dam was the largest concrete dam in the world. It is still the largest hydroelectric facility in the United States. The Franklin D. Roosevelt Reservoir, which was created behind the dam, extends over 130 miles up the Columbia River and about 30 miles east along the Spokane River. The reservoir covers land on the Colville Reservation along the Columbia River and land on the adjacent Spokane Reservation along both the Columbia and Spokane rivers. Under a 1940 act, the federal government paid $63,000 and $4,700 to the Colville and Spokane tribes, respectively, for the land used for the dam and reservoir.[1]

Subsequently, the Colville tribes pursued additional claims for their lost fisheries and for "water power values" (i.e., a share of the hydropower revenues generated by the dam from the use of their lands) before the Indian Claims Commission. The Colville tribes' fisheries claim was settled in 1978 for about $3.3 million. Under a 1994 act—the Confederated tribes of the Colville Reservation Grand Coulee Dam Settlement Act (P.L. 103-436, Nov. 2, 1994)—the Colville tribes were awarded a lump sum payment of $53 million for lost hydropower revenues and, beginning in 1996, annual payments that have ranged between $14 million and $21 million for their water power values claim.[2] The lump sum payment was made from the U.S. Treasury, and the cost of the annual payments is shared between the Bonneville Power Administration (Bonneville), which markets the power generated at the dam, and Treasury.

The Spokane tribe is currently pursuing similar claims. S. 1438, introduced in July 2003, is a proposed legislative settlement for the Spokane tribe's claims. While settlement proposals introduced in the 106th and 107th

[1]Pub. L. No. 76-690, 54 Stat. 703 (1940), an act for the acquisition of Indian lands for the Grand Coulee Dam and Reservoir, and for other purposes, granted the United States title to Indian lands the Secretary of the Interior designated as necessary for the Grand Coulee Dam project and authorized the Secretary to determine the appropriate amount to be paid to the tribes for lands so designated.

[2]Pub. L. No. 103-436, 108 Stat. 4577 (1994).

Congresses directed the settlement costs to be split between Bonneville and the U.S. Treasury, S. 1438 provides that the settlement be paid entirely out of the U.S. Treasury.[3] In this context, you asked us to address the (1) impact of a settlement on Bonneville if the costs were split between Bonneville and the U.S. Treasury and (2) possible allocation of settlement costs between Bonneville and the U.S. Treasury. To meet these objectives, we relied on information developed for a preliminary GAO report to the Subcommittee on Energy and Water Development, House Committee on Appropriations;[4] interviewed officials at Bonneville and representatives of the Spokane tribe; and reviewed numerous documents on the Colville and Spokane tribes' claims for additional compensation. Our work for the Appropriations Subcommittee on Bonneville's financial condition is continuing. We plan to issue our final report in June 2004. Also, as you know, we are continuing our review of Bonneville's obligations for tribal fish and wildlife programs for this Committee. See appendix I for a more detailed description of how we estimated the impact of a settlement on Bonneville. We performed our work in September 2003, according to generally accepted government auditing standards. We provided a a draft of this statement to Bonneville for comment but did not receive a response in time to include in this statement.

In summary, we found the following:

- A settlement with the Spokane tribe along the lines provided to the Colville tribes would likely necessitate a small increase in Bonneville's rates for power. While the rate increase would amount to less than 20 cents per month per household, it comes at a time when Bonneville's customers have already absorbed rate increases, including those announced on October 1, 2003, of over 40 percent and when the region's economy is experiencing difficulties. However, the bulk of Bonneville's obligations in any settlement similar to the Colville settlement will occur in the future, when the conditions causing Bonneville's current financial difficulties will probably have abated. Therefore, Bonneville's current

[3]The legislative settlement proposals introduced in the 106th Congress were S. 1525 and H.R. 2664. In the 107th Congress, the proposals were S. 2567 and H.R. 4859. The proposals pending in the 108th Congress are S. 1438 and H.R. 1753. Under S. 1438 the settlement costs would all be paid out of the U.S. Treasury, while under H.R. 1753, the settlement costs would be split between Bonneville and the Treasury.

[4]U.S. General Accounting Office, *Bonneville Power Administration: Long-Term Fiscal Challenges*, GAO-03-918R (Washington, D.C.: July 1, 2003).

financial difficulties should not unduly influence current discussions about how to compensate the Spokane tribe.

- A reasonable case can be made to settle the Spokane tribe's case along the lines of the Colville settlement—a one-time payment from the U.S. Treasury for past lost payments for water power values and annual payments primarily from Bonneville. Bonneville continues to earn revenues from the Spokane Reservation lands used to generate hydropower. However, unlike the Colville tribes, the Spokane tribe does not benefit from these revenues. The Spokane tribe does not benefit because it missed its filing opportunity before the Indian Claims Commission. At that time it was pursuing other avenues to win payments for the value of its land for hydropower. These efforts would ultimately fail. Without congressional action, it seems unlikely that a settlement for the Spokane tribe will occur.

Background

The Colville and Spokane Indian reservations were established in 1872 and 1877, respectively, on land that was later included in the state of Washington. The Colville Reservation, of approximately 1.4 million acres, was created on July 2, 1872, through an executive order issued by President Grant. The Spokane Reservation, of approximately 155,000 acres, was created by an agreement between agents of the federal government and certain Spokane chiefs on August 18, 1877. President Hayes' executive order of January 18, 1881, confirmed the 1877 agreement. In 2001, the Colville and Spokane tribes had enrolled populations of 8,842 and 2,305, respectively.

The Indian Claim Commission was created on August 13, 1946, to adjudicate Indian claims, including "claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity."[5] Under section 12 of the act that created the Commission, all claims had to be filed within 5 years. Ultimately 370 petitions, which were eventually separated into 617 dockets, were filed with the Commission. The great majority of the claims were land claims. Settlements awards were paid out of the U.S. Treasury.

[5]Pub. L. No. 79-726, § 2, 60 Stat. 1049, 1050 (1946).

The Colville tribes filed a number of claims with the Indian Claims Commission within the 5-year window—on July 31, August 1, and August 8, 1951. Their fisheries claim and water power values claim became part of Indian Claims Commission Docket No. 181, which was originally filed on July 31, 1951. The original petition for Docket No. 181 included broad language seeking damages for unlawful trespass on reservation lands and for compensation or other benefits from the use of the tribes' land and other property. The tribes' original petition did not specifically mention the Grand Coulee Dam. In 1956, Docket No. 181 was divided into four separate claims. The tribes' fisheries claim became part of Docket No. 181-C. In November 1976, over 25 years after the original filing of Docket No. 181, the Indian Claims Commission allowed the Colville tribes to file an amended petition seeking just and equitable compensation for the water power values of certain riverbed and upstream lands that had been taken by the United States as part of the Grand Coulee Dam development. This amended water power value claim was designated as Docket No. 181-D, and it was settled in 1994 by Public Law 103-436.

The Spokane tribe filed one claim with the Indian Claims Commission, Docket No. 331, on August 10, 1951, just days before the August 13, 1951, deadline. The claim sought additional compensation for land ceded to the United States by an agreement of March 18, 1887. Furthermore, the Spokane tribe asserted a general accounting claim. These two claims were separated into Docket No. 331 for the land claim and Docket No. 331-A for the accounting claim. Both claims were jointly settled in 1967 for $6.7 million. That is, the Spokane tribe settled all of its claims before the Indian Claims Commission almost 10 years before the Colville tribes were allowed to amend their claim to include a water power values claim. In doing so, the Spokane tribe missed its opportunity to make a legal claim with the Indian Claims Commission for its water power values as well as its fisheries. At that time, the Spokane tribe, as well as the Colville tribes, were pursuing other avenues for compensation of water power values.

The Bonneville Power Administration was formed in 1937 to market electric power produced by the Bonneville Dam.[6] Bonneville's marketing responsibilities have expanded since then to include power from 31 federally owned hydroelectric projects, including the Grand Coulee Dam. Under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Northwest Power Act), Bonneville is responsible for providing

[6]Pub. L. No. 75-329, § 2, 50 Stat. 731, 732 (1937).

the Pacific Northwest with an adequate, efficient, economical, and reliable power supply.[7] Bonneville currently provides about 45 percent of all electric power consumed in Idaho, Montana, Oregon, and Washington and owns about 75 percent of the region's transmission lines.

Bonneville Would Have to Recover Settlement Costs from Ratepayers, but Magnitude of Rate Increase Would Be Small

A settlement requiring Bonneville to pay the Spokane tribe would add to its costs of operation, and it therefore would probably pass these costs to Bonneville's customers in the form of higher rates for power. Bonneville is a self-financing agency, which means that it must cover its costs through the revenue generated by selling power and transmission services. Bonneville typically sets its rates for 5-year periods in order to generate enough revenue to cover the costs of operating the federal power system and to make its debt payments.

Assuming that the settlement with the Spokane tribe is similar in nature to the settlement with the Colville tribe in 1994, the impact on Bonneville's rates would be small. Under the settlement with the Colville tribe, Bonneville has made annual payments since 1996 that have ranged from about $14 million to $21 million. Currently, Bonneville estimates that it will pay about $17 million per year over the next 5 years.[8] In its negotiations with Bonneville, the Spokane tribe has asked for about 40 percent of the Colville tribe's settlement, which would amount to about $7 million annually from Bonneville. Bonneville uses a rule of thumb to determine rate increases: between $40 million and $50 million in additional annual costs will lead to a rate increase of 1/10th of a cent per kilowatt hour (kWh). Using this rule, we estimate that a settlement with Spokane that is equivalent to 40 percent of the Colville settlement would lead to an increase in rates of less than 20 cents per month per household for a typical household relying solely on power from Bonneville, or a 0.5 percent increase in rates over current levels.[9]

[7]Pub. L. No. 96-501, § 2, 94 Stat. 2697 (1980).

[8]The payments are to be made in perpetuity, but Bonneville gave us an annual estimate for the next five years that conforms to its 5-year rate case planning horizon. While Bonneville will make these payments to the Colville tribes, it will receive interest credits in the amount of $4.6 million per year from the U.S.Treasury—also in perpetuity—effectively reducing its payments by about 27 percent.

[9]This estimate also assumes that Bonneville pays the entire $7 million per year. If Bonneville receives interest credits from Treasury for part of the amount, the impact would be proportionally smaller.

Although the magnitude of the rate increase necessary to fund a settlement with the Spokane tribe would be small, it comes at a time when Bonneville's customers have recently faced large rate increases. From 2000 through early 2003, Bonneville experienced a substantial deterioration in its financial condition because of rising costs and lower-than-projected revenues. As a result, Bonneville's cash reserves of $811 million at the end of fiscal year 2000 had fallen to $188 million by the end of fiscal year 2002. To cope with its financial difficulties, Bonneville raised its power rates for 2002 by more than 40 percent over 2001 levels. On October 1, 2003, Bonneville raised its rates a further 2.2 percent. Despite Bonneville's current financial difficulties, Bonneville predicts the conditions that led to the financial problems—namely, consecutive years of low water conditions, extreme market price volatility, and long-term contracts Bonneville signed to buy power from other suppliers at a high cost, which are due to expire in 2006—will abate. Therefore, because the bulk of Bonneville's obligations in any settlement similar to the Colville settlement will occur in the future, Bonneville's current financial difficulties should not unduly influence current discussions about how to compensate the Spokane tribe.

A Reasonable Case Can Be Made for Adopting the Colville Model in Allocating Any Costs Associated with a Settlement for the Spokane Tribe

A reasonable case can be made for having Bonneville and the U.S. Treasury allocate any costs for the Spokane tribe's claims along the lines agreed to for the Colville tribes. Any settlement would attempt to re-institute a commitment the federal government made to the tribes in the 1930s. Under the Federal Water Power Act of 1920, licenses for the development of privately owned hydropower projects should include a "reasonable annual charge" for the use of Indian lands.[10] Originally, the Grand Coulee site was licensed, and the Spokane tribe expected to receive annual payments for its lands used for the project. However, the license was cancelled when the federal government took over the project (federalized the project). Since the federal government is not subject to the Federal Water Power Act, it was not required to make annual payments to the tribes. Nevertheless, the federal government made a commitment in the 1930s to make annual payments to the Colville and Spokane tribes as if the project had remained a nonfederal project. However, the federal government did not follow through on this commitment after the project was completed and started generating revenues from electricity sales in the 1940s. In pursuing this

[10]Pub. L. No. 66-280, §10(e), 41 Stat. 1063, 1069 (1920).

matter, the tribes weathered various administrations and changes in the federal government's Indian policy. In the 1950s and 1960s, the federal government actively sought to terminate its relationship with a number of tribes, including the Spokane tribe.

In the early 1970s, when it became clear that the federal government was not going to make these payments, the Colville tribes were able to amend their claim with the Indian Claims Commission to pursue this matter. After agreeing to the overall legitimacy of the Colville tribes' claims, the Congress ultimately approved a settlement that primarily required Bonneville to provide annual payments for water power values. This settlement was a compromise to split the costs between Bonneville and the U.S. Treasury. Bonneville is primarily paying the recurring annual payments, and the U.S. Treasury's Judgment Fund provided the one-time lump sum payment in settlement of the past annual payments—$53 million.[11] The Spokane tribe, however, had already settled its claim years earlier and therefore could not file an amended claim with the commission. Nevertheless, since Bonneville collects the annual revenues for the electricity generated by the dam, it could be argued that Bonneville should make annual payments to the Spokane tribe out of those revenues, as it does for the Colville tribes; the U.S. Treasury would then pay a lump sum to settle any claims for past years. The current House settlement proposal, H.R. 1753, and previous House and Senate settlement proposals introduced in the 106th and 107th Congresses directed the settlement costs to be split between Bonneville and the U.S. Treasury.

It could also be argued that the U.S. Treasury should pay the Spokane tribe's claim, as it does for most claim settlements against the federal government. S. 1438 provides for the settlement of the tribe's claim from the U.S. Treasury. However, we do not believe a compelling case can be made to have the nation's taxpayers fully absorb an additional cost of doing business associated with Bonneville's production of power in one region of the country.

In conclusion, since the Spokane tribe missed its opportunity to file claims with the Indian Claims Commission for its fisheries and water power values, it is unlikely that the tribe's claims and any associated settlement or

[11]The Judgment Fund is a permanent indefinite appropriation available to pay certain settlements and judgments against the federal government.

final resolution will move forward in any meaningful way without some form of congressional intervention. If the Congress is satisfied with the merits of the tribe's claims, settlement legislation, such as the current House and Senate bills, could be used as a method to resolve the tribe's claims. A reasonable case can be made for adopting the model established in the Colville settlement to allocate the settlement costs between Bonneville and the U.S. Treasury. Another option would be to enact legislation providing for some form of dispute resolution, such as mediation or binding arbitration. If the Congress has any doubts about the merits of the claim, it could enact legislation to allow the tribe to file its claim in the U.S. Federal Court of Claims.[12] The merits of the claims could then be decided in court. Such an action was discussed in 1994 when the Colville settlement was reached.

Contacts and Acknowledgments

For further information, please contact Robert A. Robinson on (202) 512-3841. Individuals making key contributions to this testimony included Jill Berman, Brad Dobbins, Samantha Gross, Jason Holliday, Jeffery Malcolm, Frank Rusco, Rebecca Sandulli, and Carol Herrnstadt Shulman.

[12]*See, e.g.*, Pub. L. No. 95-280, § 2, 92 Stat. 244 (1978), Pub. L. No. 96-251, 94 Stat. 372 (1980), Pub .L. No. 96-404, 94 Stat. 1711 (1980), or Pub. L. No. 104-198, 110 Stat. 2418 (1996).

Appendix I

Methodology for Estimating the Impact of a Settlement on the Bonneville Power Administration

Because a settlement has not yet been negotiated, we used the terms of the Colville settlement to estimate the potential effect of the Spokane settlement on electricity rates in the Pacific Northwest. Assumptions used in this calculation are designed to provide a conservative (high-end) estimate of the impact of the settlement on Bonneville's rate payers. For planning purposes, Bonneville estimates that payments to the Colville tribes total $17 million annually.[1] The Spokane tribe is requesting as much as 40 percent of the Colville settlement, or approximately $7 million annually. To estimate the impact of increasing costs on power rates, Bonneville uses a rule of thumb that $40 million to $50 million in increased costs over a year necessitate a rate increase of approximately $0.001 per kilowatt-hour (kWh). Using this rule of thumb, a $7 million per year cost increase would raise Bonneville's wholesale power rates by approximately $0.00016 per kWh.

According to the Oregon Department of Energy, the average household in Oregon uses approximately 1,000 kWh of electricity per month. An average household in Washington uses 1,170 kWh of electricity per month, according to the Washington Utilities and Transportation Commission. Using the approximate rate increase calculated above, the electricity bills for average households in Oregon and Washington would increase approximately 16 cents and 19 cents, respectively. These calculations assume that the household receives all its electricity from Bonneville and that its retail utility passes through the wholesale rate increase. The impact on the region as a whole would be smaller because Bonneville provides only about 45 percent of the region's power. Our calculations also assume that Bonneville would not be permitted to deduct any portion of its payment to the Spokane tribe from its debt payment to the U.S. Treasury. Public Law 103-436 enables Bonneville to deduct a portion of its annual payment to the Colville tribes as an interest credit on its Treasury debt payments. If a similar provision were included for any payments for the Spokane tribe, the impact on ratepayers would be reduced.

[1]From fiscal year 2000 onward, Bonneville receives a $4.6 million interest credit on its Treasury debt payment to offset some of the cost of the Colville settlement. Therefore, Bonneville's share of the Colville payments total $12.4 million net of the credit. This calculation conservatively assumes that Bonneville will be responsible for the entire Spokane payment.