STATEMENT FOR THE RECORD
GREGORY J. ABRAHAMSON
CHAIRMAN
SPOKANE TRIBE OF INDIANS

BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS

ON

S. 1345 THE SPOKANE TRIBE OF INDIANS OF THE SPOKANE RESERVATION GRAND COULEE DAM EQUITABLE COMPENSATION SETTLEMENT ACT

October 20, 2011

Thank you Mr. Chairman and members of the Committee. My name is Gregory J. Abrahamson. I am the Chairman of the Spokane Tribe of Indians. I very much appreciate the opportunity to appear before the Senate Committee on Indian Affairs to testify on S. 1345. Accompanying me are Michael Spencer, Vice Chairman of the Tribe, and Bruce Didesch, our attorney. They are available for questions.

SUMMARY

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 use of our lands for the production of hydropower and for injury to our Tribe and Reservation caused by the Grand Coulee Project. My testimony today summarizes my written statement for the record and the critical need for this important legislation. The Spokane Tribe has been struggling to protect our Reservation since an agreement with the United States in 1877. To understand this settlement it must be viewed in an historic context. As is fitting and proper for that struggle spanning over one hundred and thirty (130) years, we have submitted a lengthy and detailed statement herein.

Grand Coulee's waters flooded the lands of two adjoining Indian reservations that held great economic, cultural and spiritual significance for the people residing thereon. Ours is one of those reservations. The other is the Colville Tribes Reservation.

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 continues to be the center of our world. We know it as 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 proposed Legislation is designed to end a lengthy chapter in American history, in which the United States and American citizens reaped tremendous rewards at the expense of the Spokane Tribe and the Confederated Tribes of the Colville Reservation. The severe devastation wrought upon both tribes was unprecedented. And though the affected land areas held by the Spokane Tribe were roughly only 40% of that held by the Colville Tribes, a portion of the Colville's salmon fishery continues to reach their Reservation, while the Spokane's fishery was lost entirely. Additionally, the Spokanes lost forever a prime site on the Spokane River that it could have developed for hydropower. Ultimately, both Tribes suffered severely. We continue to be greatly impacted by the operation of Grand Coulee Dam each and every year.

Prior to its construction, during its operation and with the completion of the Third Powerplant in 1974, the United States acknowledged and supported its responsibility to fairly and honorably address the losses to be suffered by the Spokane Tribe as well as the Colville Tribes related to Grand Coulee. The Colvilles secured a settlement with the United States in 1994, while the Spokane claims are still unresolved. The United States has all but ignored its trust obligation to the Spokane Tribe. This legislation represents a final settlement of the Spokane Tribe's claims and fulfills the United States obligation to the Tribe as compensation for the use of our lands for the production of hydropower and the disproportionate impact the Spokane Tribe has had to bear from the Grand Coulee Project. The following statement describes and underscores the need for the United States to finally treat the Spokane people fairly and honorably in resolving this matter.

HISTORICAL CONTEXT

From time immemorial, the Spokane River has been at the heart of the Spokane territory.

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

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

Section 10(e) of the Federal Power Act (16 U.S.C. 803(e)) requires that when licenses are issued for a hydropower project involving tribal land within an Indian reservation, a reasonable annual charge shall be fixed for the use of the land, subject to the approval of the Indian tribe having jurisdiction over the land. Had a state or a private entity developed the site as originally contemplated, the Spokane Tribe would have been entitled to a reasonable annual charge for the use of its land. The Federal Government is not subject to licensing under the Federal Power Act.

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

> *"the matter of protecting these valuable Indian rights will receive active attention in connection with applications filed by the interested parties before the Federal Power Commission for the power development."* Letter from William Zimmerman to Harvey Meyer, Colville Agency Superintendent, dated September 5, 1933.

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

> *"shows the cost of installed horsepower to be reasonable and one that could bear a reasonable annual rental in addition thereto for the Indians' land and water rights involved."* Letter from William Zimmerman to Elwood Mead, dated Dec. 5, 1933.

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

> *"The government began building the dam in the mid-1930's. A letter dated December 3, 1933, to the Supervising Engineer regarding the Grand Coulee and the power interests of the Tribes, with the approval signature of Secretary of the Interior Ickes states:*
>
> *This report should take into consideration the most valuable purpose to which the Indians' interests could be placed, including the development of hydro-electric power.*
>
> *We cannot too strongly impress upon you the importance of this matter to the Indians and therefore to request that it be given careful and prompt attention so as to avoid any unnecessary delay.*
>
> *Also, a letter dated December 5, 1933, to the Commissioner of the Bureau of Reclamation and endorsed by Interior Secretary Ickes, stated that 'it is necessary to secure additional data before we can advise you what would constitute a reasonable revenue to the Indians for the use of their lands within the [Grand Coulee] power and reservoir site areas.' And a letter dated June 4, 1935 from the Commissioner of the Bureau of Reclamation requested that additional data be secured to determine 'a reasonable revenue to the Indians for the use of their lands within the power and reservoir site areas.'"*
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> Statement of Peter R. Steenland, Appellate Section Chief, Environment and Natural Resources Div., Dept. of Justice (Joint Hearing on S.2259 before the Subcomm. on

Water and Power of the Comm. on Energy and Natural Resources and the Comm. on Indian Affairs, S. Hrg. 103-943, Aug. 4, 1994, at 16).

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

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

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

> *"The project was first authorized by the Rivers and Harbors Act of 1935 (49 Stat. 1028, 1039). In spite of the fact that the Act authorized the project for the purpose, among others, of 'reclamation of public lands and Indian reservations . . . .,' no hydroelectric or reclamation benefits flow to the Indians. Hardly any were employed at the project site. Indeed, the Tribes have presented evidence that even unskilled workers were recruited from non-Indian towns far away. The irrigation benefits of the project all flowed south.....*
>
> *Furthermore, the 1935 enactment made no provision for the compensation of the [Spokane and Colville] Tribes. It was not until the Act of June 29, 1940 (54 Stat. 703) – seven years after construction had begun – that Congress authorized the taking of any Colville and Spokane lands . . . . Section 2 [of that Act] required the Secretary to determine the amount to be paid to the Indians as just and equitable compensation. Pursuant to this authorization the Secretary condemned thousands of acres of Indian lands, primarily for purposes of inundation by the planned reservoir.*
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> *Apart from the compensation for those lands, which the Tribes claim was inadequate, no further benefits or compensation were paid to the Indians. Nothing was provided for relocation of those Indians living on the condemned lands; and tribal lands on the bed of the original Columbia River were not condemned at all. Worst of all, Grand Coulee Dam destroyed the salmon fishery from which the Tribes had sustained themselves for centuries. The salmon run played a central role in the social, religious and cultural lives of the Tribes. The great majority of the population of the Tribes lived near the Columbia and its tributaries, and many were driven from their homes when the area was flooded. While Interior Department*

officials were aware that the fishery would be destroyed, the technology of the time did not permit construction of a fish ladder of sufficient height to allow the salmon to bypass towering Grand Coulee Dam.

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

Another principal aboriginal pursuit of the Colville and Spokane Indians involved the gathering of roots and berries on lands south of the rivers. That activity was largely curtailed after the construction of the project because of the influx of non-Indians on to those southern lands and because the river was widened to such an extent that crossing it became very difficult. Before the reservoir there were many places where the river could be forded. Similarly, hunting south of the river was also curtailed. Thus, the Grand Coulee project had a devastating effect on their economy and their culture." Final Report, Colville/Spokane Task Force, Directed by the Senate Committee on Appropriations in its 1976 Report on the Water and Power Public Works Appropriations Bill, S.Rep.94-505. (September, 1980).

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

In the 1940 Act, Congress also directed the Secretary of the Interior to "set aside approximately one-quarter of the entire reservoir area for the paramount use of the Indians of the Spokane and Colville Reservations for hunting, fishing, and boating purposes, which rights shall be subject only to such reasonable regulations as the Secretary may prescribe for the protection and conservation of fish and wildlife." 16 U.S.C. § 835(d).

In an extraordinary move, the Tribe in December, 1941, sent a delegation cross-country to meet on the issues with Commissioner John Collier. Unfortunately, the meeting took place on December 10 — just three days following the bombing of Pearl Harbor. The Commissioner and his representatives committed to the Tribal delegation they would do all they could in aid of the Tribe, but that the national priorities of war meant that redress would have to wait until its conclusion.

In 1946, the Interior Secretary designated areas within Lake Roosevelt as "Indian Zones" to fulfill the requirements of the 1940 Act's "paramount use" provisions in recognition of tribal lands inundated by Lake Roosevelt. The "Spokane Indian Zone" and the "Colville Indian Zone" were

located generally within the reservations of those Tribes. The Spokane Zone also extended up the inundated Spokane River, within the Spokane Reservation, which today is known as the "Spokane Arm" of Lake Roosevelt.

INDIAN CLAIMS COMMISSION FILINGS

In 1946, Congress enacted the Indian Claims Commission Act. 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. It was under the Indian Claims Commission Act that the Colvilles were able to settle their claims in 1994. And it was due to a quirk of circumstances that the Spokanes were not.

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

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

> *"The writer was employed in 1955 as the Tribe's first General Counsel. The tribal leaders of 1951 were still in office. When asked why they had not filed claims for the building of Grand Coulee, the destruction of their fishery and loss of their lands, they were thunderstruck. They had no knowledge at all that they might have filed such claims. They told the writer that no one had alerted them to the possibility of such claims. They did not know that these potential claims might be governed by the Claims Commission Act. They assumed that their rights were still alive, and well they may be. The Superintendent had approached them in about 1949 with the Tri-partite agreement between the BIA, Bureau of Reclamation, and the National Parks Service for the establishment of and administration of the Indian Zones pursuant to the Act of 1940. While he got them to sign pre-written resolutions approving this agreement [so] vital to their river and lake rights, not a word was spoken of the possibility of the tribe filing claims. The deadline of August 13, 1951 was therefore*

allowed to pass without the claims having been filed." Memorandum of January 12, 1981 with Final Report, Colville/Spokane Task Force (September 1980).

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

Meanwhile, the Colvilles, who had not settled their ICCA claim, continued that litigation against the United States. In 1975, the Indian Claims Commission ruled for the first time ever that it had jurisdiction over ongoing claims as long as they were part of a continuing wrong which began before the ICCA's enactment and continued thereafter. *Navajo Tribe v. United States*, 36 Ind. Cl. Comm. 433, 434-35 (1975). Over objections by the United States, the 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 of their amended claims to the Federal Circuit Court of Appeals, which held that the ICCA's "fair and honorable dealings" standard may serve to defeat the United States' "navigational servitude" defense. *Colville Confederated Tribes v. United States*, 964 F.2d 1102 (Fed. Cir. 1992). In light of this ruling, the United States negotiated with the Colvilles to resolve that Tribe's Grand Coulee-related claims. Unfortunately, however, because the Spokane Tribe in 1967 had acted in cooperation with the United States to settle its ICCA case, it lacked the legal leverage to force settlement.

In 1967, the Spokane Tribe settled its ICCA claims case. That was the very same year that construction of the Grand Coulee Dam third power plant containing six new generating units began. The next thirteen years witnessed a flurry of activity by the United States to address the claims of the tribes to a share of the benefits of the Grand Coulee Project.

NEGOTIATIONS WITH BOTH TRIBES CONTINUE

In 1972, the Secretary of the Interior's Task Force began negotiation with the tribes through multiple policy, legal and technical committees to address the tribal claims. The "Secretaries Task Force" engaged the tribes on a full range of issues, including compensation, riverbed ownership and tribal jurisdiction over the inundated Indian Zones.

In 1974 the Solicitor of the Department of the Interior issued an Opinion which concluded, among other things, that the Spokane and Colville Tribes each retained ownership of the lands underlying the Columbia River and, in the case of the Spokane Tribe, the lands underlying the Spokane River. The Solicitor found the United States intent to reserve those riverbeds in the Spokane Tribe clear. The Opinion suggested that the resource interests of the Tribes were being utilized in the production of hydroelectric power at Grand Coulee.

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

> *"to determine what, if any, interests the Tribe have in such production of power at Chief Joseph and Grand Coulee Dams, and to explore ways in which the Tribe*

might benefit form any interest so determined." S. Rep, 94-505, Dec. 4, 1975, at 79.

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

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

> *"I firmly believe that a settlement in this range is a realistic and fair way of resolving this controversy. The representatives of the Departments of Energy and Army who participated on the Federal Negotiating Task Force concur. It adequately reflects the relatively weak legal position of the tribes. (If the tribes could get around the Government's defenses they conceivably could establish a case for from 15% to 25% of the power of the Grand Coulee and Chief Joseph dams.) In addition to the threat of legal liability to the federal government, there is the undeniable fact that the Colville and Spokane people have been treated shabbily throughout the 40-year history of this dispute. To this day they have received little benefit from these projects on their lands which totally destroyed their fishery (no fish ladders were included) and inalterably changed their way of life. It has been the non-Indian communities and irrigation districts who have benefited from these projects. Much reservation land remains desert, while across the river irrigated non-Indian lands bloom.*
>
> *I am also hopeful that this is one "pro-Indian" bill that the Washington State congressional delegation will support as a fair resolution of a sorry chapter of our history. The tribes have tried recently to cultivate support for such a settlement proposal among key members of the delegation. My understanding is that the delegation's concerns have focused on the size of a settlement award (tribal demands have referred to hundreds of millions of dollars) and a tribal proposal for allocation of a firm power supply in the 1980's an allocation which might be seen as a threat to domestic users in times of shortage."* Legislative Proposal on Settlement of the Claims of the Colville and Spokane Tribes, Memorandum of Leo M. Krulitz to Eliot Cutler, May 7, 1979.

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

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

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

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

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

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

The Tribe notes here that this legislation is not a settlement of legal claims. Rather, it is "to provide for equitable compensation. . . for the use of tribal lands for the production of hydropower by the Grand Coulee Dam. . ."

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

> *"While plaintiff had no legal and equitable claim based on the navigational servitude, they did have a viable moral claim based on the "fair and honorable dealings" provision of the Indian Claims Commission Act of 1946.*
>
> *The resolution reached in the proposed settlement does not constitute an admission of liability. . . . But, we are prepared to recognize that the record, in this timely filed*

claim, can be read to reflect an undertaking by the United States with respect to power values. Because of that we think it is fair and just to fashion a complete resolution of this longstanding claim."

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

CONTINUING RECOGNITION OF THE TRIBE'S INTERESTS

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

Litigation over the ownership of the original Spokane Riverbed resulted in a separate federal court opinion (*Washington Water Power v. F.E.R.C.*, 775 F.2d 305, 312 n. 5 (D.C. Cir. 1985)), a court order (*Spokane Tribe of Indians v. State of Washington, Washington Water Power Company and United States of America*, No. C-82-753-AAM, Judgment and Decree Confirming Disclosure and Quieting Title to Property (U.D. Dist. Ct., E.D. Wash., September 14, 1990)). Separate settlement agreement (*Spokane Tribe of Indians v. Washington Water Power Company*, No. C-82-AAM, Judgment (U.S. Dist. Ct. E.D. Wash., March 3, 1995)) all of which provide and affirm that the Spokane Tribe holds full equitable title to the original Spokane Riverbed.

In 1994 Congress passed the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (P.L. 103-436; 108 Stat. 4577, 103d Congress, November 2, 1994) to provide compensation to the Colville Tribes for the past and future use of reservation land in the generation of electric power at Grand Coulee Dam.

A. For past use of the Colville Tribes' land, a payment of $53,000,000.

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

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

During the hearing on the Colville Settlement bill, the Spokane Tribe sought an amendment that would have waived the Indian Claims Commission Act's statute of limitations to enable the Spokane

to pursue its Grand Coulee claims through litigation. In the words of then Tribal Chairman Warren Seyler, "We believe it would be unprecedented for Congress to only provide relief to one tribe and not the other when both tribes were similarly impacted." Hearing Record, Colville Tribes Grand Coulee Settlement, H.R. 4757, pp. 56-61 (August 2, 1994).

Colville Tribal leaders and the bill's Congressional sponsors asked the Spokane to withdraw the request for an amendment to waive the statute of limitations. The Spokane complied, with the understanding that good faith negotiations to reach a fair and honorable settlement with the United States would be imminent. As a result, the following statements were made in a colloquy accompanying the Colville Tribes' Grand Coulee Settlement legislation. Colloquy to Accompany S. 2259, A Bill Providing for the Settlement of the Claims of the Confederated Tribes of the Colville Reservation Concerning Their Contribution to the Production of Hydropower by the Grand Coulee Dam, and for Other Purposes**.**

Senator Bradley stated:

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

Senator Murray stated:

> *"The settlement of the claims of the Colville Tribes is long overdue. The claim, first filed by the Colville Tribes over forty years ago, is based upon the authority the Congress vested in the Indian Claims Commission, which provided a five-year period during which Indian tribes could bring their claims against the United States.*
>
> *Unfortunately, the Spokane Tribe did not organize its government in time to participate in the claims process.*
>
> *The fair and honorable dealings standard established in the Indian Claims Commission Act should clearly apply to the United States' conduct and relationship with both the Colville and Spokane Tribes. I would urge, in the strongest possible terms, that the Department of the Interior and other relevant federal agencies enter into negotiations with the Spokane Tribe that might lead to a fair and equitable settlement of the tribe's claims."*

Senator Inouye stated:

> *"I fully support the notion that the United States has a moral obligation to address the claims of the Spokane Tribe, and I would be pleased to join you in a letter to*

Interior Department Secretary Babbitt urging that negotiations be undertaken by the Department."

Senator Bradley added:

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

Senator McCain stated:

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

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

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

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

LEGISLATIVE HISTORY

Spokane Tribe settlement legislation has been introduced in the 106th, 107th, 108th, 109th, 110th, 111th, and this the 112th Congress. In the 108th Congress, hearings on H.R. 1797 were held before the House Resources Subcommittee on Water and Power on October 2, 2003.

Hearings were also held on the Senate bill S. 1438, on October 2, 2003, before the Indian Affairs Committee. The bill was approved by the United States Senate on November 19, 2004. The House

of Representatives adjourned late on November 20, 2004 without time to consider the Senate-passed bill.

A Spokane Settlement Bill was introduced in the 109th Congress. The House bill, H.R. 1797, was approved by the House of Representatives on July 25, 2005. In the second session of 109th Congress, in 2006, subsequent objections to S. 1438 by the State of Washington Department of Fish and Wildlife, as well as the Lincoln County Commissioners, stalled consideration of the settlement in the Senate. The Senate adjourned without vote on the settlement bill.

AMENDMENTS AND SUPPORT

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

Spokane Tribal acreage taken by the United States for the construction of Grand Coulee Dam equaled approximately 39 percent of Colville acreage taken for construction of the dam. The Spokane settlement previously was based on 39 percent of the Colville settlement. At the request of members of Congress, the payment provisions for the Spokane settlement bill were reduced to 29 percent of the Colville settlement in exchange for return of the Tribe's lands taken for the Grand Coulee Project.

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

The Tribe and the Lincoln County Commissioners held meetings to address the concerns of the Commissioners with provisions of the bill affecting the Spokane River. The Tribe agreed to amend the bill to address these concerns. In 2007, Section 9(a)(2) was removed, thereby excluding transfer to the Tribe of the south bank of the Spokane River, which is located outside Reservation boundaries. Section 9(a) confined the land to be restored to the Tribe to "land acquired by the United States. . . that is located within the exterior boundaries of the Spokane Indian Reservation." On June 4, 2007, the Commissioners endorsed by letter, "strong support" for the settlement legislation as amended. See Attachment 1.

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

The Eastern Washington Council of Governments, pursuant to letters of January 23, 2008, by Chairman Ken Oliver provide, "We urge your strongest support and consideration for this issue." See Attachment 3.

The Governor of the State of Washington, Christine Gregoire, by letter dated December 14, 2007, to Senator Cantwell and Congressman Dicks, also voiced strong support for the settlement legislation, stating that it is "clearly appropriate" and "long overdue". See Attachment 4. By letter dated June 29, 2009 to President Obama, Governor Gregoire explained that "t]his legislation [then S. 1388] will correct a longstanding wrong" and "request[ed] the support of your administration in righting this injustice and securing enactment of the legislation." Id.

The Mayor of the City of Spokane, Mary Verner, by letter to the Washington Congressional delegation on August 25, 2009, stated "strong support for the Spokane Tribe" settlement legislation, finding that the Tribe had "suffered devastating impacts" while recognizing the Tribe's "generous efforts to address … the previously stated concerns of affected State and local governments, Indian tribes and individual landowners as well as federal agencies." See Attachment 5.

The Spokane Tribe also reached an agreement with the Colville Tribe dated May 22, 2009, providing for a disclaimer provision in the prior bill (S.1388) regarding adjoining Reservation boundaries. See Attachment 6.

In light of the foregoing support, Section 9 of the prior 2009 bill (S. 1388) provided for the return to Tribal ownership of lands within the Spokane Reservation taken by the United States for the Grand Coulee Project. DOI's Bureau of Reclamation (BOR) thereafter expressed concerns about the extent of continuing federal liability under that return of ownership provision, citing potential liability for erosion and landslides. After extensive Tribal-BOR discussions, the Tribe agreed to remove language in Section 9 providing for the return of taken Reservation lands to Tribal trust status. In exchange, BOR agreed that new Section 9(a) of the current bill (S. 1345) should confirm the delegation to the Spokane Tribe of Secretarial authority as set forth in the 1990 DOI-Tribal Agreement (appended hereto as Attachment 7). As a result, new Section 9 of S. 1345 provides as follows:

Explanation of Proposed New Section 9(a)

New Section 9(a) of S. 1345 confirms that Section IV.D.3.b. of the 1990 DOI-Tribal Agreement (Attachment 7 at page 7) was intended to and did in fact constitute a proper delegation to the Spokane Tribe of the Secretary's authority to "manage, plan and regulate all activities, development, and uses that take place within that portion of the Reservation [or Indian] Zone within the Spokane Reservation." Id.

That 1990 delegation includes, but is not limited to, the authority of the Tribe to regulate and license the use of the Reservation Zone by Tribal members and nonmembers, including non-Indians, for hunting, fishing, boating, camping, and other activities. As set forth in the 1990 Agreement, the authority delegated thereby to the Spokane Tribe must be exercised "in accordance with applicable provisions of federal and tribal law, and subject to the statutory authorities of Reclamation, and consistent with the provisions of [the 1990] Agreement subject to Reclamation's right to make use of such areas of the Reservation Zone as required to carry out the purposes of the Columbia Basin Project." See Attachment 7 at page 7 (Section IV.D.3.b).

New Section 9(a) of the settlement bill recites, as authority for the Secretary's 1990 delegation to the Spokane Tribe, four separate statutory provisions. Two of those provisions -- the Act of August 30, 1935 (43 U.S.C. 373) and the Act of March 10, 1943 (43 U.S.C. 485i) -- are cited in Section II of the 1990 Agreement (Attachment 7 at pages 3-4) as authority for execution of that document by the Department of the Interior. In addition, the proposed new bill language references the Columbia Basin Project Act of June 29, 1940 (16 U.S.C. 835d, 835h).

The former provision, 16 U.S.C. 835d is referenced as an appropriate, additional source of the Secretary's authority to delegate regulatory power to the Spokane Tribe over hunting, fishing, and boating by all persons within the Indian Zone. The latter provision, 16 U.S.C. 835h, is cited in new Section 9(a) since it empowers the Secretary "to perform any and all acts and to prescribe such regulations as he may deem appropriate to carry out the provisions of sections 835d to 835g" of title 16 U.S.C..

Explanation of Proposed New Section 9(b)

Proposed new Section 9(b) of the settlement bill tracks *verbatim* the same language agreed upon in May 2009 by the Spokane and Colville Tribal Councils with respect to the boundary between the Spokane and Colville Reservations along the Columbia River. That Spokane-Colville common understanding was set forth in the May 22, 2009 letter from Spokane Chairman Abrahamson and Colville Chair Jerred to Rep. Inslee and Sen. Cantwell, enclosing joint Tribal revisions to the bill (then Section 8(c) of S. 1388) and joint Tribal proposed report language on the Reservation boundary. See Attachment 6.

The new Section 9(b) language would replace Section 9(c) of the current version of S. 1388 (at pages 15-16), with the changes thus agreed upon in 2009 by the Spokane and Colville Tribal Councils. The new Section 9(b) language, like the former bill, makes clear that the delegation of authority by the Secretary to the Spokane Tribe in new Section 9(a) does not affect or establish the precise boundary between the Spokane and Colville Reservations along the Columbia River, or the 1973 Spokane-Colville Agreement concerning the common boundary of the Spokane and Colville Indian Zones at the center line of Lake Roosevelt, or the rights of either Tribe to use its respective portion of the overall Indian Zone as provided in the 1940 Project Act (16 U.S.C. 835d).

Explanation of Proposed New Section 9(c)

Proposed new Section 9(c) of the settlement bill tracks in part relevant language from Section 9(d) of S. 1388 (at pages 16-17). The new Section 9(c) language is intended to make clear that the delegation of authority by the Secretary to the Spokane Tribe in new Section 9(a) does not affect the federal statutory authority or responsibility of the BOR or NPS with respect to the Columbia Basin Project or the Lake Roosevelt National Recreation Area.

The Spokane Tribe has made numerous and significant concessions over the course of negotiations on the provisions of the settlement bill. When members of Congress so requested, the Tribe agreed that compensation to the Spokane Tribe could be reduced to 29% of the Colville settlement even though Spokane lands taken for Grand Coulee amounted to about 39% of Colville lands so taken.

That significant payment reduction was in exchange for the return to Spokane Tribal trust ownership of taken lands. Thereafter, at BOR's request, the Tribe relinquished its demand that the BOR land within the Spokane Reservation Zone be transferred to the BIA to be placed in trust for the benefit of the Tribe, in exchange for Congressional confirmation of the delegation of authority by the Secretary of the Interior to the Spokane Tribe under the 1990 DOI-Tribal Agreement (Attachment 7).

Explanation of Changes to Payment Sections 6 and 8 in S. 1345

In addition to the changes to Section 9 to address concerns related to land transfer, S. 1345 modifies the payment provisions in Section 6 and Section 8 to be consistent with the 2004 agreement between the Spokane Tribe and the Bonneville Power Administration regarding such payments and thereby render the payments revenue neutral.

The Tribe has reached agreement with members of Congress, federal agencies, the State and county governments, the Colville Tribe, as well as private individuals, to resolve their concerns or objections to the bill.

CONCLUSION

The Tribe has exerted significant efforts to retain its homelands, to receive the benefit of the promises made by the United States to reserve our lands, and to fairly compensate us for the use of our lands for the production of hydropower. Our people have endured enormous past and present impacts to their resources, their way of life and their culture due to operation of the Project. Grand Coulee delivers enormous benefits to the United States and the region. The Colville Tribes, similarly situated directly across the Columbia River, share in the benefits of the Project. The Spokane deserve fair and honorable treatment by its trustee, and the region, in a settlement due them for the use of their lands for the production of hydropower and many other Project purposes.

LIST OF ATTACHMENTS TO
STATEMENT FOR THE RECORD
GREGORY J. ABRAHAMSON
CHAIRMAN
SPOKANE TRIBE OF INDIANS

BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS

ON

S. 1345 THE SPOKANE TRIBE OF INDIANS OF THE SPOKANE RESERVATION GRAND COULEE DAM EQUITABLE COMPENSATION SETTLEMENT ACT

October 20, 2011

ATTACHMENT 1: June 4, 2007 Letter from Lincoln County Commissioners to Chairman, Spokane Tribe of Indians (2 pages)

ATTACHMENT 2: December 18, 2007 Letters from Stevens County Commissioners to Senators Cantwell and Murray (2 pages)

ATTACHMENT 3: January 23, 2008 Letters from Eastern Washington Council of Governments to Senators Murray and Cantwell and Representative McMorris-Rodgers (3 pages)

ATTACHMENT 4: December 14, 2007 Letter from Governor Christine O. Gregoire to Senator Cantwell and Congressman Dicks (2 pages) and June 29, 2009 Letter from Governor Gregoire to President Obama (2 pages)

ATTACHMENT 5: August 25, 2009 Letter from Mary B. Verner, Mayor of Spokane to Senators Cantwell and Murray and Representatives Dicks and Inslee (2 pages)

ATTACHMENT 6: May 22, 2009 Letter from Chairmen, Spokane Tribe of Indians and Confederated Tribes of the Colville Reservation, to Congressman Inslee and Senator Cantwell (1 page) with proposed changes to Section 8 of S. 1388 (1 page) and proposed report language (1 page)

ATTACHMENT 7: 1990 Lake Roosevelt Cooperative Management Agreement (15 pages)

ATTACHMENT 1

June 4, 2007 Letter from Lincoln County Commissioners to Chairman, Spokane Tribe of Indians (2 pages)

Board Of
Lincoln
County
Commissioners

Lincoln County, Washington
P.O. Box 28 · Davenport, Washington 99122
Office Phone: (509) 725-3031 · FAX: (509) 725-2034

Regular Meetings First & Third Monday of Each Month

June 4, 2007

Richard L. Sherwood, Chairman
Spokane Tribe of Indians
P.O. Box 100
Wellpinit, WA 99040

RE: Settlement Bill

Dear Chairman Sherwood,

Thank you for providing Lincoln County an advance copy of the proposed federal legislation for the Spokane Tribe of Indians. As you are aware, last year we took exception to the proposed legislation because it included a provision which would transfer the south shore of the Spokane River, up to the 1290 elevation, to the tribe. We greatly appreciate that in the current legislation you have eliminated that provision and that the South shore of the Spokane River will remain as it has since the inception of the Coulee Dam Project.

The Board of Commissioners has a very minor concern with the agreement that was entered into with the Washington State Department of Fish and Wildlife. However, the concern is of such a minor nature that we would not wish to hold up your settlement bill over an issue that we feel certain can be worked out between ourselves.

Based on our understanding that the legislation proposed by the Spokane Tribe of Indians would officially transfer administrative jurisdiction of that portion of land that includes the south bank of the Spokane River as it existed before Grand Coulee Dam was constructed; and understanding that the exact location of the original south bank cannot be accurately determined; but further understanding that it does not reach to the south bank of the current body of water, the Board of Lincoln County Commissioners fully and strongly supports the legislation being proposed to settle the tribe's long standing claim against the federal government. Our support is based on the proposed legislation that has been provided by the tribe and if that legislation changes during the legislative process, we would reserve the right to re-evaluate the impact on our citizens and our support for the bill.

We want to thank the Council of the Spokane Tribe of Indians for their efforts to reach out to Lincoln County in a positive manner to resolve an issue that was potentially divisive to the region.

Respectfully,

Dennis D. Bly	Deral D. Boleneus	Ted Hopkins
Dennis D. Bly	Deral D. Boleneus	Ted Hopkins
Chairman	District #2	District #3

cc: Senator Patty Murray
Senator Maria Cantwell
Representative Cathy McMorris Rodgers
Senator Bob Morton
Prosecuting Attorney

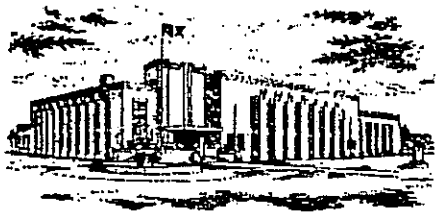
ATTACHMENT 2

December 18, 2007 Letters from Stevens County Commissioners to Senators Cantwell and Murray (2 pages)

Tony Delgado
District No. 1

Merrill J. Ott
District No. 2

Malcolm Friedman
District No. 3



Polly Coleman
Clerk of the Board

Nettie Winders
Assistant Clerk

Stevens County Commissioners

215 South Oak St, Room #214, Colville, WA 99114-2861
Phone: 509-684-3751 Fax: 509-684-8310 TTY: 800-833-6388
Email: Commissioners@co.stevens.wa.us

December 18, 2007

Senator Maria Cantwell
U.S. Senate Rm 717
Hart Building
Washington, D.C., 20510

Dear Senator Cantwell,

We are writing to request renewed support for authorizing reparation payments to the Spokane Tribe of Indians. The Grand Coulee Dam's reservoir, Lake Roosevelt inundated their traditional lands many decades ago, and through a series of false starts and circumstances, the Spokane Tribe has yet to receive reparation payments.

Ironically, the Eastern Washington Council of Governments, of which Stevens County is a member, met recently. It was on December 7 – the 66th anniversary of Pearl Harbor – and it was then, in 1941, in Washington, D.C. that a bill was being considered to grant the reparation payments to the tribe. In a most gracious and patriotic fashion, the Spokane Tribe did not pursue the passage of the bill granting reparations, but instead, stood aside to stand side by side with all the Americans to engage in the WWII conflict.

They continue to lead by example, and we are honored to call them our neighbors and friends. Please continue in your efforts to get legislation passed which finally settles this debt owed to the Spokane Tribe.

Sincerely,

Malcolm Friedman
Chairman of the Board
Commissioner

Merrill J. Ott
Commissioner

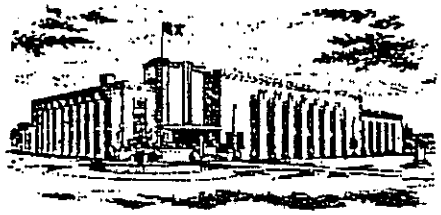
Tony Delgado
Commissioner

Cc: Chairman Rick Sherwood, Spokane Tribe of Indians
Representative Cathy McMorris-Rodgers

Tony Delgado
District No. 1

Merrill J. Ott
District No. 2

Malcolm Friedman
District No. 3



Polly Coleman
Clerk of the Board

Nettie Winders
Assistant Clerk

Stevens County Commissioners

215 South Oak St, Room #214, Colville, WA 99114-2861
Phone: 509-684-3751 Fax: 509-684-8310 TTY: 800-833-6388
Email: Commissioners@co.stevens.wa.us

December 18, 2007

Senator Patty Murray
B-34 Dirksen Senate Building
Washington, D.C. 20510

Dear Senator Murray,

We are writing to request renewed support for authorizing reparation payments to the Spokane Tribe of Indians. The Grand Coulee Dam's reservoir, Lake Roosevelt inundated their traditional lands many decades ago, and through a series of false starts and circumstances, the Spokane Tribe has yet to receive reparation payments.

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They continue to lead by example, and we are honored to call them our neighbors and friends. Please continue in your efforts to get legislation passed which finally settles this debt owed to the Spokane Tribe.

Sincerely,

Malcolm Friedman
Chairman of the Board
Commissioner

Merrill J. Ott
Commissioner

Tony Delgado
Commissioner

Cc: Chairman Rick Sherwood, Spokane Tribe of Indians
Senator Maria Cantwell
Representative Cathy McMorris-Rodgers

ATTACHMENT 3

January 23, 2008 Letters from Eastern Washington Council of Governments to Senators Murray and Cantwell and Representative McMorris-Rodgers (3 pages)

Eastern Washington
Council of Governments

215 S. Oak St, Colville , WA 99114
509-684-3751

Chairman Ken Oliver, Pend Oreille County
Vice Chairman Rudy Plager, Adams County
Secretary Merrill Ott, Stevens County
Treasurer Ted Hopkins, Lincoln County

Jan 23, 2008

Representative Cathy McMorris-Rodgers
1708 Longworth House Office Building
Washington, D.C., 20515

Dear Representative McMorris-Rodgers,

The Eastern Washington Council of Governments (EWCOG) continues to fully support efforts by the Spokane Tribe of Indians to gain reparation payments for the Columbia River's inundation of their lands when the Grand Coulee Dam was constructed many decades ago. To this date, the United States has yet to fulfill their promise of reparation payments, and though legislation was introduced last year, the authorization has yet to materialize.

The county commissioners of the EWCOG continue to meet on various issues of concern here in the northeast portion of this great state. Our concerns for developing a healthy economy, protecting our resources, and engaging our state and federal representatives remain strong. Your visits to our region have been encouraging to us all.

We urge your strongest support and consideration for this issue. As we move ahead in our regional issues, our friends and neighbors in the Spokane Tribe have and continue to be an integral force helping us all.

Thank you for your service to our great state of Washington.

Sincerely,

Ken Oliver
Pend Oreille County Commissioners
Chairman, Eastern Washington Council of Governments
commissioners@pendoreille.org
commissioners@co.stevens.wa.us

Eastern Washington
Council of Governments

215 S. Oak St, Colville, WA 99114
509-684-3751

Chairman Ken Oliver, Pend Oreille County
Vice Chairman Rudy Plager, Adams County
Secretary Merrill Ott, Stevens County
Treasurer Ted Hopkins, Lincoln County

Jan 23, 2008

Senator Maria Cantwell,
511 Dirksen Senate Office Building
Washington, D.C., 20510

Dear Senator Cantwell,

The Eastern Washington Council of Governments (EWCOG) continues to fully support efforts by the Spokane Tribe of Indians to gain reparation payments for the Columbia River's inundation of their lands when the Grand Coulee Dam was constructed many decades ago. To this date, the United States has yet to fulfill their promise of reparation payments, and though legislation was introduced last year, the authorization has yet to materialize.

The county commissioners of the EWCOG continue to meet on various issues of concern here in the northeast portion of this great state. Our concerns for developing a healthy economy, protecting our resources, and engaging our state and federal representatives remain strong. Your visits to our region have been encouraging to us all.

We urge your strongest support and consideration for this issue. As we move ahead in our regional issues, our friends and neighbors in the Spokane Tribe have and continue to be an integral force helping us all.

Thank you for your service to our great state of Washington.

Sincerely,

Ken Oliver
Pend Oreille County Commissioners
Chairman, Eastern Washington Council of Governments
commissioners@pendoreille.org
commissioners@co.stevens.wa.us

Eastern Washington
Council of Governments

215 S. Oak St, Colville, WA 99114
509-684-3751

Chairman Ken Oliver, Pend Oreille County
Vice Chairman Rudy Plager, Adams County
Secretary Merrill Ott, Stevens County
Treasurer Ted Hopkins, Lincoln County

Jan 23, 2008

Senator Patty Murray
173 Russell Senate Office Building
Washington, D.C., 20510

Dear Senator Murray,

The Eastern Washington Council of Governments (EWCOG) continues to fully support efforts by the Spokane Tribe of Indians to gain reparation payments for the Columbia River's inundation of their lands when the Grand Coulee Dam was constructed many decades ago. To this date, the United States has yet to fulfill their promise of reparation payments, and though legislation was introduced last year, the authorization has yet to materialize.

The county commissioners of the EWCOG continue to meet on various issues of concern here in the northeast portion of this great state. Our concerns for developing a healthy economy, protecting our resources, and engaging our state and federal representatives remain strong. Your visits to our region have been encouraging to us all.

We urge your strongest support and consideration for this issue. As we move ahead in our regional issues, our friends and neighbors in the Spokane Tribe have and continue to be an integral force helping us all.

Thank you for your service to our great state of Washington.

Sincerely,

Ken Oliver
Pend Oreille County Commissioners
Chairman, Eastern Washington Council of Governments
commissioners@pendoreille.org
commissioners@co.stevens.wa.us

ATTACHMENT 4

December 14, 2007 Letter from Governor Christine O. Gregoire to Senator Cantwell and Congressman Dicks (2 pages) and June 29, 2009 Letter from Governor Gregoire to President Obama (2 pages)

CHRISTINE O. GREGOIRE
Governor

STATE OF WASHINGTON

OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

December 14, 2007

The Honorable Maria Cantwell
United States Senate
511 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Norm Dicks
U.S. House of Representatives
2467 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Senator Cantwell and Congressman Dicks:

Today I write in support of the Spokane Tribe of Indians Grand Coulee Dam Equitable Compensation Settlement Act, a bill to provide monetary compensation and return of the lands to the people of the Spokane Tribe that were taken, damaged, or used for the construction and operation of the Grand Coulee Dam. I also offer the full assistance of my office in your efforts to pass this legislation as it is clearly appropriate that this settlement be approved and compensation paid.

For many years, the people of the Spokane Tribe were joined with the Columbia and Spokane Rivers in a relationship that defined the Tribe's culture, economy, and way of life. The rivers were their primary source of food, trade and spirituality, and played a central role in shaping tribal identity. To be a Spokane tribal member was to believe in and rely upon the abundance and permanence of the river's bounty. The Spokane People referred to the Spokane River as the "Path of Life." It is difficult for most people living in Washington to comprehend the profound and devastating impacts and effects forced upon tribal members during construction and subsequent operation of the dam.

As a result of your efforts in Congress, the people of the United States now have an opportunity to redress, in part, the damage inflicted on the Tribe. I am committed to work with you to secure some measure of fair and equitable compensation for the past and continued use of Spokane Tribal land for the production of hydropower at Grand Coulee Dam.

The state of Washington, the Pacific Northwest, and the United States receive enormous benefits from the low-cost power, flood protection, water supply, and other value provided by the Grand Coulee Dam. Indeed, the very competitiveness of the regional economy is founded in large measure upon these benefits. The Spokane Tribe has long waited to receive fair and honorable compensation for the use of their lands by Grand Coulee. It should be obvious to all that fulfillment of that obligation is long overdue.

I look forward to working with you to enact this important legislation.

Sincerely,

Christine O. Gregoire
Governor

cc: The Honorable Rick Sherwood, Chairman, Spokane Tribal Business Council
The Honorable Patty Murray, United States Senate
The Honorable Cathy McMorris Rodgers, U.S. House of Representatives
The Honorable Jay Inslee, U.S. House of Representatives
Mark Rupp, Director, Governor Gregoire's Washington, D.C., Office

CHRISTINE O. GREGOIRE
Governor

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

June 29, 2009

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

RE: Spokane Tribe of Indians' Grand Coulee Dam Equitable Compensation Settlement Act

Dear Mr. President:

I write to you on behalf of the Spokane Tribe of Indians to request your support for the Tribes' Grand Coulee Settlement legislation soon to be introduced in Congress. This legislation will help correct a longstanding wrong against this Washington State tribe. The legislation is expected to be introduced soon, and will be sponsored in the Senate by Senators Patty Murray and Maria Cantwell of Washington and by Senator Inouye. In the House of Representatives the bill will be sponsored by Congressman Jay Inslee and others.

The Spokane Indian Reservation is located at the confluence of the Columbia and Spokane Rivers in the eastern part of the state of Washington. The construction of the Grand Coulee Dam in the 1930's created a reservoir which had significant adverse affects on the Tribe. It cut off critical salmon runs, inundated boundary rivers and flooded thousands of acres of the Reservation. The Tribe received one payment of $4,700 for this damage.

Since that time the Tribe has been trying to secure a settlement with the United States. Negotiations with the Departments of Interior and Justice failed and legislation has been introduced in Congress over the past several years, passing one house or the other but never both. Most recently the Tribe has worked to resolve concerns about the legislation raised by state and local governments. The annual settlement payments under the bill would be paid to the Tribe from the Bonneville Power Administration and derived from agency cost savings rather than ratepayers. The bill does not require any direct federal spending.

I respectfully request the support of your administration in righting this injustice and securing enactment of the legislation to provide for equitable compensation to the Spokane Tribe of Indians of the Spokane Reservation for the use of tribal land for the production of hydro power by the Grand Coulee Dam. Thank you for your consideration.

Sincerely,

Christine O. Gregoire
Governor

cc: Gregory J. Abrahamson, Chairman, Spokane Tribe of Indians
Washington State Congressional Delegation
Craig Bill, Executive Director, Governor's Office of Indian Affairs

ATTACHMENT 5

August 25, 2009 Letter from Mary B. Verner, Mayor of Spokane to Senators Cantwell and Murray and Representatives Dicks and Inslee (2 pages)

City of Spokane

August 25, 2009

The Honorable Maria Cantwell
United States Senate
SD-511 Dirksen Senate Office Building
Washington, DC 20510-4705

Dear Senator Cantwell:

I write to voice strong support for the Spokane Tribe of Indians' Grand Coulee Dam Equitable Compensation Settlement Act – S. 1388 and H.R. 3097. The legislation has the endorsement of Governor Gregoire, all of the neighboring County Commissioners and the National Congress of American Indians. I am familiar with the relevant history of the Tribe and the proposed legislation and I endorse this bill and this long overdue settlement.

The Grand Coulee Dam has brought tremendous benefits to our region, to the West, indeed to the entire country. Regrettably, those rewards come at the expense of the Spokane Tribe and the Colville Confederated Tribes. Both Tribes have suffered devastating impacts to their culture, economy and way of life. Yet the Colvilles secured a settlement with the United States in 1994, while the annual impacts to the Spokane continue unmitigated, and their historic claims are still unresolved. When the Colville bill was considered in 1994, the Spokanes were promised a similar settlement by Congress. The Spokane legislation is based on the 1994 Colville settlement. The proposed legislation represents a final settlement of the Spokane Tribe's claims.

Similar Spokane settlement bills were approved by the United States Senate during the 108th Congress in 2004 and the House of Representatives in the 109th Congress in 2005. I applaud the Tribe in their successful and generous efforts to address in this bill the previously stated concerns of affected State and local governments, Indian Tribes and individual landowners as well as federal agencies. I also note that the annual compensation payments provided for in the bill are not to be recovered from the region's ratepayers, but from cost reductions in expenditures by Bonneville Power Administration.

The Spokane Tribe is our good neighbor. The Tribe has fought long and hard in numerous regional forms to protect and enhance the values and interests associated with the Spokane River and Columbia River as well as Lake Roosevelt. Congressional approval of this proposed settlement legislation will right a longstanding wrong imposed on the Spokane Tribe, foster positive intergovernmental relations, as well as provide numerous other benefits both to the Tribe and our region.

808 W. Spokane Falls Blvd. • Spokane, Washington 99201-3335
Phone: (509) 625-6250 • Fax (509) 625-6217

A fair and honorable settlement with the Spokane Tribe, for the past and continued use of their lands for the production of hydropower, is long overdue. I urge Congress to enact this important legislation.

Sincerely,

Mary

Mary B. Verner
Mayor

cc: Senator Patty Murray
Congressman Jay Inslee
Congressman Norman Dicks

ATTACHMENT 6

May 22, 2009 Letter from Chairmen, Spokane Tribe of Indians and Confederated Tribes of the Colville Reservation
to Congressman Inslee and Senator Cantwell (1 page)
with proposed changes to Section 8 of S. 1388 (1 page)
and proposed report language (1 page)

OFFICE OF THE RESERVATION ATTORNEY
Confederated Tribes of the Colville Reservation
P. O. Box 150
Nespelem, WA 99155
Telephone: (509) 634-2381 Fax: (509) 634-2387

RECEIVED
JUN 19 2007

Via Telecopier to 208-667-4695,
Followed by First-Class U.S. Mail

June 17, 2007

Howard Funke, Attorney At Law
Howard Funke & Associates, P.C.
424 Sherman Ave., Suite 308
P.O. Box 969
Coeur d'Alene, ID 83816-0969

Re: Disclaimer language for Colville-Spokane Reservation boundary in Spokane Tribe Coulee Dam Settlement Bill

Dear Mr. Funke:

In a letter dated March 21, 2007, I proposed draft disclaimer language for Section 9 of the Spokane Tribe Grand Coulee Dam Settlement bill, re the boundary between the Colville and Spokane Reservations. We subsequently discussed this and on April 25, 2007, at a meeting in Spokane, you provided me with modifications to my proposed language. This letter is to advise that your modifications are acceptable to the Colville Tribes. The language in question, including your modifications, is as follows:

> Nothing in this section shall be construed as establishing or affecting the precise location of the boundary between the Spokane Indian Reservation and the Colville Reservation along the Columbia River.

This language is found at Section 9 (c) of the full draft bill as you provided it to me an email on May 10, 2007. You have indicated that the bill may be introduced soon. Please advise me in the event Section 9 is modified in any way. Please note, too, that the Colville Tribes' acceptance of this boundary disclaimer language is not intended to indicate any position on the merits of the bill or whether it should be enacted.

I have appreciated your courtesy and professionalism in working with me to produce language that is acceptable to both the Spokane and Colville Tribes. Please do not hesitate to contact me if you have any further questions or concerns.

Sincerely,

Stephen H. Suagee
Reservation Attorney

cc: Colville Business Council

SEC. 8. TRANSFER OF ADMINISTRATIVE JURISDICTION AND RESTORATION OF OWNERSHIP OF LAND.

(a) Transfer of Jurisdiction - The Secretary shall transfer administrative jurisdiction from the Bureau of Reclamation to the Bureau of Indian Affairs over all land acquired by the United States under the Act of June 29, 1940 (16 U.S.C. 835d), that is located within the exterior boundaries of the Spokane Indian Reservation established pursuant to the Executive Order of January 18, 1881. Such transfer shall be subject to the provisions of subsection c.

(b) Restoration of Ownership in Trust -

(1) IN GENERAL - All land transferred under this section -

(A) shall be held in trust for the benefit and use of the Spokane Tribe; and

(B) shall remain part of the Spokane Indian Reservation.

(2) FEDERAL TRUST RESPONSIBILITY- The Federal trust responsibility for all land transferred under this section shall be the same as the responsibility for other tribal land held in trust within the Spokane Indian Reservation.

(c) Colville-Spokane Reservation Boundary - Nothing in this section establishes or affects the precise location of the boundary between the Spokane Indian Reservation and the Colville Reservation along the Columbia River or the agreement between the Colville and Spokane Tribes that the common boundary of the Spokane and Colville Indian zones established under the Act of June 29, 1940 (16 U.S.C. 835d) shall follow the center line of Lake Roosevelt without reference to the course of the submerged Columbia River. Further, nothing in this section affects either Tribe's rights to the use of that Tribe's respective portion of the Indian zone as provided by the Act of June 29, 1940 (16 U.S.C. 835d).

Proposed Report Language

Section 8(c) provides that nothing in this section establishes or affects the precise location of the actual boundary between the Spokane Indian Reservation and the Colville Reservation along the Columbia River, the respective use rights of each Tribe in Lake Roosevelt as reserved by the 1940 Act, or the common boundary of the Indian zones established pursuant to the 1940 Act in a Joint Resolution adopted by the two Tribes on September 17, 1973. That agreement provides:

1. That the common boundary of the enlarged Indian zones between the Spokane and Colville Reservations follow the center line of Roosevelt Lake without reference to the course of the submerged Columbia River so that the Spokane Indian zone will be to the east of said center line and the Colville Indian zone to the west.

2. That the Tribes establish a policy of reciprocity within both Indian zones where they are adjacent to each other with the cross deputization of game wardens, patrols, and other officers and uniformity in the administration of tribal rights and jurisdiction in that area.

3. That there be reserved for later negotiations and accord the question of where the actual common boundary between the two reservations exists on the bottom of the Roosevelt Lake, that is, whether it is at the center line or the west bank of the submerged Columbia River.

Nothing in this section affects these rights and agreement inter se. The Committee recognizes that the actual boundary between the two Reservations on the Columbia River and Lake Roosevelt is a matter to be resolved by further negotiation and accord between the Spokane and Colville Tribes. Accordingly, the Committee recommends that any unresolved issues regarding the common Reservation boundary should be a matter to be resolved through further negotiations between the two Tribes and are not affected in any way by the proposed legislation.

ATTACHMENT 7

1990 Lake Roosevelt Cooperative Management Agreement (15 pages)

LAKE ROOSEVELT
COOPERATIVE MANAGEMENT AGREEMENT

I. RECITALS

A. Whereas, the Bureau of Reclamation (hereinafter Reclamation) in connection with its responsibility for the construction, operation, and maintenance of the Columbia Basin Project has withdrawn or acquired lands or the right to use lands and may acquire additional land under the federal reclamation laws, Act of June 1902, 32 Stat. 388, and acts amendatory thereof or supplementary thereto, including the Act of March 10, 1973, 57 Stat. 14, and the Act of August 30, 1935, 49 Stat. 1028, 1039; and

B. Whereas the parties recognize (1) that some of the land acquired, withdrawn or used by Reclamation is located within the boundaries of the Colville Indian Reservation and the Spokane Indian Reservation; (2) that those reservation boundaries were not changed as a result of the acquisition or use of land within either reservation for the Columbia Basin Project; and, (3) that the Confederated Tribes of the Colville Reservation and the Spokane Tribe retain certain governmental authority and responsibility within the exterior boundaries of their respective reservations; and

C. Whereas, Congress and the President have each recognized certain sovereign and governmental powers of Indian tribes within their respective reservations, and support the tribal sovereignty of Indian tribes to exercise their full measure of governmental authority within their respective reservations; and

D. Whereas, on Lake Roosevelt, consistent with the express policies of the United States, the Colville and Spokane tribes have an interest in and certain regulatory authority within their reservations over fish and wildlife harvest and habitat protection, recreation, environmental protection, protection and management of cultural, historical and archaeological resources, and the development and utilization of resources on reservation, including economic development and management thereof; and

E. Whereas, the parties agree that the recreational and other natural resources of Lake Roosevelt and adjacent lands which through sound coordinated planning, development, and management of the Lake Roosevelt Management Area (LRMA), offer unusual opportunities for recreation and other activities for the people of the nation, and the members of the Confederated Tribes of the Colville Reservation and Spokane Indian Tribe; and

F. Whereas, lands acquired by Reclamation for Lake Roosevelt within the Colville and Spokane reservations are available for public recreation and other development; however, the management and development of those lands may pose unique and difficult problems because of the cultural, religious, and competing social uses to which the tribes have committed their reservations; and

G. Whereas, the parties recognize that development in areas of Lake Roosevelt located off the Colville and Spokane Reservations will affect and impact reservation lands and resources, and because the lake area was the ancestral home of the Colville and Spokane Indians, such development could impact off-reservation archaeological, historical or religious sites; likewise, reservation activity will affect similar sites off the reservation within the LRMA; and

H. Whereas, there is an inter-relationship between the development of recreational and other natural resources of the LRMA; and

I. Whereas, the Coulee Dam National Recreation Area is an existing unit of the National Park system and subject to all NPS laws, regulations, policies and guidelines; and,

J. Whereas, the National Park Service has special skills and experience in planning, developing, maintaining and managing areas devoted to recreational uses, and is authorized to coordinate with other federal agencies in developing recreational programs (16 U.S.C. §§ 17j-2(b), 4601-1); and

K. Whereas, the Confederated Tribes of the Colville Reservation and the Spokane Indian Tribe have significant interests in the use and development of those lands within the LRMA, particularly within their respective reservations, and have demonstrated the willingness, capability and experience to

manage those lands and resources within their reservations for beneficial purposes including public recreational uses, and the conservation of the resources; and

L. Whereas, the respective parties to this Agreement are in a position to provide the services herein identified and, it has been determined to be in the interest of the United States Government to use such services, and the participation of the Confederated Tribes of the Colville Reservation, and the Spokane Tribe as set out herein is consistent with the Indian Self Determination Act of 1975, P.L. 93-638, as amended; and

M. Whereas, it is recognized and understood among the parties hereto, that nothing contained herein shall affect the authority of any party to commit federal funds as provided by law; and

N. Whereas, the protection, curation and ultimate disposition of archeological and historical resources (hereafter collectively resources) located within the LRMA is an important responsibility under this Agreement; and in several areas, investigation or preservation activities have occurred in the past but conditions have since changed; and the parties recognize it is important to learn more about these resources; and

O. Whereas, there exists a dispute on the extent of the Spokane Indian Reservation on the Spokane River Arm of Lake Roosevelt; and whereas, nothing in this Agreement shall be interpreted to affect that issue; and

P. Whereas, the Secretary of the Interior has a trust duty to tribes and has an obligation to exercise his/her authority consistent with statutory responsibilities and that trust duty, and to interact with tribes on a government-to-government basis.

NOW THEREFORE, the parties hereto, hereby mutually agree as follows:

II. AUTHORITY

1. This Agreement is entered into by the Department of the Interior pursuant to the authority of the Act of August 30,

1935, 49 Stat. 1028, 1039, the Act of March 10, 1943, 57 Stat. 14, 43 U.S.C. §§ 373, 485i (1982). Nothing in this Agreement shall be construed to modify or annul the Secretary's authority under these Acts.

2. The Confederated Tribes of the Colville Reservation has authority to enter into this Agreement pursuant to Article V, Section 1, Part (a) of the Colville Constitution, adopted February 26, 1938, and approved by the Secretary on April 19, 1938.

3. The Spokane Tribe has authority to enter into this Agreement pursuant to Article VIII of the Spokane Tribal Constitution, adopted June 27, 1951, as amended.

III. PURPOSE

The purpose of this Agreement is to allow the parties to coordinate the management of the Lake Roosevelt Management Area (hereinafter referred to as LRMA), and to plan and develop facilities and activities on Lake Roosevelt and its freeboard lands. The parties acknowledge and recognize management of the LRMA is subject to the right of the Bureau of Reclamation to accomplish the purposes of the Columbia Basin Project.

IV. GENERAL PROVISIONS

A. Parties:

The parties to this Agreement shall include as governmental parties the National Park Service (NPS), the Bureau of Reclamation (Reclamation), the Bureau of Indian Affairs (BIA), the Confederated Tribes of the Colville Reservation (Colville Tribes), and the Spokane Indian Tribe (Spokane Tribe). Unless the context of the Agreement requires otherwise, the Colville and Spokane tribes shall be referred to collectively as "tribes."

B. Area Subject to Agreement:

This Agreement shall cover the management of the LRMA as depicted in Exhibit 1 attached hereto. The LRMA includes Grand Coulee Dam and its appurtenances on Lake Roosevelt, the surface area of Lake Roosevelt up to elevation 1290 msl

(hereinafter Lake area) and all freeboard lands surrounding Lake Roosevelt above elevation 1290 msl owned by or used by the United States pursuant to any agreement for purposes of the Columbia Basin Project.

C. Management Zones:

For the purpose of coordinating the management of the LRMA, and for allocating the appropriate use of resources available in and around Lake Roosevelt, three management zones shall be established.

1. Reclamation Zone: That part of the LRMA surrounding Grand Coulee Dam as set out in Exhibit 1 and marked in blue.

2. Recreation Zone: That part of the LRMA lying outside of the Reclamation and Reservation Zones as set out in Exhibit 1 and marked in green.

3. Reservation Zone: That part of the LRMA lying within the boundaries of the Colville Indian Reservation or Spokane Indian Reservation all as set out in Exhibit 1 and marked in orange. Provided, that for purposes of management only, in those areas where the Colville Indian Reservation and Spokane Indian Reservation lie across from each other and on the Spokane River arm, there shall be a right of navigational passage. This right shall be defined as the right to pass through that portion of the Reservation Zone defined in this Part to a destination point outside that portion of the Reservation Zone.

D. Management and Regulation of the LRMA:

The parties to this Agreement agree that the management and regulation of the LRMA set out below are not intended to nor shall they interfere with or be inconsistent with the purposes for which the Columbia Basin Project was established, is operated and maintained; those purposes being primarily flood control, improved navigation, streamflow regulation, providing for storage and for the delivery of stored waters thereof for the reclamation of public and private lands and Indian reservations, for the generation of electrical power and for other beneficial uses, nor is it intended to modify or alter any obligations

or authority of the parties. Consistent with the above statement, the management and regulation of the LRMA shall be as follows:

1. Reclamation shall have exclusive operational control of the flow and utilization of water at the Grand Coulee Dam and Project facilities operated by Reclamation, and of all access to the Grand Coulee Dam and Project facilities operated by Reclamation; and complete and exclusive jurisdiction within the Reclamation Zone, including authority over and responsibility for the Grand Coulee Dam and Project facilities operated by Reclamation, and such project lands adjacent thereto as the Commissioner of Reclamation with the approval of the Secretary determines to be necessary for Project purposes. Provided, that the parties shall retain the right to take any action otherwise available to challenge any action undertaken by Reclamation under the authority recognized under this Part, including but not limited to action dealing with irrigation, lake level, flows, and storage.

2. NPS shall manage, plan and regulate all activities, development, and uses that take place in the Recreation Zone in accordance with applicable provisions of federal law and subject to the statutory authorities of Reclamation, and consistent with the provisions of this Agreement subject to Reclamation's right to make use of the Recreation Zone as required to carry out the purposes of the Columbia Basin Project.

3. The tribes shall manage as follows:

   a. The Colville Tribes shall manage, plan and regulate all activities, development and uses that take place within that portion of the Reservation Zone within the Colville Reservation in accordance with applicable provisions of federal and tribal law, and subject to the statutory authorities of Reclamation, and consistent with the provisions of this Agreement subject to Reclamation's right to make use of such areas of the Reservation Zone as required to carry out the purposes of the Columbia Basin Project.

b. The Spokane Tribe shall manage, plan and regulate all activities, development, and uses that take place within that portion of the Reservation Zone within the Spokane Reservation in accordance with applicable provisions of federal and tribal law, and subject to the statutory authorities of Reclamation, and consistent with the provisions of this Agreement subject to Reclamation's right to make use of such areas of the Reservation Zone as required to carry out the purposes of the Columbia Basin Project.

c. In those portions of the Reservation Zone where the Colville Indian Reservation and Spokane Reservation abut, the tribes shall determine as between themselves the allocation of management responsibility.

4. The BIA shall assist the tribes in carrying out the tribes' management of the Reservation Zone, and undertake such other activities as are authorized by law in support of the tribes.

E. Coordination of LRMA.

1. Each party to this Agreement shall designate a representative who will meet periodically with representatives of the other parties to coordinate the independent management of each within the LRMA, consistent with this Agreement.

2. The Parties shall:

a. Review, coordinate, communicate and standardize the management plans, regulations and policies developed by the tribes and NPS for their respective management areas to manage and regulate (1) recreation activities, (2) commercial and private development, including major new or significantly expanded development, and (3) the protection of the environment of the LRMA, all consistent with the special interests identified by the parties for their respective management areas, to the extent possible.

b. Develop a method to incorporate the plans developed by the tribes and NPS to provide to the extent practicable uniform management in the LRMA. Implementation of such plans shall be carried out consistent with the purposes of the Columbia Basin Project.

c. Review, coordinate, communicate and standardize use permits within the LRMA to the extent practicable, taking into account the cultural and religious interests of the tribes and other parties, and the need to have the standards uniformly applicable in the LRMA.

d. Monitor, once per year, compliance with this Agreement.

e. Involve and receive the comments from other interested state, local, county or regional governmental entities and private individuals, or citizen groups or entities with respect to activities related to the management of the LRMA.

f. Coordinate the development of annual operating budgets and proposals for funding.

g. Undertake such other Lake Roosevelt activities that the Parties agree to undertake consistent with applicable law.

3. Dispute Resolution Process:

a. Any party to this Agreement that is aggrieved by any action of another party related to this Agreement, or the failure of a party to act consistent with this Agreement may request that the issue be resolved under this part.

b. Any party shall prior to initiating any procedure under Part c of this Part, request: (1) a meeting of all Area/Regional Directors and tribal council representatives, to see if the problem can be resolved, and (2) if the process under Part (1) of this subpart is not successful any party may request that officials of the next higher level of BIA, NPS and Reclamation and area/regional

Directors meet with tribal council representatives to consider the issue and attempt to resolve it.

c. The aggrieved party or parties may request that a mediator be appointed to help resolve the issue. The parties shall agree on a mediator, or in the absence of agreement, the presiding Judge of the United States District Court for the Eastern District of Washington shall be requested to appoint a mediator. The parties shall develop procedures to insure that mediation is expeditious.

d. The dispute resolution process set out in this part shall be in addition to any other rights of a party to seek enforcement or interpretation of this Agreement.

F. Funding:

1. All parties shall cooperate in the development of all budget components and cost data and in the sharing of the necessary technical information so that each party can make realistic budget estimates necessary for that party to adequately manage the LRMA.

2. Each party to the Agreement shall seek funding for its share of this Agreement. The Superintendent of the Coulee Dam National Recreation Area, the Project Manager of Grand Coulee Dam and the Colville and Spokane Agency Superintendents of the Bureau of Indian Affairs will make a good faith effort to request funds needed by them to manage the LRMA. The BIA agency superintendents shall request funds needed by the tribes to adequately carry out their management responsibilities as identified under this Agreement. These requests shall only be developed and proposed consistent with and subject to budgetary practices and procedures of the United States, including, but not limited to the direction and policies of the President, OMB, and the Secretary of the Interior. Except as required under this paragraph or applicable law, parties to this Agreement shall support the need to provide adequate funding to the tribes to allow the tribes to carry out their responsibilities under this Agreement.

3. Upon approval of the requests for submission to the Congress as part of the President's budget, each party shall to the extent practicable, identify these funds in their respective congressional justifications and continue to support their own and each other's funding requests when testifying before Congress to the extent that such requirements are identified in the President's budget.

4. This Agreement shall not create an obligation on the part of any party hereto to expend funds that have not been lawfully appropriated by Congress or the Colville or Spokane tribes. The failure to take action otherwise required because funds were not appropriated shall not constitute a breach of this Agreement.

5. Nothing in this part shall prohibit or limit the right of the tribes to independently seek funding from whatever source is available to carry out their management and regulation within the Reservation Zone.

6. To the extent allowed by law, and consistent with the activity being undertaken and the terms of the Agreement, if additional funds from sources other than congressional appropriation become available to Reclamation, NPS or the BIA for purposes of undertaking any activity addressed by this Agreement, the agencies shall attempt to assure an equitable portion of those funds will be available to the tribes for compliance with this Agreement.

7. When the BIA submits its proposed budget it shall specifically identify for the Colville and Spokane tribes funds to cover the Lake Roosevelt Management Agreement.

8. Funding for the curation of any Indian resources transferred to the Colville and Spokane tribes will be included in the tribes' budget for management of LRMA unless other means become available for curation.

G. <u>Coordination of Recreation</u>:

1. The NPS and tribes shall coordinate their respective activities to the end that in the implementation of

their independent management and regulation of the LRMA they achieve to the extent practicable, a uniform system of recreation management including law enforcement throughout the LRMA taking into account the special needs or circumstances identified by the tribes or the NPS within the Reservation or Recreation Zones, respectively.

2. The NPS and tribes shall develop and implement a procedure that informs the recreating public of all facilities, resources, and concessions located within the LRMA, and the limitations on their use, and further informs the recreating public of the rules applicable in the various Management Areas of the LRMA, including anti-pollution rules.

3. The NPS and tribes shall work with Reclamation in the development of any recreation management or resource plans for the LRMA consistent with Federal law.

H. Development and Utilization of Resources:

1. The tribes shall retain within those parts of the Reservation Zone within their respective reservations the right to beneficially develop and utilize the natural resources and to develop economic enterprises that are compatible within the character of the LRMA, subject to federal statutory requirements. Use of the freeboard lands as allowed under this subpart H.1. shall be with the permission of the United States, which shall not be unreasonably withheld.

2. Should operations of the Columbia Basin Project cause damage to the natural resources on the freeboard lands within the Reservation Zone for which mitigation is required by law, the mitigation shall take place on the Reservation within which the damage took place to the extent practicable. Nothing in this part shall relieve any party from liability for past impacts to the natural resources of any party on either the Colville or Spokane Reservations.

I. Reservation of Rights:

This Agreement shall not be construed as waiving any rights the parties have under any applicable Act of Congress,

Executive Order, treaty, regulation, court decision or other authority.

J. Protection and Retention of Historical, Cultural and Archaeological Resources:

1. The parties to this Agreement shall prepare a Cultural Resources Management Plan that provides for the identification, and protection of Indian archaeological and historical resources (as identified in 16 U.S.C. 470bb(1), and 16 U.S.C. § 470w(5) (hereafter Indian Resources) located within the LRMA, and a procedure for the most expeditious transfer of title and return to the tribes of Indian Resources removed from the LRMA by the United States or with the United States' authority and which are within the United States' possession or under its control, consistent with the tribes' ability to properly curate or provide for the curation of the Indian Resources as required by law.

2. The Cultural Resources Plan shall contain provisions requiring the Federal parties to notify and consult with the tribes during the planning process and prior to authorizing or undertaking any survey, monitoring, or removal of Indian Resources from the LRMA, and shall provide an opportunity for the tribes to participate in, or if consistent with the activity to undertake any such activity.

K. Duty to Comply:

It shall be a violation of this Agreement for any party to take any action or authorize any other person or entity to take any action that is inconsistent with or in violation of the terms and conditions of this Agreement, or to fail to take any action otherwise required by this Agreement.

V. MISCELLANEOUS PROVISIONS

A. Effective Date:

This Agreement shall become effective on the date it is approved by the Secretary of the Interior.

B. Modification of Agreement:

This Agreement may be modified only in writing, signed by all the parties and approved by the Secretary.

C. Termination:

This Agreement shall remain in effect until terminated by the Secretary of the Interior. Any party may request that the Secretary terminate this Agreement. Within 30 days of the receipt of a request to terminate, the Secretary shall establish a mechanism to assist the parties to the Agreement in reconciling differences under this Agreement or to negotiate a new Agreement. The Secretary shall terminate this Agreement 180 days after the mechanism required under this part is established if no agreement between the parties is reached.

D. Judicial Enforcement:

Without regard to any other dispute resolution process set out in this Agreement, any party may seek review of any provision of this Agreement to determine the rights or obligations of the parties under this Agreement or to seek judicial enforcement of any provision of this Agreement or of a party's failure to carry out any duty provided for under this Agreement. Nothing in this Agreement shall be interpreted or construed as a limitation upon any party's right to seek judicial or administrative enforcement or review of any matter based upon treaty, Federal or state law or Executive Order, or to take any other action allowed by law.

E. Implementation of Agreement:

1. The tribes and the NPS shall independently exercise their individual and separate management and regulation of the Reservation and Recreation Zones respectively, consistent with the consultation and coordination responsibilities set out in this Agreement, and consistent with the legislated purposes of the Columbia Basin Project and applicable Reclamation Law.

2. Reclamation, in exercising its statutory oversight authority in the LRMA, shall not interfere with the management and regulation of the tribes or NPS as set

out in Part IV.D of this Agreement except where the actions of either the tribes, the NPS, or both are inconsistent with the legislated purposes of the Columbia Basin Project or interfere with the ability of Reclamation to carry out its legislated responsibility for the Columbia Basin Project.

F. Visitor Center:

Reclamation shall work with the tribes and NPS to incorporate their suggestions into the development of an interpretive program to the extent of available resources, for changes to the visitor's presentations. The resulting program should depict the purpose and operation of the Columbia Basin Project, the Indian history, government, and culture of the area, the impact of the Columbia Basin Project on the tribes, and the available recreational resources and benefits. This may include the display and distribution of literature/information applicable to the LRMA.

G. Contracting:

There are or may be activities carried out by contract by the Federal parties that take place within the LRMA under this Agreement that could be contracted by the tribes. The Federal parties will provide notice to the tribes of all contracting opportunities within the LRMA and will coordinate on contracting options, which may be available to tribes, either directly or through another Federal agency, within the LRMA, prior to the obligation of appropriated funds consistent with their statutory authorities. The parties to this Agreement shall use their best efforts to contract with the tribes consistent with the continued execution of their agency directed duties, to the extent allowed by statutory authority. Likewise, there may be opportunities for the tribes to contract for services or

facilities with the other parties. Nothing in this Part shall limit a party from utilizing bidding procedures.

APPROVED:

DATED: APR 2 0 1990

Jude C. Stensgar
Chairperson
Colville Business Council

DATED: APR 2 0 1990

Joe V. Flett
Chairperson
Spokane Indian Tribe

DATED: APR 1 0 1990

Jame M. Ridenour
Director
National Park Service

DATED: APR 2 0 1990

John M. Sayre
Assistant Secretary for
Water and Science

DATED: APR 1 1 1990

Constance Harriman
Assistant Secretary for
Fish, Wildlife and Parks

DATED: APR 2 0 1990

Dennis Underwood
Commissioner
Bureau of Reclamation

DATED: APR 2 [illegible]

Dr. Eddie F. Brown
Assistant Secretary for the
Bureau of Indian Affairs

DATED: APR 0 5 1990

Manuel Lujan, Jr., Secretary
Department of Interior