

Committee on Resources

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TESTIMONY OF WARREN SEYLER

CHAIRMAN, SPOKANE TRIBE OF INDIANS

ON H.R. 1753

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

BEFORE THE

Subcommittee on Water and Power

Committee on Resources

October 2, 2003

Thank you Mr. Chairman and members of the Subcommittee on Water and Power for the opportunity to testify on H.R. 1753. Accompanying me are Howard Funke, our attorney, and Dr. Charles Pace, our economist, who are available for questions and may have a few comments.

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

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

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

The other Reservation flooded by Grand Coulee's waters is that of the Colville Confederated Tribes. The waters that rose behind Grand Coulee Dam brought similar fates to both our Reservations. Our burial sites -- the places our ancestors were laid to rest -- were lost to the rising waters. The river banks, which provided us plants for foods and medicines were forever flooded. The homes, gardens, farms and ranches our people had worked hard to build on our Reservation are now under water. The free-flowing Columbia River and our "Path of Life" are now slack water behind Grand Coulee. The Dam also destroyed our salmon runs, which from time immemorial had given us life and identity. While the Colville lost most of their runs, salmon still were able to reach the Colville Reservation up to the Grand Coulee Dam. But upstream, at our Reservation, the salmon were entirely lost.

For decades, the Colville and Spokane Tribes shared similar histories and dialogue in connection with the Grand Coulee issue, and were subjected to the identical misconduct by the United States Government. When the project first began, it was to be a state project, governed by the Federal Power Act which required annual compensation to impacted Indian tribes. Later, after the Project was federalized and no longer fell under the Federal Power Act, Government officials continued to recognize that the Tribes should

be compensated. When construction on Grand Coulee began, the Commissioner of Indian Affairs recommended, in writing, that both Tribes receive annual payments for the dam's operations. The Secretary of the Interior and other high level federal officials knew the Tribes should receive compensation. But it never happened. Both Tribes were equally deceived.

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

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

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

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

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

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

We believe it is unprecedented for one tribe to receive compensation from the United States while a similar tribe receives nothing.

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

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

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

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

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

"The fair and honorable dealings standard established in the Indian Claims Commission Act should clearly apply to the United States' conduct and relationship with both the Colville and Spokane Tribes."

For the first several years we met nothing but delay and the assertion of technical legal defenses. Members of Congress who had been made aware of these failings, admonished the United States, stating in clear terms that the negotiations must be on the merits of our claim without consideration of legal defenses, and that by definition, negotiations must involve flexibility. We were advised that an offer was being developed, but that it had to go through several levels of federal approval. We were concerned that there would be little room for negotiation. As we awaited the offer, we continuously sought and obtained assurances from BPA and others that once presented, there would be sufficient flexibility for negotiations. But when the offer finally came five years later, it was presented as an ultimatum -- "take it or leave it."

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

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

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

for over sixty years.

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