



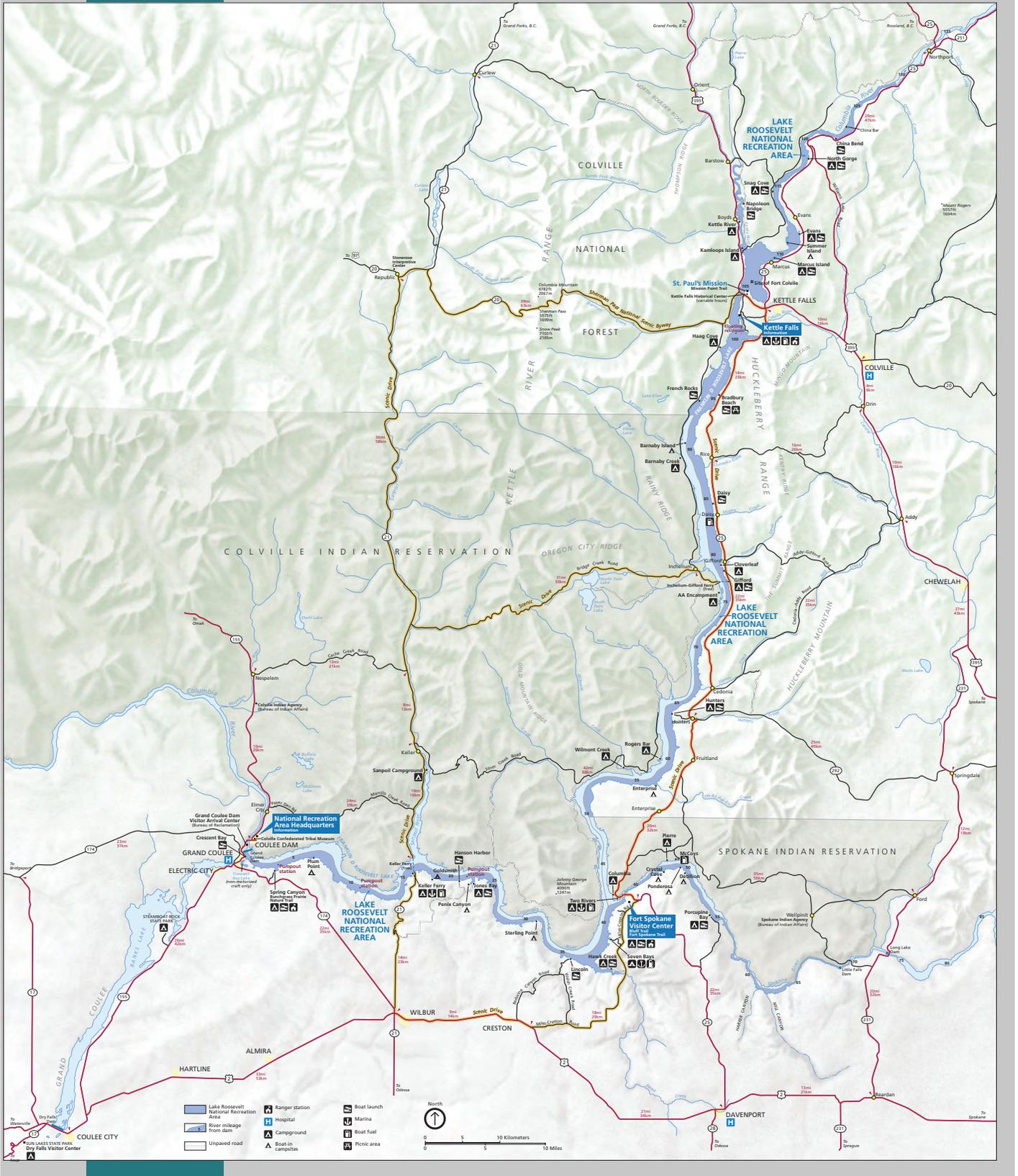
# Foundation Document

## Lake Roosevelt National Recreation Area

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# Contents

<b>Mission of the National Park Service</b>	<b>1</b>
<b>Introduction</b>	<b>2</b>
<b>Part 1: Core Components</b>	<b>3</b>
Brief Description of the Park	3
Park Purpose	5
Park Significance	6
Fundamental Resources and Values	7
Interpretive Themes	8
<b>Part 2: Dynamic Components</b>	<b>10</b>
Special Mandates and Administrative Commitments	10
Special Mandates	10
Administrative Commitments	11
Assessment of Planning and Data Needs	12
Analysis of Fundamental Resources and Values	12
Identification of Key Issues and Associated Planning and Data Needs	12
Planning and Data Needs	15
High Priority Planning Needs	16
High Priority Data Needs	17
<b>Part 3: Contributors</b>	<b>21</b>
Lake Roosevelt National Recreation Area	21
NPS Pacific West Region	21
NPS Denver Service Center, Planning Division	21
<b>Appendixes</b>	<b>22</b>
Appendix A: Primary Agreements for Lake Roosevelt National Recreation Area	22
Appendix B: Analysis of Fundamental Resources and Values	64
Appendix C: Inventory of Administrative Commitments	73



## Mission of the National Park Service

The National Park Service (NPS) preserves unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations. The National Park Service cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world.

The NPS core values are a framework in which the National Park Service accomplishes its mission. They express the manner in which, both individually and collectively, the National Park Service pursues its mission. The NPS core values are:

- **Shared stewardship:** We share a commitment to resource stewardship with the global preservation community.
- **Excellence:** We strive continually to learn and improve so that we may achieve the highest ideals of public service.
- **Integrity:** We deal honestly and fairly with the public and one another.
- **Tradition:** We are proud of it; we learn from it; we are not bound by it.
- **Respect:** We embrace each other's differences so that we may enrich the well-being of everyone.

The National Park Service is a bureau within the Department of the Interior. While numerous national park system units were created prior to 1916, it was not until August 25, 1916, that President Woodrow Wilson signed the National Park Service Organic Act formally establishing the National Park Service.

The national park system continues to grow and comprises more than 400 park units covering more than 84 million acres in every state, the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands. These units include, but are not limited to, national parks, monuments, battlefields, military parks, historical parks, historic sites, lakeshores, seashores, recreation areas, scenic rivers and trails, and the White House. The variety and diversity of park units throughout the nation require a strong commitment to resource stewardship and management to ensure both the protection and enjoyment of these resources for future generations.



*The arrowhead was authorized as the official National Park Service emblem by the Secretary of the Interior on July 20, 1951. The sequoia tree and bison represent vegetation and wildlife, the mountains and water represent scenic and recreational values, and the arrowhead represents historical and archeological values.*

## Introduction

Every unit of the national park system will have a foundational document to provide basic guidance for planning and management decisions—a foundation for planning and management. The core components of a foundation document include a brief description of the park as well as the park’s purpose, significance, fundamental resources and values, and interpretive themes. The foundation document also includes special mandates and administrative commitments, an assessment of planning and data needs that identifies planning issues, planning products to be developed, and the associated studies and data required for park planning. Along with the core components, the assessment provides a focus for park planning activities and establishes a baseline from which planning documents are developed.

A primary benefit of developing a foundation document is the opportunity to integrate and coordinate all kinds and levels of planning from a single, shared understanding of what is most important about the park. The process of developing a foundation document begins with gathering and integrating information about the park. Next, this information is refined and focused to determine what the most important attributes of the park are. The process of preparing a foundation document aids park managers, staff, and the public in identifying and clearly stating in one document the essential information that is necessary for park management to consider when determining future planning efforts, outlining key planning issues, and protecting resources and values that are integral to park purpose and identity.

While not included in this document, a park atlas is also part of a foundation project. The atlas is a series of maps compiled from available geographic information system (GIS) data on natural and cultural resources, visitor use patterns, facilities, and other topics. It serves as a GIS-based support tool for planning and park operations. The atlas is published as a (hard copy) paper product and as geospatial data for use in a web mapping environment. The park atlas for Lake Roosevelt National Recreation Area can be accessed online at: <http://insideparkatlas.nps.gov/>.



## Part 1: Core Components

The core components of a foundation document include a brief description of the park, park purpose, significance statements, fundamental resources and values, and interpretive themes. These components are core because they typically do not change over time. Core components are expected to be used in future planning and management efforts.

### Brief Description of the Park

Lake Roosevelt National Recreation Area, which is the largest reservoir in the Pacific Northwest, is located in the northeast portion of the state of Washington and stretches 133 miles from Grand Coulee Dam to Onion Creek, 16 miles south of the US-Canada border. The park manages more than 300 miles of publicly accessible shoreline that provides a wide range of primarily water-based recreational opportunities. The lake's open water and extensive—albeit narrow—shoreline provide visitors opportunities ranging from solitude to group activities, encompassing a variety of recreational possibilities. Boating, fishing, camping, picnicking, and sightseeing are a few of the activities supported by this regionally popular and nationally significant recreation area.

Long before Lake Roosevelt was formed by the impoundment of the Columbia River by Grand Coulee Dam, Native Americans fished, hunted, and gathered wild fruits and vegetables in the Upper Columbia River Basin. Dam construction, which began in 1933, resulted in the loss of life-sustaining fisheries, forever changing the cultural, spiritual, and economic lives of the Colville and Spokane tribes. The historic salmon fishery at the now submerged Kettle Falls was an important center of human activity in the Inland Northwest during more than 9,000 years of continuous habitation. Life began to change in the early 1800s as vastly different cultures arrived—fur traders, missionaries, settlers, and soldiers. Encroachment on traditional native lands led to tensions between Native Americans and newcomers, culminating in a brief war, treaties, and the establishment of reservations.

Grand Coulee Dam was completed in 1941, and Lake Roosevelt was formed behind the dam. In 1946 the Secretary of the Interior, by his approval of an agreement between the Bureau of Reclamation, the Office of Indian Affairs (now Bureau of Indian Affairs), and the National Park Service, designated the National Park Service as the manager for the Coulee Dam National Recreation Area. The agreement provided for NPS management of the area and noted that Lake Roosevelt and the adjacent lands offered unusual opportunities through sound planning, development, and management for health, social, and economic gains for the people of the nation. The name of the area was changed in 1997 to Lake Roosevelt National Recreation Area.





The 1990 Lake Roosevelt Cooperative Management Agreement, or “five-party agreement,” replaced the 1946 agreement and detailed the key responsibilities for the National Park Service, the Bureau of Reclamation, the Bureau of Indian Affairs, and the Confederated Tribes of the Colville Reservation and the Spokane Tribe of Indians. It further identified a “reclamation zone,” a “recreation zone,” and a “reservation zone,” which defined the management jurisdictions for each agency. However, the terms of the agreement do not alter land ownership. The National Park Service manages all uses in the recreation zone, subject to authorities of the Bureau of Reclamation required to carry out the purposes of the Columbia Basin Project.

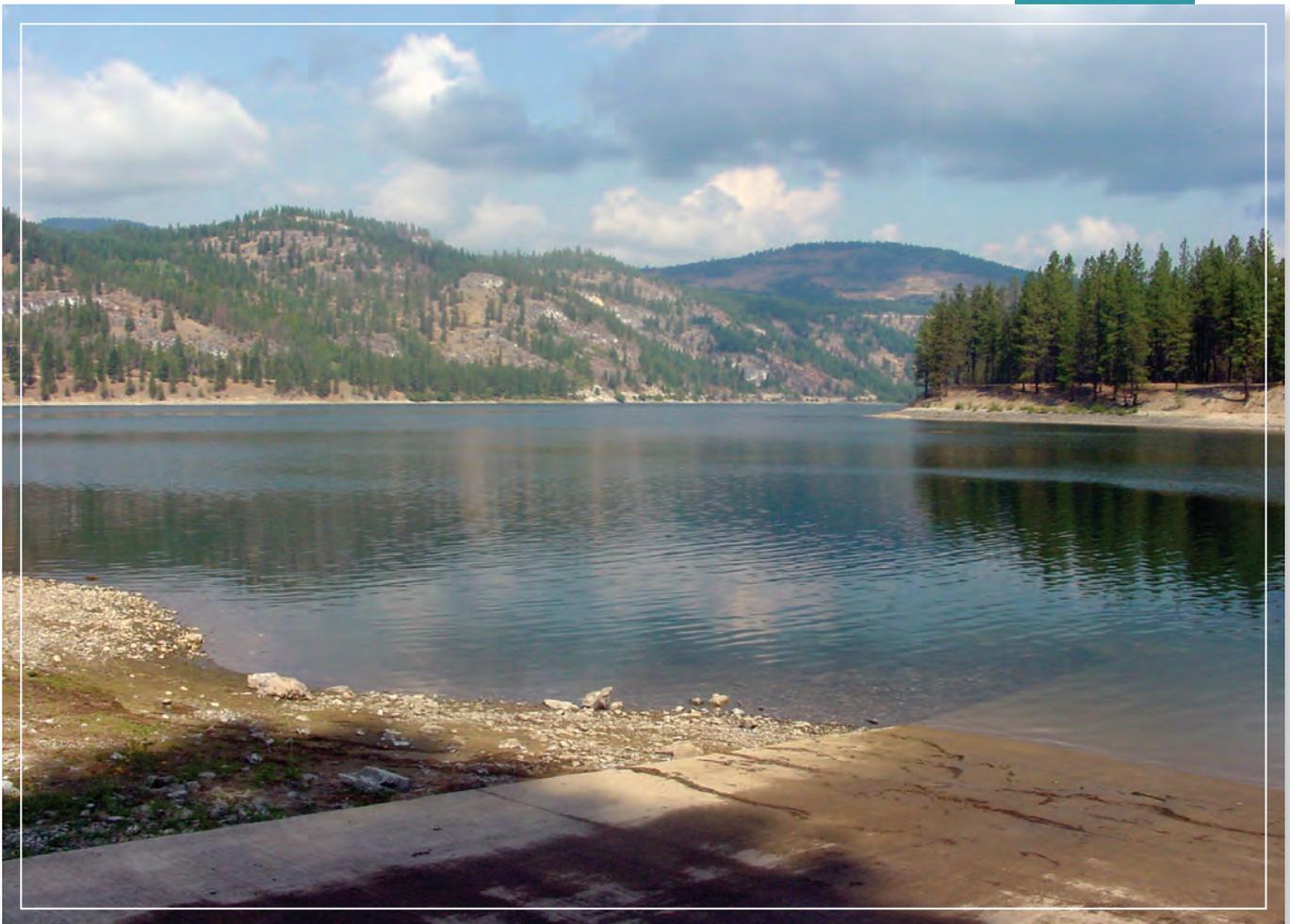
The Bureau of Reclamation lawfully acquired land upstream of the proposed Grand Coulee Dam. Lands were acquired from private landowners, the Confederated Tribes of the Colville Reservation, and the Spokane Tribe of Indians through acquisition, donation, reservation, or withdrawal. These lands were acquired to create an operational buffer and provide for recreation opportunities for visitors. These lands were a minimum of 20 feet above the expected full pool water level of the lake and created an irregular boundary for the park. Outside of the tribal reservations, these areas, referred to as the freeboard lands, are administered by the National Park Service (“recreation zone”). The park service manages 61% of the freeboard lands along the shoreline and 58% of the total water surface area. The Confederated Tribes of the Colville Reservation and the Spokane Tribe of Indians manage most of the remainder of the land and water (“reservation zone”). The Bureau of Reclamation retains management of the dam, its immediate area, and a few other locations considered necessary for reservoir operations (“reclamation zone”).

In addition to the management of Lake Roosevelt National Recreation Area, the park leads coordination efforts among multiple federal and state agencies, local governments, and nonprofit partners for the Ice Age Floods National Geologic Trail. Congress established the trail in 2009 under Public Law 111-11 to commemorate the dramatic series of floods, which occurred at the end of the last Ice Age (approximately 12,000 to 17,000 years ago) and left their mark by scouring hillsides along Lake Roosevelt, as well as transforming large portions of the regional landscape in what are now the states of Montana, Idaho, Washington, and Oregon. The trail is not considered within this document, because it is not a separate unit of the national park system and the park does not manage additional lands as part of the designation.

## Park Purpose

The purpose statement identifies the specific reason(s) for establishment of a particular park. The purpose statement for Lake Roosevelt National Recreation Area is based on a careful analysis of its management agreements and the legislative history that influenced its development (see appendix A). The purpose statement lays the foundation for understanding what is most important about the park.

*The purpose of LAKE ROOSEVELT NATIONAL RECREATION AREA is to protect, conserve, and preserve the natural and cultural resources of the Upper Columbia River Basin behind Grand Coulee Dam and provide for appropriate diverse recreation opportunities.*



## Park Significance

Significance statements express why a park’s resources and values are important enough to merit designation as a unit of the national park system. These statements are linked to the purpose of Lake Roosevelt National Recreation Area, and are supported by data, research, and consensus. Statements of significance describe the distinctive nature of the park and why an area is important within a global, national, regional, and systemwide context. They focus on the most important resources and values that will assist in park planning and management.

The following significance statements have been identified for Lake Roosevelt National Recreation Area. (Please note that the sequence of the statements does not reflect the level of significance.)

1. Lake Roosevelt National Recreation Area, which includes some of the most publicly accessible shoreline in the Pacific Northwest, offers a wide range of visitor experiences and appropriate recreational opportunities.
2. Lake Roosevelt National Recreation Area is located within two distinct geologic provinces—the Okanogan Highlands and the Columbia Plateau—and is an outstanding and easily accessible landscape sculpted by a rare combination of sequential geologic processes: volcanism, collision of tectonic plates, continental glaciation, and cataclysmic ice age floods.
3. Lake Roosevelt National Recreation Area is located at a historic convergence point for numerous Pacific Northwest tribes and contains a central gathering place in their traditional homeland, including the site of the second-largest prehistoric and historic Native American fishery on the Columbia River.
4. Lake Roosevelt National Recreation Area protects prominent resources that highlight the direct impacts of development—from westward expansion through the New Deal—on Native Americans and other communities and is the only NPS site that preserves and interprets an early 20th-century Indian boarding school.



## Fundamental Resources and Values

Fundamental resources and values (FRVs) are those features, systems, processes, experiences, stories, scenes, sounds, smells, or other attributes determined to warrant primary consideration during planning and management processes because they are essential to achieving the purpose of the park and maintaining its significance. Fundamental resources and values are closely related to a park's purpose and are more specific than significance statements.

Fundamental resources and values help focus planning and management efforts on what is truly significant about the park. One of the most important responsibilities of NPS managers is to ensure the conservation and public enjoyment of those qualities that are essential (fundamental) to achieving the purpose of the park and maintaining its significance. If fundamental resources and values are allowed to deteriorate, the park purpose and/or significance could be jeopardized.

The following fundamental resources and values have been identified for Lake Roosevelt National Recreation Area:

- **Lake Roosevelt** – The reservoir formed by Grand Coulee Dam extends more than 130 miles along the Columbia River and includes other tributaries, as well as a variety of geologic features and native vegetation and wildlife communities. Lake Roosevelt is a popular attraction because of its size, the beauty of its scenery, its location in relation to population centers, and public accessibility.
- **Public Shoreline** – Visitors have access to more than 300 miles of publicly accessible shoreline in the recreation zone managed by the National Park Service. The shoreline and adjacent land provide a variety of visitor opportunities, including camping, wildlife viewing, and stargazing, and serve as launch points for activities on the lake such as boating, fishing, and swimming.
- **High-Quality Recreational Opportunities** – The NPS recreational infrastructure at Lake Roosevelt National Recreation Area is managed to provide appropriate and high-quality visitor opportunities that serve diverse interests and abilities. Opportunities range from solitude on remote stretches of the lake to group and family recreational activities.
- **Fort Spokane Complex** – Strategically located at the confluence of the Spokane and Columbia Rivers, Fort Spokane represents three important facets of westward expansion history: a military fort, an Indian boarding school, and a tuberculosis sanitarium.
- **Archeological Sites and Ethnographic Resources at Kettle Falls** – Through its establishment and management, Lake Roosevelt National Recreation Area protects archeological sites and ethnographic resources associated with enduring human interactions with the Columbia River and surrounding landscape, including traditional villages and gathering locations, Old Fort Colville, Mission Point, the Kettle Falls Archeological District, and other submerged sites up and down the lake.



## Interpretive Themes

Interpretive themes are often described as the key stories or concepts that visitors should understand after visiting a park—they define the most important ideas or concepts communicated to visitors about a park unit. Themes are derived from, and should reflect, park purpose, significance, resources, and values. The set of interpretive themes is complete when it provides the structure necessary for park staff to develop opportunities for visitors to explore and relate to all park significance statements and fundamental resources and values.

Interpretive themes are an organizational tool that reveal and clarify meaning, concepts, contexts, and values represented by park resources. Sound themes are accurate and reflect current scholarship and science. They encourage exploration of the context in which events or natural processes occurred and the effects of those events and processes. Interpretive themes go beyond a mere description of the event or process to foster multiple opportunities to experience and consider the park and its resources. These themes help explain why a park story is relevant to people who may otherwise be unaware of connections they have to an event, time, or place associated with the park.

The following interpretive themes were identified for Lake Roosevelt National Recreation Area in the park's 2001 long-range interpretive plan. The park will update these interpretive themes as part of its overall long-range interpretive plan update, beginning in 2015:

- The immense size and scenic qualities of Lake Roosevelt offer a rich variety of opportunities to safely recreate on its resources.
  - Lake Roosevelt's open water and hundreds of miles of shoreline give visitors the chance for solitary reflection, group activities, or anything in between.
  - More than 18 species of sport fish found in the waters of Lake Roosevelt continue to challenge the skills of anglers of all ages and skill levels.
  - Scenic roads that connect most of the park facilities offer an alternative to visitors without boats to experience many of the park's resources.
  - Habitats throughout the park offer opportunities for watching wildlife, such as eagles, bears, deer, and many other species of birds, mammals, and fish.
  - Recreation is a byproduct of the construction of Grand Coulee Dam; the original purposes of the dam were irrigation water, flood control, and hydroelectricity.
  - The Columbia River's huge volume of water (10 times the Colorado River) originates in Canadian snowfields and glaciers, causing Lake Roosevelt to be typically cold and clear.
- The layers and landscapes of the Lake Roosevelt area show the geologic forces that shaped the scenery: changes that happened through gradual uplift, volcanism, erosion, and—occasionally—in sudden cataclysmic events.
  - Over millions of years, intermittent lava flows created the Columbia Basin and tectonic action uplifted these basalt layers and nearby mountains that form the landscape within which Lake Roosevelt is located.
  - The gradual erosion of these rock layers changed over time as the Cascade Mountains rose, forming a rain shadow that reduced the amount of precipitation in the Columbia Basin and nearby Okanogan Highlands.
  - During the last ice age, a series of massive floods—the largest scientifically documented floods in North America—scoured the coulees (gorges), channels, scablands, and other landforms in the Columbia Basin.



- Lake Roosevelt marks a transition zone between the desert-like Columbia Basin to the south and the slightly wetter Okanogan Highlands to the north.
  - Fish inhabiting Lake Roosevelt continue to adapt to an altered environment: dams have stopped salmon and sturgeon runs, the lake's depth fluctuates seasonally because of snowmelt runoff, the water temperature changes at different locations, and human-introduced species such as bass and walleye compete with native fish populations for food and habitat.
  - Much of the shoreline around Lake Roosevelt supports conifer forests, grasslands, and scrublands that provide habitat for an estimated 75 species of mammals (including human beings), 200 species of birds, 15 species of reptiles, and 10 species of amphibians.
  - The area's plant and animal species have changed and continue to change over time, adapting to climate transitions that vary from location to location.
- Human beings have been living along the Columbia River in the Lake Roosevelt area since the end of the last ice age, about 12,000 years ago.
  - The ancestors of many Salish-speaking people have lived in this region for thousands of years using traditional land use, seasonal migrations, survival strategies, and plant and animal resources.
  - The salmon fishery at Kettle Falls became the center of human activity in the Inland Northwest during more than 9,000 years of continuous Indian habitation, and 19th-century European American fur trade and missionary efforts.
  - Archeological and geoarcheological research has helped preserve the record of humans in the area, especially for the eras before European American contact.
  - The Spokane Tribe of Indians and individual bands of the Confederated Tribes of the Colville Reservation continue a heritage that stresses cooperation.
  - The religious and economic legacy of St. Paul's Mission and Fort Colville shaped the European American culture and history of the upper Columbia River during the mid-1800s while influencing the lives of surrounding native tribes.
  - Chinese placer miners inhabited the Columbia River region from Keller Ferry to China Bend, panning for gold. From the 1850s through the 1880s, Chinese settlers out-numbered other nonnatives along this stretch of the river.
  - The US Army established Fort Spokane in 1880 to provide a buffer between American Indians and settlers of the Inland Northwest; later, its use as an Indian boarding school and hospital exemplified the US federal Indian policy in the late 1800s and early 1900s.
  - The construction of the Grand Coulee Dam and the resulting impoundment of the Columbia River to create Lake Roosevelt greatly affected the area's water, fish, and shoreline resources and inundated numerous ferries, routes, towns, roads, and railroads that had to be relocated out of the lake's flood path.

## Part 2: Dynamic Components

The dynamic components of a foundation document include special mandates and administrative commitments and an assessment of planning and data needs. These components are dynamic because they will change over time. New special mandates can be established and new administrative commitments made. As conditions and trends of fundamental resources and values change over time, the analysis of planning and data needs will need to be revisited and revised, along with key issues. Therefore, this part of the foundation document will be updated accordingly.

### Special Mandates and Administrative Commitments

Many management decisions for a park unit are directed or influenced by special mandates and administrative commitments with other federal agencies, state and local governments, utility companies, partnering organizations, and other entities. Special mandates are requirements specific to a park that must be fulfilled. Mandates can be expressed in enabling legislation, in separate legislation following the establishment of the park, or through a judicial process. They may expand on park purpose or introduce elements unrelated to the purpose of the park. Administrative commitments are, in general, agreements that have been reached through formal, documented processes, often through memorandums of agreement. Examples include easements, rights-of-way, arrangements for emergency service responses, etc. Special mandates and administrative commitments can support, in many cases, a network of partnerships that help fulfill the objectives of the park and facilitate working relationships with other organizations. They are an essential component of managing and planning for Lake Roosevelt National Recreation Area.

#### Special Mandates

The Columbia River Treaty between the United States and Canada, also known as the Treaty Relating to Cooperative Development of the Water Resources of the Columbia River Basin, was implemented between the United States and Canada in 1964 in order to provide for coordinated, optimized hydropower generation on the Columbia River, as well as flood control protection in the United States. There is no specified end date for the Columbia River Treaty; however, the treaty states that either nation can terminate most of its provisions beginning in September 2024 with a minimum 10 years' written notice.

The existing Columbia River Treaty contains an important provision that will take effect on September 16, 2024, that would substantially impact the current power and flood control benefits unless renegotiated. Canadian flood control obligations would automatically change from a predetermined storage to request storage after all available effective flood storage in the United States is utilized. This has the potential to draw down certain reservoirs more frequently and more deeply with somewhat limited refill reliability. While there have been many benefits associated with the treaty, particularly those regarding energy production and flood risk management, the operation of the hydrosystem has had detrimental effects on the basin's natural resources and the communities that depend upon them. Although there have been some environmental protections included in treaty implementation in recent decades, there is no certainty that they will continue. One recommendation for the treaty upgrade is to build upon decades of investment in environmental restoration in the Columbia River Basin by enhancing and fully integrating ecosystem function as a primary treaty purpose, alongside flood risk management and hydropower. This action would facilitate improved decision making for hydropower and flood risk management by providing a context that allows the entire biological and human environment to be considered regarding river management. In addition, one of the emerging challenges in the basin is managing the impacts of climate change, which highlights the importance of including terms and provisions for adaptive management and flexibility in the treaty to mitigate and minimize adverse impacts on ecosystems, power generation, and flood control.

## Administrative Commitments

- The “five-party agreement” among the Spokane and Colville Indian Tribes, Bureau of Reclamation, Bureau of Indian Affairs, and National Park Service clarifies roles and areas of management responsibility for the two tribes and government agencies. The agreement confirms and establishes management authority for the tribes over portions of the reservoir and related lands within the boundaries of their respected reservations. The agreement does not require joint management but only that the entities coordinate their efforts and standardize their policies as much as practicable. The agreement recognizes that Lake Roosevelt National Recreation Area is an existing unit of the national park system and is subject to all NPS laws, regulations, policies, and guidelines.
- Summer cabins at Rickey Point and Sherman Creek are private homes constructed on leased public lands. In the early 1950s, the National Park Service established a goal of encouraging recreational use of the park by authorizing leases for summer cabin sites. Possible vacation cabin sites were systematically reviewed throughout the national recreation area. By 1953, Rickey Point and Sherman Creek were identified as the preferred locations for vacation cabins. NPS management of vacation cabin sites evolved over time. Changes included issuance of five-year special use permits, beginning in 1977, and new requirements that fees for private use of public lands had to be based on current market value and determined using competitive commercial practices.
- The park currently administers 24 special use permits for private vacation cabin use. The National Park Service acknowledges that no specific statutory authority exists to permit private vacation cabins within the park. When the leases for vacation cabins were initially issued in the 1950s, it was seen as a legitimate tool to help build a local constituency and support for a new NPS unit. This was the same method used by Steven Mather and Horace Albright when they initiated efforts to build visitation to the new national parks by building comfortable lodges and new roads to attract the increasing number of automobile drivers after World War I.

While the National Park Service is aware that under the modern interpretation of the Organic Act the private vacation cabins would not be permitted, the fact remains that these cabin lots have been permitted now for more than 50 years. Today, the Sherman Creek and Rickey Point vacation cabins are managed in accordance with laws, policies, regulations, executive orders, and NPS Director’s Orders/handbooks that guide the management of special park uses within units of the national park system. If increased visitation and recreation demands necessitated a different use for these lands, the issuance of these leases would be revisited.

- Camp NaBorLee, a summer camp geared to youth, hosts over 2,500 youth and adults each summer. The camp operates as a nonprofit organization dedicated to providing outdoor opportunities to youth and families of the region.
- Various easements exist for different purposes, such as transportation (county and private roads), utility (such as water and electricity), and/or water withdrawals (primarily for irrigation purposes).
- Agreement with the State of Washington for concurrent jurisdiction, which establishes the law enforcement authority within the park.
- Private uses of the public lands within the park will continue to be allowed as specifically authorized by law. For example, there are five grazing allotments that will sunset in 2021.

For more information about the existing administrative commitments for Lake Roosevelt National Recreation Area, please see appendix C.

## Assessment of Planning and Data Needs

Once the core components of part 1 of the foundation document have been identified, it is important to gather and evaluate existing information about the park's fundamental resources and values, and develop a full assessment of the park's planning and data needs. The assessment of planning and data needs section presents planning issues, the planning projects that will address these issues, and the associated information requirements for planning, such as resource inventories and data collection, including GIS data.

There are three sections in the assessment of planning and data needs:

1. analysis of fundamental resources and values (see appendix B)
2. identification of key issues and associated planning and data needs
3. identification of planning and data needs (including spatial mapping activities or GIS maps)

The analysis of fundamental resources and values and identification of key issues leads up to and supports the identification of planning and data collection needs.

### Analysis of Fundamental Resources and Values

The fundamental resource or value analysis table includes current conditions, potential threats and opportunities, planning and data needs, and selected laws and NPS policies related to management of the identified resource or value. Please see appendix B for the analysis of fundamental resources and values.

### Identification of Key Issues and Associated Planning and Data Needs

This section considers key issues to be addressed in planning and management and therefore takes a broader view over the primary focus of part 1. A key issue focuses on a question that is important for a park. Key issues often raise questions regarding park purpose and significance and fundamental resources and values. For example, a key issue may pertain to the potential for a fundamental resource or value in a park to be detrimentally affected by discretionary management decisions. A key issue may also address crucial questions that are not directly related to purpose and significance, but which still affect them indirectly. Usually, a key issue is one that a future planning effort or data collection needs to address and requires a decision by NPS managers.

The following are key issues for Lake Roosevelt National Recreation Area and the associated planning and data needs to address them:

- **Clarifying the Roles of Partners in Cooperative Management** – The Lake Roosevelt Cooperative Management Agreement (also known as the “five-party agreement”) establishes a unique co-management situation that impacts park operations, visitor use, and resource protection. As mandated by the agreement, the National Park Service manages recreational use of 58% of the water surface area, plus 61% of the narrow freeboard lands. The long, linear configuration of the recreation zone consistently poses challenges to NPS management, in particular relating to staffing and operational efficiency.

The management of Lake Roosevelt National Recreation Area is regularly complicated by water level draw-downs mandated by the Bureau of Reclamation and the Bonneville Power Administration: the full pool elevation of the reservoir can fluctuate as much as 80 feet in the course of a year, due to inflows from precipitation and outflows at Grand Coulee Dam. Water level fluctuations are affected by the Columbia River Treaty and may become more variable in coming decades due to projected changes in the treaty and increased winter and spring flooding associated with climate change.

Lake level changes exert significant impacts on visitor use and experience, as well as on natural resources. For example, when water levels decrease many of the 22 park docks are above water level or in waters too shallow for safe recreational use. Such draw-downs impact facilities and require an immediate response along more than 300 miles of shoreline. Draw-downs also reduce the optimal functioning of riparian areas along the reservoir's edge, reducing the diversity of vegetation species to those that can withstand inconsistent moisture conditions and impairing habitat for amphibians, invertebrates, and fish.

In addition, the cooperative management agreement establishes a boundary between the NPS recreation zone and the Colville and Spokane Indian Reservations that stretches through the midpoint of the lake throughout much of the park. This boundary is not easily discernible to members of the public. Moreover, there is a lack of public awareness about tribal versus NPS jurisdiction relating to activities such as hunting, fishing, boating, and shoreline camping. The five-party agreement calls for tribal management of reservation lands and waters within the reservation zone; however, management authority has not been officially delegated to tribes by the Department of the Interior.

Similarly, park boundaries along the shoreline are often challenging to determine, and numerous private encroachments on the boundary have occurred, often with negative impacts on cultural and natural resources. Private development is also increasing outside the NPS boundary, adversely influencing views from within the recreation zone and expanding the wildland-urban interface, adding complexity to fire management.

#### **Associated Planning Needs:**

- Delegation of regulatory authority to tribes
- Staffing management plan
- Long-range interpretive plan
- Terrestrial and aquatic invasive species management plan

#### **Associated Data Needs:**

- Comprehensive visitor use survey
  - Invasive species distribution survey
- **Understanding Visitor Use and Carrying Capacity**– Managers at the park currently have a limited understanding of visitor use patterns. Some areas of the unit are heavily visited while others are largely unknown to the public and receive few visitors. Visitor use patterns and carrying capacity are also impacted by water level fluctuations, which are projected to increase. The park is eager to increase visitation in general but does not know how much use its resources can sustain. In addition, recreational practices are evolving—one example is the increased popularity of recreational vehicle camping—and the unit may not be providing the most relevant facilities and services for current use. Existing park resources could be better used to take advantage of emerging recreational opportunities, while attracting visitors to lesser-known stretches of the lake.

Unit operations are also heavily influenced by visitation patterns. Staffing and fleet management decisions have proven challenging in the absence of accurate information about visitor use, and facility and site planning projects likewise rely on visitation data. For example, the park is currently struggling to meet state requirements for potable water at all of its campgrounds and must prioritize where to provide water.

#### **Associated Planning Needs:**

- Visitor use management plan
- Staffing management plan
- Long-range interpretive plan
- Fleet management plan

#### **Associated Data Need:**

- Comprehensive visitor use survey

- **Communicating Public Identity and Outreach** – Many members of the public are not aware that Lake Roosevelt National Recreation Area is a unit of the national park system, and others may not know that the lake shoreline is available for public use. These issues are compounded by a lack of signs or signs that do not identify the unit as a national recreation area. Private encroachments in the recreation zone can also make it difficult to ascertain that the shoreline is public.

While Lake Roosevelt National Recreation Area is best known for the reservoir and its recreational opportunities, the unit also protects significant cultural resources including Fort Spokane and the site of the Kettle Falls fishery; these cultural resources are largely overlooked by the majority of visitors, who may not know that they exist. Managers would like to expand public awareness about the variety of sites and experiences that visitors can explore along the lake, in an effort to disperse visitation and make full use of park facilities.

Lake Roosevelt’s outreach efforts are further challenged by a lack of consistent direction for public communication, including the use of social media. The unit’s interpretation program has no guidance for incorporating current technology. Although the interpretive themes outlined in the current long-range interpretive plan are serving the park well, the 2001 plan does not include, for example, direction for engaging with more recent digital resources or social media. In addition, cellular connectivity issues throughout the park will require a creative and strategic application of digital interpretation tools.

**Associated Planning Needs:**

- Visitor use management plan
- Long-range interpretive plan

**Associated Data Need:**

- Comprehensive visitor use survey

- **Climate Change Impacts** – Global climate change impacts, including increased temperature and precipitation, will influence water flow and lake level fluctuation in the park. Mean annual temperature is projected to increase +4°F to 5°F by 2050 and +5.4°F to 9.2°F by 2100 for the region. Mean annual precipitation is projected to increase +6% to 8% by 2050 and +8% to 12% by 2100. Glacial ice loss is predicted, along with reduced snowpack and an increase in intense storms. In addition, heat waves and drier summers may become more prevalent in the Columbia Plateau region that relies on the reservoir for irrigation. These projected climate futures will impact natural resources, cultural resources, visitor use, park operations, and infrastructure at Lake Roosevelt National Recreation Area. Due to the park’s cooperative management agreement, collaboration with the other parties will be necessary to plan and manage for the full range of climate futures possible for the region. This will require the ability to adapt as new and sometimes unprecedented climate conditions evolve.

**Associated Planning Need:**

- Climate change scenario planning

**Associated Data Needs:**

- Natural and cultural resource condition assessment
- Climate change vulnerability assessment

- **Nonnative Species Management** – Lake Roosevelt’s natural and cultural resources are currently threatened by both aquatic and terrestrial invasive species, including reed canarygrass (*Phalaris arundinacea*), Eurasian watermilfoil (*Myriophyllum spicatum*), cheatgrass (*Bromus tectorum*), and black locust (*Robinia pseudoacacia*). There is currently no comprehensive guidance in place for managing nonnative invasives and the risk is particularly urgent given the reservoir’s vulnerability to infestation by quagga and zebra mussels (*Dreissena rostriformis bugensis* and *D. polymorpha*), which are typically spread by watercraft. If introduced into park waters, quagga and zebra mussels could alter the aquatic food web, threatening the viability of native species. Quagga mussels can also rapidly colonize hard surfaces such as boat docks, boats, and other lake-based infrastructure. Similarly, noxious plants such as spotted knapweed (*Centaurea maculosa*) and Russian thistle (*Kali tragus*) have invaded certain regions of the park—especially disturbed areas—and have degraded desirable native plant communities.

Many of the campgrounds and picnic areas in the recreation zone have inherited planting schemes with nonnative species that are inappropriate to the climate and present safety and sustainability concerns. These species—in particular black locust, Norway maple (*Acer platanoides*), and American elm (*Ulmus americana*)—require irrigation, which has an adverse effect on native species present, such as ponderosa pine (*Pinus ponderosa*), resulting in their susceptibility to pests and storm damage. Visitors have become accustomed to the look and feel of campgrounds planted with nonnative trees, shrubs, and lawns, however, and any change to extant vegetation will require active public outreach and education.

#### **Associated Planning Needs:**

- Terrestrial and aquatic invasive species management plan
- Cultural landscape inventory and treatment plan
- Vegetation management plan
- Long-range interpretive plan

#### **Associated Data Need:**

- Invasive species distribution survey

### **Planning and Data Needs**

To maintain connection to the core elements of the foundation and the importance of these core foundation elements, the planning and data needs listed here are directly related to protecting fundamental resources and values, park significance, and park purpose, as well as addressing key issues. To successfully undertake a planning effort, information from sources such as inventories, studies, research activities, and analyses may be required to provide adequate knowledge of park resources and visitor information. Such information sources have been identified as data needs. Geospatial mapping tasks and products are included in data needs.

Items considered of the utmost importance were identified as high priority, and other items identified, but not rising to the level of high priority, were listed as medium- or low-priority needs. These priorities inform park management efforts to secure funding and support for planning projects.

### **Criteria and Considerations for Prioritization**

The following criteria were used to evaluate the priority of each planning or data need:

- Greatest utility to unit management
- Ability to address multiple issues
- Emergency or urgency of the issue
- Prevention of resource degradation
- Protection of the fundamental resources and values
- Significant benefit for visitors
- Feasibility of completing the plan or study, including staffing support and funding availability
- Opportunities, including interagency and tribal partnership or assistance

## High Priority Planning Needs

### Visitor Use Management Plan.

*Rationale* — The park needs a better understanding of visitation patterns, trends, and visitor characteristics to guide management decisions in the future. Combined with a carrying capacity study (see “High Priority Data Needs”) to better understand visitor uses and impacts parkwide and to address sustainability of park resources and infrastructure (e.g., campgrounds, boat launches, etc.), the visitor use management plan would help the park prioritize investments in recreational facilities and infrastructure.

*Scope* — This plan would include visitor use management planning for the entire park and would tier from guidance detailed in the strategic plan. A comprehensive visitor use survey that includes a carrying capacity study, facility use analysis, analysis of visitor values, changing demographics, and emerging interests would be a critical first step to this effort. A public affairs component would also be needed to communicate potential changes in management direction to visitors and stakeholders. The visitor use management component would assess all types of appropriate visitor activities in the park, determine what services and facilities need to be available to accommodate different types of use, and identify the most appropriate areas in the park to provide these services. A visitor use management plan would also assist in updating the park’s 2009 shoreline management plan.

### Staffing Management Plan.

*Rationale* — This plan would provide direction for hiring and recruitment practices and would address high turnover in critical positions throughout the park. The plan would identify the most efficient use of funding and prioritize staffing for those areas of the park that need the most assistance. The plan would also identify the positions and expertise needed by the park that it may currently be lacking.

*Scope* — The plan would tier from guidance detailed in the strategic plan, completed in 2013, but updated on an annual basis, and support processes outlined by the park’s position review board to bolster the overall staffing process. A health and wellness component could be added to the plan to help unify staff.

### Long-Range Interpretive Plan.

*Rationale* — Visitor use patterns, recreational experiences, and expectations of park facilities at Lake Roosevelt National Recreation Area have changed since the completion of the 2001 long-range interpretive plan. While park staff is in general agreement that the interpretive themes in the 2001 plan remain adequate and useful, the plan needs programming updates that make use of current digital resources. In addition, there are new opportunities to engage visitors in the stories of the cataclysmic ice age floods, the Fort Spokane complex, the impacts of Grand Coulee Dam, climate change, NPS management of the recreation zone, and the Kettle Falls fishery. The long-range interpretive plan provides direction for park staff to engage the public through interpretive and educational programming and is a valuable tool to communicate park issues and management priorities to visitors and partners.

*Scope* — The long-range interpretive plan would provide overall guidance for interpretation and education. The plan would also evaluate opportunities for waysides, new visitor programming and activities, and lifelong learning and youth engagement opportunities. The long-range interpretive plan could benefit from visitor use information that would be collected as part of the visitor use management plan. Guidance should be informed by data on current visitor use patterns and local demographics and include strategies for marketing and outreach.

## **Terrestrial and Aquatic Invasive Species Management Plan.**

*Rationale* — The park must manage both terrestrial and aquatic invasive species. Some invasive species management planning is underway (e.g., an integrated pest management plan for the control of nonnative black locust), however certain nonnative invasive species, such as Eurasian watermilfoil and quagga mussels, have the potential to severely degrade fundamental resources. The park should consider coordinating management activities among the five parties and engage the recreating public in these shared objectives.

*Scope* — This plan would include comprehensive guidance for managing terrestrial and aquatic invasive species. Data needs to support the plan would include the documentation of current vegetation distribution patterns and potential entry points for invasive species (see “High Priority Data Needs”). Future strategies may include the establishment of checkpoint stations for watercraft entering the area. Additional quarantine of vessels may be addressed by the plan as well. Cooperation with partners and agencies would likely be necessary, and the range of management strategies could include integrated pest management techniques, as well as education and monitoring efforts.

## **High Priority Data Needs**

### **Comprehensive Visitor Use Survey.**

*Rationale* — This survey would analyze the volume and type of visitor use that can be accommodated in the park. It would also include current resource and visitor experience conditions for each area. These data would support the visitor use management plan.

*Scope* — The survey would include a carrying capacity study, facility use analysis, and analysis of visitor values, changing demographics, and emerging interests. Commercial and noncommercial uses would also be studied.

### **Invasive Species Distribution Survey.**

*Rationale* — The park needs information on the locations, extent, and coverage of invasive species throughout Lake Roosevelt National Recreation Area. These data would support the terrestrial and aquatic invasive species management plan.

*Scope* — These surveys would include current vegetation distribution patterns and potential entry points for invasive species (e.g., roads, trails, boat launches, etc.).

### **Natural and Cultural Resource Condition Assessments.**

*Rationale* — The natural and cultural resource condition assessments evaluate current conditions, identify critical data gaps, and highlight notable resource condition influences for a park unit’s important resources.

*Scope* — Resource condition assessments rely on existing scientific data and information from varied sources, combined with expert interpretations or syntheses of data sources as the primary basis for developing condition findings. The assessments also highlight emerging or cross-cutting issues that require the greatest management attention. They provide a variety of critical baseline information to inform planning and management efforts, and would provide the first component for the park’s overall climate response planning efforts. Likewise, the assessments should be completed prior to initiating a resource stewardship strategy.

**Climate Change Vulnerability Assessment.**

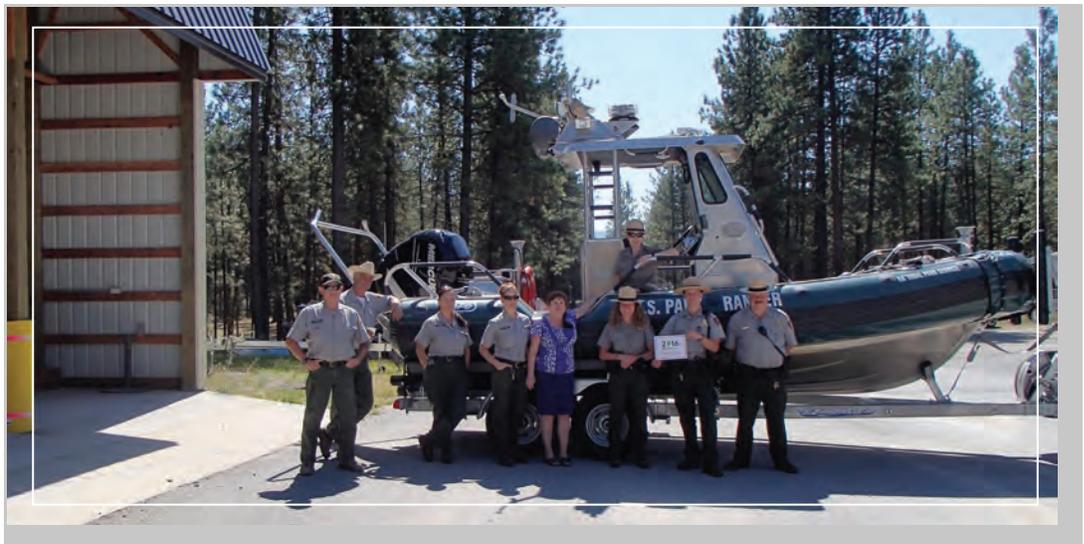
*Rationale* — Vulnerability to climate change is the degree to which a system is susceptible to and unable to cope with adverse effects. Following the completion of natural and cultural resource condition assessments, the vulnerability assessment would examine the exposure, sensitivity, and adaptive capacity of a resource or system and combine observations and projections to identify vulnerable areas and potential refugia. The assessment would likely be conducted by the National Park Service and could inform five-party resource management efforts at Lake Roosevelt. In the assessment, sensitivity refers to characteristics of a species or system and considers tolerance to change in such things as temperature, precipitation, fire regimes, or other key processes. Exposure refers to extrinsic factors focusing on the character, magnitude, and rate of change the species or system is likely to experience. Adaptive capacity addresses the ability of a species or system to accommodate or cope with climate change impacts with minimal disruption.

*Scope* — Using information in the vulnerability assessment, management and response strategies would be developed and prioritized to mitigate climate change impacts on park resources. These strategies could be developed as stand-alone efforts or as parts of other plans (such as the terrestrial and aquatic invasive species management plan). The vulnerability assessment would support the next phase of climate change response planning, such as scenario planning.

Summary of High Priority Planning and Data Needs
<b>Plan name</b>
Visitor use management plan
Staffing management plan
Long-range interpretive plan
Terrestrial and aquatic invasive species management plan
<b>Data need</b>
Comprehensive visitor use survey
Invasive species distribution survey
Natural and cultural resource condition assessments
Climate change vulnerability assessment

Summary of Other Planning and Data Needs		
Planning or Data Needs	Priority (M, L)	Notes
<b>Natural and Cultural Resources</b>		
<b>Plans</b>		
Vegetation management plan	M	The plan would focus on vegetation management for each campground and picnic area, including the replacement of nonnative species with native, climatically appropriate plantings
Shoreline management plan – update	M	This effort would provide updates to the park’s 2009 shoreline management plan. The updates would assist implementation of general management plan provisions, analyze existing facilities for potential expansion, analyze construction of new facilities, and increase consistency in shoreline management among the National Park Service, Native American tribes, and other partner agencies and organizations. Updates would also consider new methods for managing visitor use and actions to address ongoing fluctuation in lake levels.
Night skies and light pollution analysis	M	Light pollution from internal and external sources threatens the park’s high-quality night skies. Analysis would include study of surrounding land uses (existing and planned) and document the importance of high-quality night skies to the visitor experience. Data could also include a parkwide lighting inventory of facilities to support the preservation of night skies.
Climate change scenario planning	M	This planning process would develop a range of plausible science-based future scenarios to inform development of climate change adaptation strategies. These strategies would inform park planning needs, guide resource management, and serve visitors in a rapidly changing environment.
Resource stewardship strategy	M	This adaptive, long-range planning document would establish a process for evaluating and communicating the status of knowledge and condition of a park’s priority natural and cultural resources and would determine strategies and activities needed to protect those resources. Natural and cultural resource condition assessments should be completed prior to initiating the resource stewardship strategy, as these assessments provide critical baseline information necessary to inform the strategic components of the document.
Cultural landscape inventory and treatment plan for the Fort Spokane complex	M	The park can better compete for cultural resources program funding with a complete cultural landscape inventory for Fort Spokane. In addition, the park needs detailed information for cyclic maintenance of Fort Spokane structures. The inventory needs to include a comprehensive condition assessment of the historic buildings and extant foundations on the site.

Summary of Other Planning and Data Needs		
Planning or Data Needs	Priority (M, L)	Notes
<b>Plans</b>		
Museum collections management plan	M	Many of the park’s museum collections are not being managed, while others are managed by Nez Perce National Historical Park or by the Confederated Tribes of the Colville Reservation. Lake Roosevelt does not have access to collections maintained outside the national recreation area and can’t oversee management of these finite invaluable resources that it is mandated to protect. The plan would meet NPS curatorial standards.
<b>Other Park Strategies and Actions</b>		
Delegation of regulatory authority to tribes	M	Tribes need authority delegated by the US Department of the Interior to regulate hunting, fishing, and boating in the reservation zone. While this is a high priority issue for the National Park Service and Lake Roosevelt National Recreation Area, the planning effort will take considerable time to accomplish and is listed as a medium priority in this document because the National Park Service does not control the timeframe of the process.
Business plan	M	This plan would prioritize facilities and utilities maintenance activities and projects while recognizing the park’s goal to remain below 85% fixed costs.
Fleet management plan	M	This planning need is related to the high-priority staffing management plan. Due to the seasonal nature of most park operations and the park’s linear configuration, leased vehicles may sit idle in certain areas for large portions of the year, making optimal fleet management difficult for park managers. The fleet management plan would help the park establish fleet size and composition, suggest performance measures, address acquisition and resale priorities, and provide best practices to more effectively manage its fleet.



## Part 3: Contributors

### Lake Roosevelt National Recreation Area

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### NPS Pacific West Region

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## Appendixes

### Appendix A: Primary Agreements for Lake Roosevelt National Recreation Area

#### Lake Roosevelt Cooperative Management Agreement (Also Known as the “Five-Party Agreement”) (1990):

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 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. Coordination of Recreation:

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(l), 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 20 1990

*Jude C. Stensgar*  
Jude C. Stensgar  
Chairperson  
Colville Business Council

DATED: APR 20 1990

*Joe V. Flett*  
Joe V. Flett  
Chairperson  
Spokane Indian Tribe

DATED: APR 10 1990

*James M. Ridenour*  
James M. Ridenour  
Director  
National Park Service

APR 20 1990  
DATED:

*John M. Sayre*  
John M. Sayre  
Assistant Secretary for  
Water and Science

DATED: APR 11 1990

*Constance B. Harriman*  
Constance Harriman  
Assistant Secretary for  
Fish, Wildlife and Parks

APR 20 1990  
DATED:

*Dennis Underwood*  
Dennis Underwood  
Commissioner  
Bureau of Reclamation

APR 20 1990  
DATED:

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

DATED: APR 05 1990

*Manuel Lujan, Jr.*  
Manuel Lujan, Jr., Secretary  
Department of Interior

Solicitor's Opinion (1977)

**UNITED STATES DEPARTMENT OF THE INTERIOR  
WASHINGTON, D.C. 20240**

**Secretary of the Interior ..... Cecil D. Andrus**

*Office of Hearings and Appeals . . . David B. Graham, Director*

*Office of the Solicitor . . . Leo Krulitz, Solicitor*

**DECISIONS  
OF THE  
UNITED STATES  
DEPARTMENT OF THE INTERIOR**

**EDITED BY**

**VERA E. BURGIN**

**BETTY H. PERRY**



**VOLUME 84**

**JANUARY-DECEMBER 1977**

**U.S. GOVERNMENT PRINTING OFFICE, WASHINGTON: 1978**

Interior bestowed upon him by Federal statute. We find that the Nov. 4, 1957, instrument did not amount to a testamentary disposition of trust property but did amount to a written recognition by the decedent of a debt owed to the lessees in the amount of \$950. We find that this debt is a valid claim against the decedent's estate.

We further find that the Nov. 4, 1957, instrument did not revoke the previous will of Mar. 11, 1953. The matter should be remanded for the purpose of probate of the Mar. 11, 1953, will and for the incorporation of the \$950 indebtedness referred to above in any future order and decree of distribution.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, we REVERSE the Order Approving the Nov. 4, 1957 will and Decree of Distribution, dated Apr. 30, 1975, for the reasons stated above, and REMAND the matter for consideration and probate of the Mar. 11, 1953, will and related matters in keeping with applicable rules and regulations.

MITCHELL J. SABAGH,  
*Administrative Judge.*

WE CONCUR:

ALEXANDER H. WILSON,  
*Chief Administrative Judge.*

WM. PHILIP HORTON,  
*Administrative Judge.*

**OPINION ON THE BOUNDARIES OF  
AND STATUS OF TITLE TO CER-  
TAIN LANDS WITHIN THE COL-  
VILLE AND SPOKANE INDIAN  
RESERVATIONS**

**Indian Lands: Reservation Boundary**

Once boundaries of a reservation are established, neither the boundaries nor title to tracts within them can be altered or abolished without a clear statement of Congressional intent to do so.

**State Lands**

If the intent of the United States in administering lands now comprising a state was clearly to reserve the bed of a river for some particular purpose, then that intent, embodied in an appropriate legislative or administrative act, results in exclusion of the riverbed from lands passing to the state upon statehood.

**Indian Tribes: Jurisdiction—Indian Tribes: Hunting and Fishing: On Reservation**

18 U.S.C. § 1165 (1970) confirms the right of Indian Tribes to control, regulate and license hunting and fishing within their reservations.

59 I.D. 147 overruled in part.

M-36887 *February 2, 1977*

*OPINION BY*

*SOLICITOR FRIZZELL*

*OFFICE OF THE SOLICITOR*

*June 3, 1974*

To: SECRETARY OF THE  
INTERIOR.

SUBJECT: Opinion on the Boundaries of and Status of Title to Certain Lands Within the Colville and Spokane Indian Reservations.

72 OPINION ON THE BOUNDARIES OF AND STATUS OF TITLE 73  
TO CERTAIN LANDS WITHIN THE COLVILLE AND SPOKANE INDIAN  
RESERVATIONS

February 2, 1977

This opinion sets forth my conclusions with respect to the following issues: (1) the present boundaries of the Colville and Spokane Indian Reservations in the reservoir area created on the Columbia River by Grand Coulee Dam; (2) the nature of title to certain portions of the original riverbed within those reservations and to the so-called "Indian zone" established in the reservoir area within lands taken in aid of construction of the dam; and (3) the jurisdiction of the Confederated Colville Tribes and Spokane Tribe to regulate hunting, fishing, and boating in that Indian zone.

The Colville and Spokane Indian Reservations were established in 1872 and 1877 respectively, on lands which were later included within the state of Washington. The Colville Reservation was created by an executive order issued by President Grant. Executive Order of July 2, 1872. Some confusion regarding creation of the Spokane Reservation has existed, but the Supreme Court has specifically held that that reservation was established on Aug. 18, 1877, the date of an agreement between agents of the United States and certain Spokane chiefs. *Northern Pac. Ry. v. Wismer*, 246 U.S. 283 (1918). A subsequent executive order issued by President Hayes was held by the Court merely to have confirmed the earlier reserva-

tion. Executive Order of Jan. 18, 1881.<sup>1</sup>

The Columbia River, taking a westerly turn from its initially southward flow, forms first the eastern and then the southern boundary of the Colville Reservation. The Spokane Reservation lies eastward across the Columbia from the Colville Reservation, just before the river turns west and just north of the Spokane River, a tributary of the Columbia; the Spokane River, flowing essentially from east to west at this point, forms the southern boundary of the Spokane Reservation.

In 1940 construction of Grand Coulee Dam, a federal reclamation project, was completed on a portion of the Columbia where it forms the southern boundary of the Colville Reservation. In an Act dated June 29, 1940 (54 Stat. 703), 16 U.S.C. § 835d, Congress required the Secretary of the Interior to designate the Indian lands to be taken in aid of the project, and granted "all right, title, and interest" in such designated lands to the United States, "subject to the provisions of this Act."<sup>2</sup> The following is the full text

<sup>1</sup>The 1945 Solicitor's Opinion referred to *infra* (M-34326, 59 I.D. 147), dealing with certain of the subjects considered herein, refers only to the 1881 executive order.

<sup>2</sup>Grand Coulee Dam was authorized to be constructed by the Rivers and Harbors Act of Aug. 30, 1935 (49 Stat. 1028, 1039), but no provision was included therein authorizing the taking of Indian lands. Some Indian lands were actually inundated prior to the 1940 Act. See 59 I.D. at 155.

of this portion of the Act as originally passed by Congress:

That in aid of the construction of the Grand Coulee Dam project, authorized by the Act of Aug. 30, 1935 (49 Stat. 1028), there is hereby granted to the United States, subject to the provisions of this Act, (a) all the right, title, and interest of the Indians in and to the tribal and allotted lands within the Spokane and Colville Reservations, including sites of agency and school buildings and related structures and unsold lands in the Klaxta town site, as may be designated therefor by the Secretary of the Interior from time to time: *Provided*, That no lands shall be taken for reservoir purposes above the elevation of one thousand three hundred and ten feet above sea level as shown by General Land Office surveys, except in Klaxta town site; and (b) such other interests in or to any such lands and property within these reservations as may be required and as may be designated by the Secretary of the Interior from time to time for the construction of pipe lines, highways, railroads, telegraph, telephone, and electric-transmission lines in connection with the project, or for the relocation or reconstruction of such facilities made necessary by the construction of the project.

The area designated by the Secretary pursuant to this provision and thus taken by the United States in aid of the project extends from the original bed of the river (which was not designated) to the nearest contour line indicating an elevation of 1,310 feet above sea level.<sup>3</sup>

<sup>3</sup> The 1940 Act was amended by the Act of Dec. 16, 1944 (58 Stat. 813), to authorize a taking of some of the Indians' interest in the lands above the 1,310 contour line to protect against the danger of slides in the areas around the reservoir.

Another provision of the Act requires the Secretary to set aside approximately one-fourth of the reservoir area above the dam for the "paramount" use of the Colville and Spokane Tribes for hunting, fishing, and boating. (The reservoir, Lake Roosevelt, extends approximately 150 miles upstream from the dam into Canada, or about twice as far as the northern boundary of the Colville Reservation.) This provision of the Act reads as follows:

The Secretary of the Interior, in lieu of reserving rights of hunting, fishing, and boating to the Indians in the areas granted under this Act, shall 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: *Provided*, That the exercise of the Indians' rights shall not interfere with project operations. The Secretary shall also, where necessary, grant to the Indians reasonable rights of access to such area or areas across any project lands.

Pursuant to this provision, the Secretary in 1946 designated an area—the so-called "Indian zone"—which comprises essentially all of the "freeboard," "drawdown,"<sup>4</sup> and water area inside the original boundaries of the reservations (ex-

<sup>4</sup> "Freeboard" area is that land within the area taken for reservoir purposes which is above the high-water mark of the reservoir and must be crossed to gain access to the water area. "Drawdown" area comprises the exposed land between the high-water mark and the actual water level.

72] OPINION ON THE BOUNDARIES OF AND STATUS OF TITLE 75  
TO CERTAIN LANDS WITHIN THE COLVILLE AND SPOKANE INDIAN  
RESERVATIONS

February 2, 1977

cept immediately around the dam).<sup>5</sup> The zone extends to the center line of Lake Roosevelt from the Colville side except where the Colville and Spokane Reservations are adjacent to one another across the Lake. There, the zone includes the entire reservoir with the exception of a strip in the center of the Lake half a mile wide, which was preserved by the Secretary as a navigation lane. In addition, the zone extends from the Spokane side to the center line of a separate arm of the Lake formed by the backup of the Spokane River. The Colville Reservation does not border this arm of the Lake.

Pursuant to a tri-party agreement among the National Park Service, the Office of Indian Affairs, and the Bureau of Reclamation, dated Dec. 18, 1946, the Bureau of Reclamation has primary responsibility for overseeing administration of the reservoir area.<sup>6</sup> The general public is presently permitted to have equal use of the Indian zone with the Indians, under the supervision of the National Park Service.

<sup>5</sup> The zone is really two zones—one including lands taken from within the Colville Reservation, and the other including areas taken from within the Spokane Reservation. For convenience, however, these areas are referred to jointly as the "Indian zone."

<sup>6</sup> It was the tri-party agreement (which was approved by the Assistant Secretary) that formally set aside the Indian zone. The agreement speaks of a "Colville Indian Zone" and a "Spokane Indian Zone," and the map annexed as an exhibit to the agreement shows the navigation lane referred to above as being a separate area not included within either zone.

The 1946 tri-party agreement reflects the views expressed a year earlier in an opinion by Solicitor Gardner, dealing with, *inter alia*, certain of the questions considered herein. 59 I.D. 147 (1945). Solicitor Gardner indicated in that opinion that portions of the original pre-1940 riverbed in this area had been within the boundaries of the reservations, which had not been altered by the taking pursuant to the 1940 Act; and he appeared to suggest that since the original riverbed was not designated by the Secretary, title to the bed was unaffected by the Secretarial designation made pursuant to the Act. 59 I.D. at 152, 166-67, 175 n. 60.

I adopt these conclusions, and hold that the tribes do in fact hold the equitable title to those portions of the original riverbed within the boundaries of their reservations. I differ, however, with the 1945 opinion insofar as it dealt with the extent of the tribes' additional interests in the reservoir area. I hold that the tribes' hunting, fishing and boating rights in the zone set aside by the Secretary for their paramount use are reserved rights, preserved by Congress in the 1940 Act, and that those rights are exclusive of any such rights of non-Indians in that zone, although they do not encompass interference with project purposes and are subject to regulation by the Secretary to conserve fish and wildlife. In addition, I hold

that the tribes have the power to regulate hunting, fishing, and boating by non-Indians in the Indian zone (which is almost entirely within the boundaries of the reservations).<sup>7</sup> To the extent that the 1945 opinion conflicts with any of these conclusions, it is hereby overruled.

#### 1. THE BOUNDARIES OF THE COLVILLE AND SPOKANE RESERVATIONS ALONG THE RIVER

A public land decision dated May 29, 1914, *J. H. Seupelt*, 43 L.D. 267, held that the Colville Reservation boundary was located at the middle of the channel of the Columbia River where it bordered the reservation. In my view this issue was correctly decided in *Seupelt* (which was followed in the subsequent 1945 Solicitor's Opinion, *see* 59 I.D. at 152).

An apparent conflict between the boundaries established for the Spokane and Colville Reservations along the Columbia should be noted, however. The boundary of the Spokane Reservation is described in the executive order ratifying creation

<sup>7</sup> The only locations in which the boundaries of the Indian zone might extend beyond those of either reservation would appear to be in places where, because of the meander of the original river or a difference in elevation on the two sides of the river, the center line of the original riverbed differs perceptibly from the center line of Lake Roosevelt. Such differences in fact have relevance only to the Colville Reservation, since the presence of the navigation lane in the middle of the Lake prevents the Spokane portion of the zone from approaching the center line of the original riverbed. (In addition, as set forth in the text *infra*, the Spokanes claim—not without support—that their reservation includes the entire riverbed.)

of the reservation as being located on the west bank of the Columbia River, thus evidently overlapping with the Colville boundary. While I am cognizant of this conflict and of the consequent possibility that an area of joint rights may have been created in the area of overlap, I do not resolve this question herein, because both tribes, by a joint resolution dated Sept. 17, 1973, have requested that I refrain from doing so. In their resolution, the tribes agree that the Secretary may establish a boundary line between the Colville and Spokane portions of the Indian zone at the center of the reservoir despite the overlap,<sup>8</sup> and that the question of title to the underlying riverbed should be reserved for future determination. Determination of that narrow question is not necessary for decision of the remaining issues considered herein.

With respect to the effect of the 1940 Act, it is my conclusion that the boundaries of the reservations along the Columbia (and, in the case of the Spokanes, along the Spokane River), wherever their precise location, were unchanged by the Act. It is clear from the line

<sup>8</sup> The Secretary is directed by the 1940 Act to set aside "approximately one-quarter of the entire reservoir area" as an Indian zone. Thus the zone must at a minimum be close to that one-quarter standard. If, however, in the exercise of his discretion the Secretary should decide to expand the present zone—which may well encompass less than one-quarter of the entire reservoir area—it would appear that he could do so; and an expansion of the zone in the area where the Colville and Spokane Reservations are adjacent to one another could raise the problem of delineating the Colville and the Spokane portions of the zone.

72] OPINION ON THE BOUNDARIES OF AND STATUS OF TITLE 77  
TO CERTAIN LANDS WITHIN THE COLVILLE AND SPOKANE INDIAN  
RESERVATIONS

February 2, 1977

of authority founded on *United States v. Celestine*, 215 U.S. 278, 285 (1909), that once the boundaries of an Indian reservation are established, neither those boundaries nor the status of title to the tracts included within them may be changed except upon a clear statement of an intent by Congress to change them. See *Matts v. Arnett*, 412 U.S. 481 (1973); *City of New Town v. United States*, 454 F.2d 121, 125, 126 (8th Cir. 1972); 25 U.S.C. § 398d (1970). The Supreme Court concluded in *Seymour v. Superintendent*, 368 U.S. 351 (1962), that the boundaries of the present Colville Reservation have not been affected by allotments, patents and other dispositions of land within the reservation made subsequent to its establishment. The current boundaries of that reservation thus remain as discussed in *J. H. Seupelt, supra*, and for similar reasons the boundaries of the Spokane Reservation remain unchanged by the Act.<sup>9</sup> This holding

<sup>9</sup> An argument against the conclusion set out above conceivably could be based on *United States v. Oklahoma Gas and Elec. Co.*, 318 U.S. 206 (1943); *Ellis v. Page*, 351 F.2d 230 (10th Cir. 1965); and *Tootsigah v. United States*, 186 F.2d 93 (10th Cir. 1950). *Oklahoma Gas* and *Tootsigah*, however, were decided prior to the Supreme Court's decisions in *Seymour v. Superintendent, supra*, which reaffirmed the analysis of *Celestine* and applied it to a statute opening the Colville Reservation to white settlement and ownership, and *Matts v. Arnett, supra*, in which the Court indicated that a congressional intent to alter reservation boundaries can be found only if such an intent is made express in the language of the statute in question or can be clearly

is in accord with the position taken in the 1945 Solicitor's Opinion. See 59 L.D. at 175 n. 60.

2. THE INDIANS' INTEREST  
IN THE ORIGINAL RIVER-  
BED AND THE INDIAN  
ZONE<sup>10</sup>

Congress has recognized the Colville Confederated Tribes' full equitable title to tribal lands within the Colville Reservation, both in the 1940 Act and in prior legislation, see *United States v. Pelican*, 232 U.S. 442, 445 (1914); and similar

perceived from its legislative history and other surrounding circumstances. (*DeMarrias v. South Dakota*, 319 F.2d 845 (9th Cir. 1963), a case similar to *Tootsigah*, was explicitly overruled in *United States ex rel. Feather v. Erickson*, 489 F.2d 99 (8th Cir. 1973), on the ground that its rationale had become untenable in light of recent decisions such as *Seymour* and *Matts*.) And in any event, all three cases—*Oklahoma Gas*, *Ellis*, and *Tootsigah*—involved statutes which, unlike the 1940 Act, conveyed to the United States all of the lands within the reservations in question. The courts in those cases professed to perceive in such circumstances a clear congressional intent to dissolve tribal governments on those reservations. Plainly, no such intent can be imputed to Congress in connection with the 1940 Act. Indeed, as to that Act, *Seymour* clearly governs; for if, as *Seymour* holds, continued tribal jurisdiction is not inconsistent with ownership by non-Indians of certain lands in fee within a reservation, then such jurisdiction is a fortiori not inconsistent with similar ownership, for purposes of a reclamation project such as the one involved here, by the Indians' trustee.

<sup>10</sup> The bed of a river is that area covered by water during flood stage up to the normal high-water mark. With most rivers, much of this area is dry during the greater portion of the year, during which time it must be traversed to obtain access to the stream for fishing, hunting, boating, or other purposes. *United States v. Kansas City Life Ins. Co.*, 339 U.S. 799 (1950). See also *United States v. Cress*, 243 U.S. 316 (1917).

recognition has been extended with respect to the Spokane Reservation.<sup>11</sup> Such title, having vested in the tribes, cannot be taken except as clearly and specifically authorized by Congress.<sup>12</sup> The following two subsections of this opinion deal, in light of this principle, with the nature of the tribes' interest in (a) the pre-1940 riverbed, and (b) the Indian zone.

*a. Title to the pre-1940 Riverbed*

The bed of the river (*i.e.*, of the Columbia and of its tributary the Spokane) was not designated by the Secretary pursuant to the 1940 Act, and the tribes were not compensated for any taking with respect to the riverbed. Accordingly, the action taken by the Secretary pursuant to the 1940 Act has not changed the tribes' title, and I hold that each tribe has full equitable title to that part of the riverbed which is within the exterior boundaries of its reservation.<sup>13</sup>

<sup>11</sup> Congressional enactments concerning the Colville Reservation such as the Act of June 21, 1906 (34 Stat. 325, 378), which provided for the payment of \$1.5 million compensation for the lands taken by virtue of the Act of July 1, 1892 (27 Stat. 62), and the Act of March 22, 1906 (34 Stat. 80), which provided compensation for lands taken by settlement and entry, were statutes in which Congress recognized tribal ownership of the equitable title to reservation lands. With respect to the Spokane Reservation, *see*, in addition to the 1940 Act, the Act of May 29, 1908 (35 Stat. 458), authorizing, *inter alia*, the allotment of land within that reservation.

<sup>12</sup> *Mattz v. Arnett*, at 504 (1973); *Seymour v. Superintendent*, *supra*; *United States v. Celestine*, *supra*.

<sup>13</sup> *But see* page 7, *supra*. That title of course confers no rights conflicting with the provisions of the 1940 Act. The principle articulated at p. 8, *supra*, seems to me clearly to overcome the possible argument to the contrary noted by Solicitor Gardner in his 1945 Opinion. *See* 59 I.D. at 167 n. 48. That argu-

ment is based on the "ordinary rule" that absent the expression of a contrary intention, "the conveyance of title to the upland carries with it the title to the bed of the stream." As the 1945 Opinion acknowledged, however, in the present instance title was taken rather than conveyed. And in any event, the broad principles underlying *United States v. Celestine*, *supra*, and its progeny would make inappropriate the application of any such rule here, since title to the riverbed was not clearly and specifically taken.

It could conceivably be argued that the lands in the riverbed are owned by the state of Washington because lands underlying navigable waters in territories of the United States are, as a general rule, held by the United States for the benefit of future states under the "equal footing" doctrine; and both the Colville and Spokane Reservations were created while what is now the state of Washington was still a territory. Some authority in this regard for a claim of ownership by the state might be found in *United States v. Holt State Bank*, 270 U.S. 49; 55 (1925), which indicates that "disposals by the United States during the territorial period are not lightly to be inferred." *Holt State Bank* held that the bed of Mud Lake had not been reserved for the use of the Indians on the Red Lake Reservation, and that title thereto consequently had passed to the state of Minnesota when that state entered the Union. The Supreme Court has recently made clear, however, that *Holt State Bank* turned on its particular facts, and has indicated that the focal question is the intent of the United States with respect to the land in question. In *Choctaw Nation v. Oklahoma*, 397 U.S. 620 (1970), the Court held that the bed

ment is based on the "ordinary rule" that absent the expression of a contrary intention, "the conveyance of title to the upland carries with it the title to the bed of the stream." As the 1945 Opinion acknowledged, however, in the present instance title was taken rather than conveyed. And in any event, the broad principles underlying *United States v. Celestine*, *supra*, and its progeny would make inappropriate the application of any such rule here, since title to the riverbed was not clearly and specifically taken.

72] OPINION ON THE BOUNDARIES OF AND STATUS OF TITLE 79  
TO CERTAIN LANDS WITHIN THE COLVILLE AND SPOKANE INDIAN  
RESERVATIONS

February 2, 1977

of the Arkansas River in Oklahoma had been conveyed to the Cherokees, Choctaws, and Chickasaws prior to Oklahoma's becoming a state. The opinion emphasized that—

\* \* \* nothing in the *Holt State Bank* case or in the policy underlying its rule of construction \* \* \* requires that courts blind themselves to the circumstances of the grant in determining the intent of the grantor. \* \* \*

397 U.S. at 634.

Thus if the intent of the United States in administering lands now comprising a state was clearly to reserve the bed of a river for some particular purpose, then that intent, if embodied in an appropriate legislative or administrative act, would result in an exclusion of the riverbed from the lands passing to the state.

I find that the executive order creating the Colville Reservation and the agreement and executive order establishing the Spokane Reservation sufficiently embody such an intent. Particularly on point in this respect is a recent decision by the Court of Appeals for the Ninth Circuit. In *United States v. Alaska*, 423 F.2d 764 (9th Cir. 1970), that court held that although Alaska was admitted on an equal footing with other states, the state did not own a lakebed within a wildlife refuge previously created by executive order. The court stated that the equal footing doctrine—

\* \* \* does not mean that the President had no power to previously promulgate

the executive order here under scrutiny. If, as we now hold, the language of the order is sufficiently clear to withdraw the water of the lake and the submerged land, the state's rights, if any, are subsequent in time and inferior in right \* \* \*. [T]he United States had all the powers of a sovereign and, if it saw fit, it might even grant rights in and titles to lands which normally would go to a state on its admission. \* \* \*

423 F.2d at 768.

Similarly, I conclude that the bed of the Columbia and Spokane Rivers in the area presently being considered were reserved for the use and benefit of the Colville and Spokane Tribes and therefore were not acquired by the state of Washington when it entered the Union. This Department determined in *J.H. Seupelt, supra*, that the land out to the middle of the Columbia River had been reserved to protect the fishing interests of the Colville Indians, who relied upon the fish as a source of subsistence. This aspect of the opinion in *Seupelt*, which was cited with approval in the 1945 Solicitor's Opinion, 59 I.D. at 152, is now reaffirmed. Nor is there any basis for distinguishing in this regard between the Colville and Spokane Tribes,<sup>14</sup> or between the Columbia and Spokane Rivers. Indeed, by placing the boundary of the Spokane Reservation on the far (west and south) banks of those rivers, the executive order confirming creation of that reservation makes it

<sup>14</sup> See 59 I.D. at 153.

doubly clear that the lands reserved for the use of the Indians included the riverbed.<sup>15</sup>

<sup>15</sup> The outcome of *Holt State Bank* was in large part dependent on the fact that the Red Lake Reservation, which was involved in that case, had been created by means which did not constitute an "express" setting aside of the lands in question. See *United States v. Pollmann*, 364 F.Supp. 995, 999 (D. Mont. 1973). As the opinion in *Holt* pointed out,

"\* \* \* The reservation came into being through a succession of treaties with the Chippewas whereby they ceded to the United States their aboriginal right of occupancy to the surrounding lands. \* \* \* There was no formal setting apart of what was not ceded, nor any affirmative declaration of the rights of the Indians therein, nor any attempted exclusion of others from the use of navigable waters. The effect of what was done was to reserve in a general way for the continued occupation of the Indians what remained of their aboriginal territory; and thus it came to be known and recognized as a reservation. \* \* \* There was nothing in this which even approaches a grant of rights in lands underlying navigable waters; nor anything evincing a purpose to depart from the established policy, \* \* \* of treating such lands as held for the benefit of the future State." 270 U.S. at 58-59 (footnote omitted).

The Court in fact noted in *Holt* that "[o]ther reservations for particular bands were specially set apart, but those reservations and bands are not to be confused with the Red Lake Reservation and the bands occupying it." *Id.* at 58 n. These aspects of *Holt*, which distinguish that case from *United States v. Alaska*, *supra*, and from the situation now before me, were emphasized in the *Pollmann* decision, *supra*. That decision held that title to the bed of the south half of Flathead Lake, within the Flathead Reservation, did not pass to Montana when that state joined the Union; instead, the court concluded, since the reservation clearly had been set aside for Indian use prior to Montana's becoming a state, the bed continued to be equitably owned by the tribes in question. See also *Montana Power Co. v. Rochester*, 127 F. 2d 189 (9th Cir. 1942).

It should also be noted that in *United States v. Big Bend Transit Co.*, 42 F. Supp. 459 (E.D. Wash. 1941), the court held that the bed of the Spokane River was part of the Spokane Reservation. The opinion observed that "[t]he State of Washington specifically disclaimed all title to all lands held by any Indian or Indian Tribes provided that the Indian lands should remain under the absolute jurisdiction and control of the Congress." 42 F. Supp. at 467 (citing Enabling Act, Rem. Rev. Stats. of

#### b. *The Tribes' Interest in the Indian Zone*

As outlined above, the Secretary designated all lands between the original riverbed and the nearest 1,310-foot contour line to be taken in aid of the Grand Coulee project. Under the Act, accordingly, the United States was granted all of the "right, title, and interest" of the Indians in and to all Indian lands so designated and taken, "subject to the provisions of this Act\* \* \*." And one of those provisions specified that the Secretary should "set aside" approximately one-quarter of the reservoir area for the "paramount use of the Indians" for hunting, fishing, and boating purposes.

The question to which I now turn concerns the precise nature of the Indians' interest in the so-called Indian zone designated by the Secretary pursuant to that provision. Solicitor Gardner concluded in 1945 that that interest was not necessarily an exclusive one. I am constrained to disagree with this position in view of my conclusion with respect to an issue not specifically considered in the 1945 opinion. In my view the Indians have a reserved and therefore exclusive interest in the Indian zone under the 1940 Act.<sup>16</sup>

Wash. Vol. 1, pp. 332, 333; 25 Stat. 676, 677, sec. 4, par. 2).

<sup>16</sup> This opinion concerns only the boundaries of the Colville and Spokane Reservations in the reservoir area, the title to certain portions of the riverbed in that area, the right of tribal members to use the Indian zone designated by the Secretary pursuant to the 1940 statute for hunting, fishing, and boating purposes, and the power of the tribes under that statute to control the use of that zone for those purposes by others. The opinion does

72] OPINION ON THE BOUNDARIES OF AND STATUS OF TITLE 81  
TO CERTAIN LANDS WITHIN THE COLVILLE AND SPOKANE INDIAN  
RESERVATIONS

February 2, 1977

Solicitor Gardner viewed the word "paramount" in the Act as reflecting a congressional purpose to create a "flexible scheme" giving the Secretary discretion to determine whether exclusive use of the zone by the Indians is "necessary to ensure the realization of their privileges." 59 I.D. at 170. Standing alone, however, the term "paramount" clearly does not determine the issue of whether exclusivity was intended. As Solicitor Gardner himself pointed out, congressional "reliance upon the adjective 'paramount' alone in this context was probably unfortunate," *id.* at 169, since the word is ambiguous with respect to connotations of exclusivity. The relevant legislative history, however, while not altogether consistent, serves in my view to resolve the question along lines somewhat different from those articulated in the 1945 Solicitor's Opinion.

The legislative history of the Act concededly does not point unequivocally in a single direction. In its report to Congress with regard to the proposed legislation, for example, the Department suggested that "the rights of the Indians to use this area for hunting, fishing, and boating will not necessarily be exclusive rights." H.R. Rep. No. 2350, 76th Cong., 3d Sess. 2 (1940).

not affect or change any of the governmental and institutional arrangements under which Grand Coulee Dam and the Third Powerplant connected therewith are now being operated and maintained.

This suggestion represents the strongest support for the position taken in the 1945 Opinion. On the other hand, the bill which became the 1940 Act was drafted in its final form by the Office of Indian Affairs jointly with the Bureau of Reclamation shortly after the Assistant Commissioner of Indian Affairs had indicated that he contemplated the "setting aside of a particular part or parts of the reservoir *for the exclusive use of the Indians* in exercising their rights, subject, of course, to the primary use of the reservoir for reservoir purposes." 59 I.D. at 157 (*Italics added*). Indeed, the very memorandum which set forth that contemplation of "exclusive" use expressed the notion in proposed statutory language utilizing the word "paramount." *Id.*

Early drafts of the Act prepared within the Department provided that the title to be granted to the United States should be "subject to the reservation for the Indians of an easement to use such lands for hunting, fishing, boating, and other purposes." 59 I.D. at 156. The Bureau of Reclamation resisted this approach, not only out of opposition to the open-ended reservation of easements for unspecified "other purposes," but also on the basis of a concern that administration of the project should not be made unduly complicated. The Indian lands to be taken were not contiguous, but rather were arranged in a "checker-

board" pattern—extending, in fact, upriver beyond the boundaries of the reservations.<sup>17</sup> This situation obviously would have rendered the simple reservation of an easement with respect to the particular lands taken difficult to oversee and administer. Indeed, it was feared that a scheme under which the Indians retained scattered "rights in all parts of the reservoir area \* \* \* would interfere with the proper development of its recreational possibilities." *Id.* at 156.

Thus the scheme of the Act was modified, and the present statutory language, authorizing the creation of a contiguous Indian zone, was agreed upon. There is no persuasive evidence of any determination at the time of this modification that the *nature* of the Indians' rights was to be different than had originally been contemplated when the reservation of an easement was specified, nor is there any apparent reason or basis for such a determination. In this context, given the

<sup>17</sup> Congress had opened both the Spokane and Colville Reservations to entry and settlement by non-Indians. See the Acts of June 19, 1902 (32 Stat. 744) (Spokane), Mar. 22, 1906 (34 Stat. 80) (Colville), and May 29, 1908 (35 Stat. 458) (Spokane). See also the title opinion dated May 2, 1973, issued by the Title Plant, Portland Area Director's Office, Bureau of Indian Affairs, which includes 11 color-coded maps depicting the boundaries of the Colville Reservation and the source of title for each parcel of land in the designated area. That title opinion and all related documents are on file in the above office.

As for the area upriver from the reservations, the Colville Reservation originally extended considerably north of its present northern boundary but was diminished by the Act of July 1, 1892 (27 Stat. 62), which provided for allotments to Indians living in the severed portion. See 59 I.D. at 151.

background outlined above and the limited purpose that the change in approach evidently was designed to accomplish, the soundest inference is that only the *location* of the areas to which such rights were applicable was changed.<sup>18</sup> It is the failure of Solicitor Gardner to draw this inference, or even to deal with the question of whether the Indians' rights were reserved rights, which represents the chief point of departure between his analysis of the Act and mine.

This view of the Act also comports more closely with an agreement dated June 14, 1940, between the Office of Indian Affairs and the Bureau of Reclamation, relating to acquisition of Indian lands for the project. Paragraph 7 of that agreement, which was concluded only fifteen days prior to the date of the Act, reflects an understanding that "existing" rights of hunting and fishing in the areas to be taken were to be "satisfied" by the Act, thus arguably, at least, suggesting a reservation of preexisting rights.<sup>19</sup>

<sup>18</sup> Since the Indian zone is located almost totally within the exterior boundaries of the Colville and Spokane Reservations, there is no geographical anomaly involved in the conclusion that the Indians' rights in the zone are reserved rights.

<sup>19</sup> The 1945 Solicitor's Opinion includes the following passage: "It is important to realize that the acquisition of Indian allotted lands for the reservoir began long in advance of the passage of the act of June 29, 1940, and that some of these lands were inundated prior to their acquisition. The plan at this time was to reserve easements to the Indian owners which would enable them to make use of the reservoir without any limitation upon these uses, and therefore the riparian factor of severance damage was not taken into consideration in appraising the Indian lands, either at this time or subsequently, the lands of the

72] OPINION ON THE BOUNDARIES OF AND STATUS OF TITLE 83  
TO CERTAIN LANDS WITHIN THE COLVILLE AND SPOKANE INDIAN  
RESERVATIONS

February 2, 1977

The above analysis is reinforced by the language of the Act. The Secretary is directed to "set aside" an Indian zone from the lands taken for project purposes—terminology that at least is consistent with, and may well be indicative of, a contemplation that already existing Indian rights to the lands designated were being preserved. Moreover, the directive is to set aside the zone "in lieu of" reserving to the Indians hunting, fishing, and boating rights "in the areas granted under this Act"—language which would appear to suggest the notion outlined above, to the effect that the Act merely imposed a geographical shift of those preexisting rights. Indeed, the Indians are specifically said to have "rights" in the zone set aside, which rights are "subject only" to (a) the Secretary's authority to promulgate conservation regulations, and (b) the overriding proviso that the rights "shall not interfere with project operations."<sup>20</sup> The implication thus is

Indians and non-Indians alike being appraised upon the same basis. The Indian allotted lands were acquired under memoranda of understanding between the Indian Office and the Bureau of Reclamation approved by the Department on Apr. 6, 1939, and June 14, 1940. Paragraph 7 of the latter memorandum of understanding provided: "Nothing in this agreement shall affect existing hunting and fishing rights of the Indians in the Columbia River Reservoir area intended to be satisfied by the enactment into law of the provisions of the second paragraph of Section 1 of S. 3766 and H.R. 9445 \* \* \* (76th Congress, 3d Session)." 59 I.D. at 155 (Italics added; footnotes omitted).

<sup>20</sup>The existence of these two limitations on the Indians' rights may well explain why the term "paramount" rather than "exclusive"

that those rights are not "subject" to any concurrent rights of other persons in the Indian zone.<sup>21</sup>

The conclusion that the Act contemplates retention by the Indians of preexisting (and therefore reserved and exclusive) rights is, in addition, strongly supported by the principle that enactments permitting a taking of Indian property are to be construed narrowly, as giving congressional consent only to the most limited extinguishment of Indian proprietary rights necessary for fulfillment of the purpose of the taking. *Mattz v. Arnett, supra*, 412 U.S. at 504; *Menominee Tribe v. United States*, 391 U.S. 404 (1968); *United States v. Santa Fe Pac. RR. Co.*, 314 U.S. 339 (1941); *Seymour v. Superintendent, supra*; *United States v. Nice*, 241 U.S. 591 (1916); *United States v. Celestine, supra*. There is no provision in the 1940 Act for any non-Indian use of areas included within the Indian zone.

Similar support for this view of the Act stems from the well-established principle that statutes affecting Indian interests are, where am-

was used in the Act, and may also perhaps underlie the comment in the Department's report quoted on page 15, *supra*.

<sup>21</sup>I do not mean to suggest that this analysis of the language of the Act is conclusive of the questions considered herein; indeed, my construction of that language is not the only plausible construction. I do, however, believe that my reading of the language is the soundest of the various possible readings, and that in combination with the analysis of the history and purposes of the Act set out above and the rules of statutory interpretation referred to in the text *infra*, it provides a sound basis for my ultimate conclusions.

biguous, to be construed most favorably to the Indians involved. *E.g.*, *Squire v. Capoeman*, 351 U.S. 1, 6-9 (1956); *Carpenter v. Shaw*, 280 U.S. 363, 367 (1930); *United States v. Santa Fe Pac. R. Co.*, *supra*, 314 U.S. at 353-54; *Choate v. Trapp*, 224 U.S. 665, 675 (1912); *Cherokee Intermarriage cases*, 203 U.S. 76, 94 (1906).

Accordingly, although neither the Act nor the legislative history underlying it is crystal clear, I am compelled by the above considerations to hold that the Indians' rights to "paramount use" of the Indian zone are reserved rights held by the United States in trust for them, and that those rights are therefore exclusive (except as limited by the prohibition against interference with project operations and by the Secretary's explicitly conferred power to prescribe conservation regulations). Those rights are a condition to and a burden upon whatever title the United States received pursuant to the 1940 Act. *Cf. Seufert Bros. v. United States*, 249 U.S. 194 (1919).

### 3. THE JURISDICTION OF THE TRIBES TO REGULATE FISHING, HUNTING, AND BOATING IN THE INDIAN ZONE

Given my holding in the preceding section, the question arises whether in addition to having exclusive hunting, fishing, and boating rights in the Indian zone, the tribes also have the authority to regulate the use of that area by

others for such purposes. It is my conclusion that they do.

With respect to hunting and fishing, such a right is clearly inferable from 18 U.S.C. § 1165 (1970), which, as was held in *Quechan Tribe v. Powe*, 350 F. Supp. 106, 110 (S.D. Cal. 1972), "makes it a crime for any person to enter an Indian Reservation for the purpose of hunting, fishing, or trapping unless such person has tribal permission to do so."<sup>22</sup> *Quechan* held that section 1165 "confirmed" the right of tribes to "control, regulate and license hunting and fishing" within their reservations.<sup>23</sup> *See also United*

<sup>22</sup> Sec. 1165 reads as follows: "Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish therefrom, shall be fined not more than \$200 or imprisoned not more than ninety days, or both, and all game, fish, and peltries in his possession shall be forfeited."

<sup>23</sup> In theory there may be some question about whether the tribes enjoy regulatory power in those few portions of the Indian zone which are not within the boundaries of the reservations, and whether 18 U.S.C. § 1165 (1970) would be applicable to those areas in view of the general principle that criminal statutes are to be strictly construed. I am inclined, on the basis of the reasoning set out in the text at note 26, *infra*, toward the view that the tribes do have jurisdiction in those areas; and I am similarly inclined to conclude that the language of sec. 1165—which speaks of "lands of the United States that are reserved for Indian use"—is applicable to all portions of the Indian zone, in light of my holding above that the tribes' hunting, fishing, and boating rights in the zone are reserved rights. (With respect to the latter point, I note that section 1165 requires that the substantive terms of the statute be violated "knowingly and willfully," so that my view of the statute would not operate to ensnare the unwary. *See United States v.*

72] OPINION ON THE BOUNDARIES OF AND STATUS OF TITLE 85  
TO CERTAIN LANDS WITHIN THE COLVILLE AND SPOKANE INDIAN  
RESERVATIONS

February 2, 1977

*States v. Pollmann*, 364 F. Supp. 995, 1001-02 (D. Mont. 1973). Thus any tribal ordinances properly enacted to regulate hunting and fishing in the Indian zone must be regarded as valid and may be enforced by the Colville and Spokane tribal courts so long as the requirements of all pertinent federal statutes, such as 25 U.S.C. §§ 1301 *et seq.* (1970), are observed.<sup>24</sup> See *Alaska Pac. Fisheries v. United States*, 248 U.S. 78 (1916); *Morris v. Hitchcock*, 194 U.S. 384 (1904); *Iron Crow v. Oglala Sioux Tribe*, 231 F.2d 89 (8th Cir. 1956). Such ordinances may also, of course, in effect be enforced in the federal courts through application of section 1165.

The right to regulate boating in the Indian zone is not specifically conferred upon the tribes by section 1165, which speaks only of hunting and fishing. In my view, however, the tribes' regulatory authority in the zone extends to boating as well.

It has long been settled that Indian tribes, bands, and nations originally possessed all aspects of sovereignty, and that those groups

today retain such sovereignty, at least in terms of power over their internal affairs, except as limited by act of Congress. *Williams v. Lee*, 358 U.S. 217, 220, 223 (1959); *Worcester v. Georgia*, 31 U.S. 214 (6 Pet.) 515 (1832); *Colliflower v. Garland*, 342 F.2d 369 (9th Cir. 1965); *Iron Crow v. Oglala Sioux Tribe*, *supra*, 231 F.2d at 91-94, 98; *Oliphant v. Schlie*, \_\_\_\_\_ F. Supp. \_\_\_\_\_, No. 511-73C2 (W.D. Wash., filed March 21, 1974; see 55 I.D. 14 (1934)). In *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 172-173 (1973), the Supreme Court recently emphasized the pertinence of these principles to questions such as the one now before me:

The Indian sovereignty doctrine is relevant, then, not because it provides a definitive resolution of [such] issues \* \* \*, but because it provides a backdrop against which the applicable treaties and federal statutes must be read. It must always be remembered that the various Indian tribes were once independent and sovereign nations, and that their claim to sovereignty long predates that of our own Government. Indians today are American citizens. They have the right to vote, to use state courts, and they receive some state services. But it is nonetheless still true, as it was in the last century, that "[t]he relation of the Indian tribes living within the borders of the United States [is] an anomalous one and of a complex character. \* \* \* They were, and always have been, regarded as having a semi-independent position when they preserved their tribal relations; not as States, not as nations, not as possessed of the full attributes of sovereignty, but as a sepa-

*Pollmann, supra.*) These questions probably are of no realistic significance, however, in view of the minimal extent of such geographical discrepancies and the practical difficulty of ascertaining their location.

<sup>24</sup> The Colville Constitution, which has been approved by the Secretary, provides in Article V, sec. 1(a), that the elected tribal council has the responsibility and authority "to protect and preserve the tribal property, wildlife and natural resources \* \* \*." A similar provision appears in Article VII, sec. 1(c) of the Spokane Constitution.

rate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the State within whose limits they reside." *United States v. Kagama*, 118 U.S. at 381-382. (Footnotes omitted.)<sup>25</sup>

On the basis of this approach, the 1940 Act's reservation of exclusive boating rights to the tribes provides in my view a sufficient basis for tribal jurisdiction to regulate that activity in the Indian zone.<sup>26</sup> The conferral of such exclusive rights would be futile unless there existed some appropriate means of enforcing those rights. It is reasonable, therefore, especially absent any other clearly effective mechanism for the enforcement of such rights, to conclude that a concomitant enforcement authority rests in the tribes themselves.

The Indian zone is, as I have noted, almost entirely within the boundaries of the reservations. A properly drafted tribal ordinance

<sup>25</sup> While decisions concerning the recognition and preservation of tribal sovereignty have basically dealt with reservations established by treaty, I can perceive no reason for any different conclusion where an executive order reservation is involved, at least so long as the executive order does not clearly and specifically indicate that the reservation was created for an exceptional purpose incompatible with ordinary notions of tribal sovereignty.

<sup>26</sup> I see no sound basis or reason for distinguishing commercial navigation from pleasure boating in this regard. The Act is not in terms limited to rights of the latter sort; indeed, excessive or unregulated commercial navigation might well interfere with the Indians' hunting and fishing as well as boating rights. In this connection I note that navigation rights exist from one end of the lake to the other in the non-Indian zone (including the "navigation lane" established by the Secretary between the Colville and Spokane portions of the Indian zone.)

could provide that anyone entering the reservation subjects himself to tribal regulations dealing with activities as to which the Indians have exclusive rights, and to the jurisdiction of the tribal courts in such respects. *See, e.g., Buster v. Wright*, 135 F. 947 (8th Cir. 1905), *app. dismissed*, 203 U.S. 599 (1906); *cf. Oliphant v. Schlie, supra*, ----- F. Supp. at -----:

[A]n Indian tribe's powers of local self-government originally included the power to enact criminal laws pertaining to non-Indians and to confer upon its tribal court jurisdiction over the person of a non-Indian to enforce such laws on those lands reserved for such Indians within the established boundaries of their reservation. Such jurisdiction continues to this day, save as it has been expressly limited by the acts of a superior government, *i.e.*, the United States Government.<sup>27</sup>

Nor is the tribal authority outlined above undercut by the regulatory authority of the state of Washington under its criminal law and Public Law 280, 18 U.S.C. § 1162. It is immaterial, in fact, whether the state has full jurisdiction over the Colville and Spokane reservations in the respects authorized by that statute; for 18 U.S.C. § 1162(b) in any event precludes

<sup>27</sup> The court in *Oliphant* restricted its holding to offenses "occurring on land held in trust by the United States Government for the benefit of Indians within the exterior boundaries of the \* \* \* Reservation. Jurisdiction \* \* \* over non-Indians on fee patent lands within the reservation is not presently before the Court, and the Court expresses no views on the question." ----- F. Supp. at -----.

Similarly, I deal above only with tribal authority to regulate activities as to which the Colville and Spokane Tribes have exclusive and reserved rights, in areas to which such rights are applicable.

871 PARK CENTER WATER DISTRICT AND THE CANON HEIGHTS 87  
IRRIGATION AND RESERVOIR COMPANY  
February 3, 1977

state regulation of Indian trust property "in a manner inconsistent with any Federal \* \* \* statute," and likewise prevents the state from—

depriv[ing] \* \* \* any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal \* \* \* statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

Such rights are granted both by the 1940 Act and by 18 U.S.C. § 1165 (1970), so that state regulatory law of the sort referred to above can in no way undermine the Indians' exclusive right to hunt, fish, or boat in the Indian zone or their right to regulate those activities there. Any state law conflicting with tribal ordinances in these areas, or purporting to undercut such tribal jurisdiction, would be invalid. See *United States v. Pollmann, supra*, 364 F. Supp. at 1002; *Quechan Tribe v. Rowe, supra*.<sup>28</sup>

KENT FRIZZELL,  
*Solicitor.*

PARK CENTER WATER DISTRICT  
AND THE CANON HEIGHTS  
IRRIGATION AND RESERVOIR  
COMPANY

28 IBLA 368

Decided February 3, 1977

Appeal from decision of the Colorado  
State Office, Bureau of Land Manage-

<sup>28</sup> As noted above, there are in reality two Indian zones—a Colville zone and a Spokane

ment, increasing charge for water from well on public land, Pueblo 057197.

Affirmed.

1. Administrative Procedure: Burden of Proof—Appraisals—Evidence: Presumptions—Water and Water Rights: Generally

One challenging the accuracy of an appraisal of water based on fair market value must show by substantial evidence the nature of the alleged error; where the appraisal has been conducted in accordance with generally accepted appraisal principles, allegations of error unsupported by evidence will be given little weight.

2. Water and Water Rights: Generally—Water and Water Rights: State Laws

An attempted adjudication of federal water rights will not be recognized where the state court 1) lacked jurisdiction over the United States for failure to serve process upon the Attorney General of the United States or his designated representative pursuant to 43 U.S.C. § 666(b) (1970); and 2) lacked jurisdiction over the subject matter for failure of the litigation to conform to the requirements of a general litigation of all water rights pursuant to 43 U.S.C. § 666(a) (1970).

3. Water and Water Rights: Federally Reserved Water Rights—Water and Water Rights: State Laws—Withdrawals and Reservations: Springs and Waterholes

zone—rather than one. Consistent with this fact and with the 1945 *Solicitor's Opinion*, 59 I.D. at 159-60, each tribe in effect has jurisdiction as described above over its portion of the zone.

**CASSIDY v. U.S. Nos. CS-93-19-JLQ, CR-92-194-JLQ.**

875 F.Supp. 1438 (1994)

Joseph W. CASSIDY, et al., Plaintiffs, v. UNITED STATES of America, et al., Defendants.  
United States District Court, E.D. Washington.  
January 27, 1994.

Jerry K. Boyd, Paine, Hamblen, Brooke, Coffin & Miller, Spokane, WA, for plaintiffs.  
James R. Shively, Asst. U.S. Atty., Spokane, WA, for defendants.

Alan C. Stay, Nespelem, WA, for amicus, Confederated Tribes of Colville Indian Reservation.  
Jay Douglas Geck, Atty. Gen. of Washington, Olympia, WA, for amicus, State of Wash.

**ORDER DENYING THE GOVERNMENT’S MOTION FOR SUMMARY JUDGMENT,  
INTER ALIA**

QUACKENBUSH, Chief Judge.

BEFORE THE COURT is the Government’s Motion to Dismiss for Failure to Join Indispensable Parties (Ct.Rec. 28, CS-93-19-JLQ), the Government’s Motion for Summary Judgment (Ct.Rec. 32, CS-93-19-JLQ), the Government’s Motion to Clarify and Supplement Record (Ct.Rec. 57, CS-93-19-JLQ), Plaintiffs’ Motion to Strike and Expunge Portions of the Record or, in the Alternative, Motion to Compel Discovery (Ct.Rec. 60, CS-93-19-JLQ), and Joseph Cassidy’s Renewal of Motion to Dismiss Information (Ct. Rec. 25, CR-92-194-JLQ), heard on November 15, 1993 and January 11, 1994. Jerry Boyd appeared on behalf of Plaintiffs; the Government was represented by Assistant United States Attorney James R. Shively. Having reviewed the record, heard from counsel, and being fully advised on this matter, the court rules for Plaintiffs.

At issue in this case is whether a non-Indian can be prosecuted under 18 U.S.C. § 11651 for fishing on waters that have been reserved for the “paramount,” instead of the “exclusive,” use of Indians. The court finds that a non-Indian cannot be so prosecuted.

***I. BACKGROUND***

The relevant facts in this case are undisputed. The Colville Indian Reservation was created by Executive Order dated July 2, 1872, and the Spokane Indian Reservation was created by Executive Order dated January 18, 1881.

On August 30, 1935, Congress authorized the construction of Grand Coulee Dam on the Columbia River. Act of August 30, 1935 (49 Stat. 1028). In aid of the construction of the Grand Coulee Dam project, Congress granted to the United States all right, title, and interest of the Indians in and to the tribal and allotted lands within the Spokane and Colville Reservations as designated by the Secretary of Interior. Act of June 29, 1940, (54 Stat. 703), 16 U.S.C. § 835d. Congress further provided that:

The Secretary of Interior, in lieu of reserving rights of hunting, fishing, and boating to the Indians in the areas granted under this Act [16 U.S.C. §§ 835d et seq.], shall 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. § 835d.

After construction of the Grand Coulee Dam and the establishment of what is now Lake Roosevelt, the Grand Coulee Dam National Recreation Area, comprised of Lake Roosevelt and the surrounding area, were open for use by the general public. The general public had a right to fish and boat on the entire reservoir, subject to reasonable management by the National Park Service. From 1940 until the present, the State of Washington has regulated fishing by non-Indians on the entire reservoir.

In 1945, prior to the set-aside, the Solicitor for the Department of the Interior opined that 16 U.S.C. § 835d did not grant the Tribes an exclusive right to hunt and fish on the set-aside portion of Lake Roosevelt. In 1946, the Secretary of Interior established two zones on Lake Roosevelt for Indian use, known at the time as the Indian Zone. (Memorandum Agreement, Plaintiff's Exhibit 35.) This was done in compliance with Congress' directive in section 835d to set-aside one-quarter of the acquired land for the paramount use of the Tribes for hunting, fishing, and boating.

In 1974, the Solicitor for the Department of Interior rendered a contrary opinion, finding that the Indian tribes were entitled to exclusive occupancy of the land set aside pursuant to section 835d.2 After this opinion was rendered, both the Colville and Spokane Tribes attempted to regulate fishing by non-Indians within the set-aside area. In 1982, the United States Attorney for the Eastern District of Washington assured the Tribes that non-Indians fishing within the Indian Zone would be prosecuted in federal court for trespassing.

In the Lake Roosevelt Cooperative Management Agreement ("Agreement"), executed on April 5, 1990, the Secretary of Interior reaffirmed the boundaries of the Indian Zone, which was the area of Lake Roosevelt allocated for Indian use in the 1946 Agreement. Under the Agreement, the Grand Coulee Reservoir area was divided into three zones: (1) the Reclamation Zone; (2) the Recreation Zone; and (3) the Reservation Zone (previously known as the Indian Zone). The Agreement states that the Reclamation Zone is to be regulated by the Bureau of Reclamation, the Recreation Zone is to be regulated by the National Park Service, and the Reservation Zone is to be regulated by the Spokane and Colville Tribes. The Agreement grants to the Spokane Tribe the authority to manage, plan and regulate all activities within that portion of the Reservation Zone within the Spokane Reservation.

Under the authority delegated to them under the Agreement, the Spokane Tribe requires a permit for non-Indian fishing within the Spokane Reservation portion of the Reservation Zone. The Colville Tribes and the State of Washington have an agreement whereby the Colville Tribes allow non-Indians to fish in their portion of the Reservation Zone with a valid State of Washington fishing permit.

In June 1992, Joseph W. Cassidy fished on the northern half of the Spokane arm of Lake Roosevelt, which is located within a portion of the Reservation Zone allegedly under the regulatory control of the Spokane Tribe. (The Agreed Pretrial Order only states that he was fishing "on the waters of Lake Roosevelt;" however, it does not appear to be disputed that he was, in fact, fishing on the northern half of the Spokane Arm, which is within the Spokane Reservation.) At the time, Mr. Cassidy possessed a valid fishing license issued by the State of Washington, but he had not obtained a fishing permit from the Spokane Tribe.

In July 1992, an amended criminal information was filed against Mr. Cassidy in federal court. It was alleged therein that without lawful authority or permission, Mr. Cassidy fished upon lands belonging to the United States that were reserved for Indian use, in violation of 18 U.S.C. § 1165. Specifically, Mr. Cassidy was charged with fishing from the northern bank of the Spokane Arm of Lake Roosevelt without permission from the Spokane Tribe.

It was evident pretrial that resolution of the criminal case would require a legal determination as to who had regulatory jurisdiction over the Spokane Arm of Lake Roosevelt. Because the criminal action involved a purely legal question, the court stayed the criminal action so that Mr. Cassidy could seek a civil declaratory judgment regarding who had regulatory control over the Spokane Arm of Lake Roosevelt.

On January 21, 1993, Mr. Cassidy and Mr. Lee filed a complaint seeking both injunctive and declaratory relief. They filed an amended complaint on June 1, 1993. The Plaintiffs seek a declaration that the United States does not have jurisdiction under existing laws and regulations to regulate or prohibit fishing by non-Indians in any waters of Lake Roosevelt, so long as the individuals comply with the laws and regulations of the State of Washington. The Plaintiffs also ask the court to declare that it is not a violation of 18 U.S.C. § 1165 for non-Indians with valid Washington state fishing licenses to fish on Lake Roosevelt.

On June 3, 1993, the Plaintiffs filed a motion for default and, in the alternative, for a preliminary injunction. On June 17, 1993, the court entered an order denying the Plaintiff's motion. (Ct. Rec. 21, CS-93-19-JLQ.)

The Government filed a motion to dismiss on June 7, 1993, arguing that the court lacked jurisdiction over the Defendants in this case, based on the doctrine of sovereign immunity. Having found that sovereign immunity was waived in this case, the court entered an order on July 23, 1993 denying the Defendants' motion to dismiss.

The Defendants subsequently filed two additional motions, the resolution of which the parties agree will decide this case. First, the Defendants seek a dismissal based on a failure to join indispensable parties. In the alternative, the Defendants seek a judgment on the merits as a matter of law. Although the Plaintiffs have not formerly filed a cross-motion for summary judgment, the substance of their response brief can be reasonably construed as not only opposing the Defendants' motion, but also seeking judgment as a matter of law.

## ***II. DISCUSSION***

The Defendants seek dismissal on the ground that an indispensable party has not been joined in this action. Specifically, it is argued that the Spokane and Colville Tribes are indispensable parties. Neither the Spokane nor the Colville Tribe is a party in this case;<sup>3</sup> however, the Colville Tribe has filed an amicus curiae brief. The Defendants alternatively argue that they are entitled to judgment as a matter of law and, therefore, summary judgment should be entered in their favor.

### ***A. Spokane and Colville Tribes as Indispensable Parties***

Federal Rule of Civil Procedure 19 identifies "necessary" parties:

(a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

Once a party is identified as a necessary party under Rule 19(a), there remains the question of whether the party is indispensable, thus requiring dismissal of the cause of action if the indispensable party is not joined.

(b) If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable.

Fed.R.Civ.P. 19(b). Rule 19(b) goes on to identify the factors which the court must consider in deciding whether a party is indispensable:

first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

The court employs a two-step analysis under Rule 19. First, it must determine whether an absent party is "necessary" to the suit. Fed.R.Civ.P. 19(a). If so, and if that party cannot be joined, the court must assess whether the absentee party is "indispensable" so that in "equity and good conscience" the suit should be dismissed." *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir.1990). "The inquiry is a practical one and fact specific, and is designed to avoid the harsh results of rigid application. The moving party has the burden of persuasion in arguing for dismissal." *Id.* (citations omitted).

### 1. Necessary Party

The first issue is whether the Spokane and Colville Tribes are necessary parties to this action. To resolve this issue, the court must determine whether complete relief is possible among those already parties to the suit. *Lujan*, 928 F.2d at 1498. "This analysis is independent of the question whether relief is available to the absent party." *Makah*, 910 F.2d at 558. Even if complete relief is available among the existing parties, thus suggesting that the absent party may not be necessary, the court must still decide whether the absent party has a legally protected interest in the case. *Id.* This is because under Rule 19(a), a party is necessary if complete relief cannot be granted among the existing parties or the absent party has a legally protected interest that might be impeded if the case proceeds in its absence. If a legally protected interest is found to exist, the issue becomes whether that interest would be impaired or impeded if the case were to proceed without the absentee party. *Id.* "Impairment may be minimized if the absent party is adequately represented in the suit. The United States may adequately represent an Indian tribe unless there is a conflict between the United States and the tribe." *Id.* Finally, the court must determine whether the risk of inconsistent rulings will affect the parties presently in the suit. *Id.* at 559.

The Plaintiffs seek no relief from the Tribes. Rather, they seek injunctive and declaratory relief against the United States, the United States Attorney, and the United States Marshal from prosecuting them for exercising their claimed right to fish in the Indian Zones of Lake Roosevelt with only a valid Washington fishing license. The Plaintiffs argue that complete relief between the existing parties is not only possible, but it is the only relief that is requested.

The Defendants note that resolution of this case will require an examination of 16 U.S.C. § 835d and the Agreement. Section 835d provides that in lieu of reserving hunting and fishing rights in the area acquired for construction of the Grand Coulee Dam, the Secretary of Interior shall set aside 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, subject only to such reasonable regulations as the Secretary may prescribe for the protection and conservation of fish and wildlife. The Agreement allocates and delegates regulatory authority over portions of Lake Roosevelt between the federal government and the Spokane and Colville Tribes.

The Defendants contend that the Tribes' legally protected interest in this case is their right to control the use of the reserved land under the Agreement and their interest in their fishing rights granted under section 835d. The Defendants also argue that the Tribes have a legal interest here because they have an interest in enforcing the Agreement, *Lujan*, 928 F.2d at 1499, and because they have an "interest in preserving their own sovereign immunity, with its concomitant 'right not to have [their] legal duties judicially determined without consent.'" *Shermoen v. United States*, 982 F.2d 1312, 1317 (9th Cir.1992), *cert. denied*, \_\_\_ U.S. \_\_\_, 113 S.Ct. 2993, 125 L.Ed.2d 688 (1993).

The Plaintiffs argue that the issues in this case relate only to their civil rights, and not to any rights of the Tribes. They challenge the Defendants' position that the Tribes have an interest in fishing and hunting in the Reservation Zone that will be affected if the Plaintiffs prevail. The

Plaintiffs label this contention “speculative,” and argue that such speculation cannot be the basis of a finding that an absent party is necessary.

It is correct that mere speculation about a future event does not rise to the level of a legally protected interest. *Makah*, 910 F.2d at 558. However, the existence of an actual legal interest does not necessarily have to be established for the absent party to be considered “necessary.” Pursuant to Rule 19, a finding that a party is necessary to an action is predicated only on that party having a *claim* to an interest. See Fed. R.Civ.P. 19(a)(2). “Just adjudication of claims requires that courts protect a party’s right to be heard and to participate in adjudication of a claimed interest, even if the dispute is ultimately resolved to the detriment of that party.” *Shermoen*, 982 F.2d at 1317.

Although the Plaintiffs’ focus in this case is on the United States rather than the Tribes, it is clear that this case will turn on, among other things, the interpretation of section 835d and the Agreement. As stated in *Shermoen*, for a party to be “necessary,” it is sufficient that it have a claim to an interest relating to the subject of the action. It is clear that the Tribes have at least a *claim* to a legally cognizable interest in this case because of the fishing and hunting rights arguably granted to them under section 835d, and the regulatory authority delegated to them under the Agreement. Further, like the tribes in *Shermoen*, the Tribes here have a protected interest in preserving their own sovereignty, with the concomitant right not to have their legal duties adjudged without consent.

Having concluded that the Tribes possess a claim to an interest, the issue becomes whether that interest will be impaired or impeded by the suit. Given the interest possessed by the absentee Tribes, if the court were to grant the requested relief — that is, enjoining the Defendants from prosecuting individuals who fish in the Reservation Zone without permission from the Tribes, the Tribes’ fishing rights arguably created by section 835d and their regulatory authority under the Agreement, would be impaired or impeded. However, this does not necessarily mandate a finding that the Tribes are necessary parties.

As stated above, in some cases the prejudice created by a party’s absence is mitigated, or even eliminated, by the presence of a party who will represent the absent party’s interest. *Makah*, 910 F.2d at 558. “The United States may adequately represent an Indian tribe unless there is a conflict between the United States and the tribe.” *Id.*<sup>4</sup>

In this case, the Plaintiffs have failed to allege any reason why the United States would not adequately represent the Tribes, nor is there any apparent actual or potential conflict between the United States’ interests and those of the Tribes. It appears that both the United States and the Tribes, if parties, would have the court construe section 835d and the Agreement in essentially the same fashion. Both appear to agree that section 835d directed the Secretary of Interior to set aside one-quarter of Lake Roosevelt for the paramount use of the Spokane and Colville Tribes for hunting, fishing, and boating, and that such land was subject to reasonable regulations as the Secretary of Interior may prescribe for the protection of fish and wildlife.

The position of the United States that section 835d reserved in the Tribes fishing and hunting rights in the Reservation Zone does not appear to be inconsistent with the likely position of the Tribes. Further, the United States appears to take a position regarding the Agreement which is not in conflict with the Tribes. In the Agreement, the United States purports to delegate to the Tribes regulatory control over the Reservation Zone. It is pursuant to this delegated regulatory control that the Spokane Tribe has regulated non-Indian fishing in its portion of the Reservation Zone. It appears both the Tribes and the United States have the same desire to see the Agreement remain in full force and effect. Further, the United States can adequately represent the Tribes’ interest without compromising any obligation it may have to the Plaintiffs or to other Indian tribes. This finding is contrary to that in *Lujan*, 928 F.2d at 1500 (United States could not adequately represent the absentee tribe’s interest without compromising the trust obligations owed to the plaintiff tribes) and *Makah*, 910 F.2d at 560 (potential intertribal conflicts means the United States cannot properly represent any of the tribes).

In sum, the absentee Tribes have a claim to an interest in the subject matter of this action. However, they are not “necessary” parties because their interests are adequately represented by an existing party to this case, the United States. Because the United States is a party to this action, disposition of this case in the absence of the Tribes, as a practical matter, will not impede or impair the Tribes’ ability to protect their interest. Therefore, the court finds that the Tribes are not necessary parties under Rule 19(a).

## **2. Indispensable Party**

“Only if the absent parties are ‘necessary’ and cannot be joined must the court determine whether in ‘equity and good conscience’ the case should be dismissed under Fed.R.Civ.P. 19(b).” *Makah*, 910 F.2d at 559. Having concluded that the Tribes are not “necessary” parties under Rule 19(a), they cannot be indispensable parties under Rule 19(b). Therefore, the Defendants’ motion to dismiss based on a failure to join indispensable parties should be denied.

### **B. Summary Judgment Standard**

The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the material facts before the court. *Zweig v. Hearst Corp.*, 521 F.2d 1129 (9th Cir.1975), cert. denied, 423 U.S. 1025, 96 S.Ct. 469, 46 L.Ed.2d 399 (1975). The moving party bears the burden of informing the court of the basis for its motion, together with evidence demonstrating the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986).

The moving party is entitled to summary judgment when, viewing the evidence and the inferences arising therefrom in favor of the nonmoving party, there are no genuine issues of material fact in dispute, and they are entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Semegen v. Weidner*, 780 F.2d 727 (9th Cir.1985). However, where reasonable minds could differ on the material facts at issue, summary judgment is not appropriate. See *v. Durang*, 711 F.2d 141 (9th Cir.1983).

When evaluating evidence offered to resist summary judgment, the Ninth Circuit distinguishes between direct and circumstantial evidence. See *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 630-31 (9th Cir.1987). Where the nonmoving party has come forward with direct evidence contrary to that offered by the movant, a credibility issue is raised. Credibility determinations are for the trier of fact and, therefore, not appropriately resolved by summary judgment. *McLaughlin v. Liu*, 849 F.2d 1205, 1207 (9th Cir.1988). Where direct evidence produced by the moving party conflicts with direct evidence produced by the nonmoving party, the court must assume the truth of the evidence set forth by the nonmoving party with respect to that fact. *T.W. Elec.*, 809 F.2d at 631-32. However, when the only evidence offered in opposition to the motion for summary judgment is circumstantial evidence, then the court may inquire into the plausibility of inferences drawn from that evidence. *Id.*

In evaluating the appropriateness of summary judgment, three steps are necessary: (1) determination of whether a fact is material; (2) determination of whether there is a genuine issue for the trier of fact, as determined by the documents submitted to the court; and (3) consideration of that evidence in light of the appropriate standard of proof. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S.Ct. 2505, 2509-10, 91 L.Ed.2d 202 (1986).

As to materiality, “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.* at 248, 106 S.Ct. at 2510.

Disputes concerning material facts also must be genuine. A genuine issue of material fact exists if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson*, 477 U.S. at 248, 106 S.Ct. at 2510. Although the court construes all facts and draws all inferences in favor of the nonmoving party, “the record must be sufficient to let a rational factfinder find that the inference nonmovant suggests is more likely than not true. A mere scintilla of evidence isn’t enough.” *Scott v. Henrich*, 978 F.2d 481, 485 (9th Cir.1992) (citation omitted).

A party opposing a motion for summary judgment “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986). In order to survive a supported motion for summary judgment, the nonmoving party must set forth “specific facts showing that there is a genuine issue for trial.” Fed. R.Civ.P. 56(e). In other words, once the moving party has met its burden, the party opposing the motion may not rest upon the allegations or denials contained in his pleadings. *Anderson*, 477 U.S. at 248, 106 S.Ct. at 2510.

“[A]t the summary judgment stage the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Anderson*, 477 U.S. at 249, 106 S.Ct. at 2511. “When determining if a genuine factual issue ... exists, ... a trial judge must bear in mind the actual quantum and quality of proof necessary to support liability...” *Id.* at 254, 106 S.Ct. at 2513. This necessitates application of the substantive evidentiary standard of proof that would apply at the trial on the merits. *Id.* at 252, 106 S.Ct. at 2512. “Thus, in ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden.” *Id.* at 254, 106 S.Ct. at 2513. The question is, therefore, “whether a jury could reasonably find *either* that the plaintiff proved his case by the quality and quantity of evidence required by the governing law or that he did not.” *Id.* The standard that governs the trial judge’s determination as to whether a genuine issue exists is provided by the applicable evidentiary standards. *Id.* at 255, 106 S.Ct. at 2513-14. This being a civil case, the applicable evidentiary standard is a preponderance of the evidence.

### ***C. Regulatory Authority Over the Reservation Zone***

There are two central issues here: (1) whether section 835d reserved in the Tribes regulatory control over the Reservation Zone, including the authority to regulate fishing, and (2) whether the United States has authority to regulate fishing in the Reservation Zone, and, if the United States has such authority, whether the United States’ purported delegation of that authority to the Tribes was proper. If section 835d does not grant the Tribes regulatory authority, and if the Tribes do not possess delegated authority from the United States, then Mr. Cassidy did not violate section 1165 because he was not fishing “unlawfully.”

Section 1165 prohibits, among other things, an individual from *unlawfully* fishing on land reserved for Indian use. Here, Mr. Cassidy’s alleged “unlawful” conduct was a failure to get a tribal fishing permit. If the Spokane Tribe does not have the authority to require such a permit, pursuant to either section 835d or a delegation from the United States, an essential element of section 1165 is absent. However, if the Spokane Tribe possesses regulatory power, then Mr. Cassidy’s failure to obtain a tribal fishing permit rendered his fishing in the Reservation Zone “unlawful.” If the court were then to find that the Reservation Zone is land “reserved for Indian use,” Mr. Cassidy’s unlawful fishing within the Reservation Zone was in violation of section 1165.

#### ***1. Reserved Regulatory Authority***

It is undisputed that pursuant to the Act of 1940, codified at 16 U.S.C. § 835d, the United States acquired all right, title, and interest of the Tribes in the Spokane and Colville Reservations underlying Lake Roosevelt.<sup>5</sup> The purpose of this acquisition was for the construction, operation, and maintenance of the Columbia Basin Project. However, Congress also provided that in lieu of reserving rights of hunting, fishing, and boating to the Tribes, the Secretary of Interior shall set aside approximately one-quarter of the entire reservoir for the paramount use of the Tribes for hunting, fishing, and boating purposes. 16 U.S.C. § 835d. These rights were made subject only to such reasonable regulations as the Secretary of Interior prescribed for the protection and conservation of fish and wildlife. *Id.*

The Plaintiffs claim that Congress only granted limited authority to the Secretary of Interior to authorize Indian fishing, hunting, and boating in the Reservation Zone. They argue that Congress did not set-aside the Reservation Zone for the exclusive use of the Tribes. Rather, the Plaintiffs argue that the State of Washington has the exclusive right to regulate non-Indian fishing in the Reservation Zone. The Defendants agree that the Tribes do not have exclusive

control over the Reservation Zone or an exclusive right to fish therein. It is the Defendants' position that section 835d demonstrates Congress' intent to make special provisions for Indian fishing in the Reservation Zone, and thus Congress effectively reserved lands belonging to the United States for the Tribes to use for fishing, hunting, and boating purposes. Because of this reservation, the Defendants argue that the Tribes have a right to regulate hunting, fishing, and boating in the Reservation Zone.

An issue somewhat similar to the one in the case at bar was recently addressed by the Supreme Court in *South Dakota v. Bourland*, \_\_\_ U.S. \_\_\_, 113 S.Ct. 2309, 124 L.Ed.2d 606 (1993). The Fort Laramie Treaty established the Great Sioux Reservation in 1868. The Reservation was to be held for the "absolute and undisturbed use and occupation" of Sioux Tribes. Further, no non-Indians, other than authorized government agents, could "pass over, settle upon, or reside in" the Great Sioux Reservation. The Great Sioux Reservation was eventually broken into smaller reservations, including the Cheyenne River Reservation.

Pursuant to the Flood Control Act of 1944, a comprehensive flood control plan was established along the Missouri River. The Flood Control Act also directed the Army Chief of Engineers to construct, maintain, and operate public park and recreational facilities in reservoir areas, which were to be open to the general public, subject to federal regulation. Subsequent Acts of Congress authorized limited takings of Indian lands for dams along the Missouri River. One such acquisition involved the Oahe Dam and Reservoir Project, for which the Congress required the Cheyenne River Sioux Tribe to relinquish 104,200 acres of its reservation land. Although the tribe conveyed all of its interest in the 104,200 acres, the Act reserved certain rights to the Tribe, including the right to have "without cost, the right of free access to the shoreline of the reservoir including the right to hunt and fish in and on the aforesaid shoreline and reservoir, *subject, however, to regulations governing the corresponding use by other citizens of the United States.*" *Id.* at \_\_\_, 113 S.Ct. at 2314 (quoting Cheyenne River Act of 1954, 68 Stat. 1191, 1193).<sup>6</sup>

In its complaint, South Dakota sought to enjoin the Tribe from excluding non-Indians from hunting on non-trust land within the reservation. In the alternative, South Dakota sought a declaration that the federal takings of the tribal lands for the Oahe Dam and Reservoir had reduced the Tribe's authority by withdrawing these lands from the reservation.

The Court initially noted that because the tribes originally possessed the unqualified right of "absolute and undisturbed use and occupation" of the reservation land, the tribes had "both the greater power to exclude non-Indians from, and arguably the lesser-included, incidental power to regulate non-Indian use of, the lands later taken for the Oahe Dam and Reservoir Project." *Id.* at \_\_\_, 113 S.Ct. at 2316. Under the prior rulings in *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981) and *Brendale v. Confederated Tribes & Bands of Yakima Indian Nation*, 492 U.S. 408, 109 S.Ct. 2994, 106 L.Ed.2d 343 (1989), the Court held that when tribal lands are conveyed to non-Indians, the tribes lose any former right of absolute and exclusive use and occupation of the conveyed lands. *Bourland*, \_\_\_ U.S. at \_\_\_, 113 S.Ct. at 2316. "The abrogation of this greater right, at least in the context of the type of area at issue in this case, implies the loss of regulatory jurisdiction over the use of the land by others." *Id.* (footnote omitted).

When Congress took the tribe's land for the Oahe Dam project, it broadly opened the land and reservoir up for public use. Because Congress provided that the acquired land was to be generally accessible to the public, the Court found that the tribe lost its ability to exclude non-Indians from the acquired lands, "and with that the incidental regulatory jurisdiction formerly enjoyed by the Tribe." *Id.* at \_\_\_ - \_\_\_, 113 S.Ct. at 2316-17.

The Court noted that the Act acquiring the tribe's land for the dam and reservoir preserved certain land-use rights in the tribe, notably mineral, timber, and grazing rights. The Court of Appeals treated these retained rights as evidence that the taking was not a simple conveyance of land and, therefore, it concluded that Congress had not abrogated the tribe's regulatory authority. The Supreme Court disagreed, holding that "Congress' explicit reservation of certain

rights in the taken area does not operate as an implicit reservation of all former rights.” *Id.* at \_\_\_, 113 S.Ct. at 2318. The Court simply could not explain Congress’ decision to grant the tribe the right to hunt and fish in the reservoir area except as an indication that Congress intended to divest the tribe of its right to “absolute and undisturbed use and occupation” of the taken area. “When Congress reserves limited rights to a tribe or its members, the very presence of such a limited reservation of rights suggests that the Indians would otherwise be treated like the public at large.” *Id.* at \_\_\_, 113 S.Ct. at 2319.

It was the exclusive language of the treaties in *Bourland* and *Montana* that led the Supreme Court to conclude that prior to the federal land acquisition, the tribes had an implicit right to exclude non-members from tribal reservation land and, therefore, an arguable right to regulate fishing and hunting on those lands. Here, it is undisputed that the Executive Orders creating the Colville and Spokane Reservations did not contain the type of exclusionary language referred to by the Court in *Bourland* and *Montana*.<sup>7</sup> In the absence of treaty provisions or congressional pronouncements to the contrary, however, “the tribe has the inherent power to exclude non-members from the reservation.” *Quechan Tribe of Indians v. Rowe*, 531 F.2d 408, 410 (9th Cir.1976) (citing *Williams v. Lee*, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959)). Thus, it would appear that like the Cheyenne Tribe in *Bourland*, the Spokane and Colville Tribes possessed the inherent power to exclude non-members from all their reservation land, including what was later acquired under the Act of 1940. This implicit power to exclude arguably conferred upon the Tribes the authority to control the fishing and hunting on those lands prior to the Act of 1940. However, as to the land in question, this regulatory power was lost when the United States acquired the land under Lake Roosevelt for the purpose of constructing and maintaining Grand Coulee Dam and the resulting reservoir.

In *Bourland*, the United States acquired all interest in the land used for the construction of the Oahe Dam and Reservoir pursuant to the Cheyenne River Act. Similarly, all title and interest previously possessed by the Tribes in the Grand Coulee Dam basin was acquired pursuant to the Act of 1940. Both cases involve a dispute as to whether dispossessed tribes can regulate hunting and fishing on federal land that was acquired by the United States for the construction and maintenance of dams and was previously part of the tribes’ respective reservations. The principal distinction between this case and *Bourland* is that here, the Tribes were provided with a paramount use of one-quarter of the reservoir created on the acquired land for fishing, hunting, and boating. In *Bourland*, the tribe was provided free access to the reservoir area to hunt and fish, along with the general public. It was this general “opening up” that negated any regulatory control the tribe may have previously had over the area. The question is, therefore, whether the Act of 1940 sufficiently “opened up” the area acquired under the Act so that the Tribes’ regulatory control was lost.

The Defendants’ argument that this case is distinguishable from *Bourland* hinges on two things.<sup>8</sup> First, when Congress directed the Secretary of Interior to set-aside one-quarter of the reservoir area for the “paramount use” of the Tribes to hunt, fish, and boat, it effectively “reserved” those lands for the Tribes. Second, although the Reservation Zone is open to the public in a general sense, when it comes to fishing, hunting, and boating, Congress’ implied reservation rendered the Reservation Zone “closed” for those limited purposes, thus enabling the Tribes to maintain their regulatory control over hunting, fishing, and boating in the Reservation Zone.

It is agreed that the Tribes do not have the exclusive right to fish, hunt, and boat in the Reservation Zone. This stems from Congress’ grant of only a “paramount right” to use, rather than an exclusive right. The parties’ views diverge when it comes to the interpretation of the term “paramount.” The Plaintiffs contend that Congress’ use of the word “paramount” implies only that the Tribes have a superior, protected interest in the designated activities. They disagree with the Defendants’ position that paramount use impliedly means that the Tribes have a reserved right to fish, which in turn precludes a finding that the Reservation Zone is “open” to the general public in the same sense as the reservoir was in *Bourland*.

Resolution of this issue must begin with an examination of the statute. *Bread Political Action Committee v. Federal Election Com.*, 455 U.S. 577, 580, 102 S.Ct. 1235, 1237, 71 L.Ed.2d 432 (1982). At the outset, the court is mindful that “[c]onsiderable deference is due an agency’s interpretation and application of a statute it administers.” *Monet v. Immigration and Naturalization Service*, 791 F.2d 752, 753 (9th Cir.1986). Nevertheless courts “must not `rubber-stamp ... administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute.” *Bureau of Alcohol, Tobacco & Firearms v. Federal Labor Relations Authority*, 464 U.S. 89, 97, 104 S.Ct. 439, 444, 78 L.Ed.2d 195 (1983) (quoting *N.L.R.B. v. Brown*, 380 U.S. 278, 291-92, 85 S.Ct. 980, 988, 13 L.Ed.2d 839 (1965)).

To begin with, the court must construe the term “paramount.” “A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.” *Perrin v. United States*, 444 U.S. 37, 42, 100 S.Ct. 311, 314, 62 L.Ed.2d 199 (1979). Because the term “paramount” is not defined in section 835d, the court looks to the contemporary meaning for guidance. “Paramount” is defined as “highest in rank or jurisdiction; chief; pre-eminent; supreme.” *Webster’s New Collegiate Dictionary*, G. & C. Merriam Co. (2d. ed. 1959).

It is clear that by using the term “paramount,” Congress intended that the Tribes be accorded more than just equal access to the Reservation Zone for fishing, hunting, and boating. Rather, the Tribes’ access to the Reservation Zone for the designated purposes was to be chief among all users of the area. Congress’ intent to accord the Tribes’ supreme access to the Reservation Zone for hunting and fishing is further illustrated by its command that the Tribes’ right of access be subject only to reasonable regulations implemented by the Secretary of Interior to protect and conserve fish and wildlife. Given the definition of paramount, it is apparent that Congress did not necessarily intend for the Tribes to have exclusive use of the Reservation Zone for the stated purposes.<sup>9</sup> The statute plainly anticipates that the Tribes are to use the Reservation Zone in connection with other users. But it is also clear that Congress intended that out of all user groups, the Tribes’ use was to be “paramount” or, in other words, of the highest rank.

The court need go no further than the plain language of the statute itself to see that Congress must have intended “paramount use” to mean something other than a reservation of an exclusive right. Congress specifically stated that the Tribes’ paramount use of the Reservation Zone for fishing, hunting, and boating was “in lieu” of reserving those same rights in the land acquired under the Act. If the court were to construe the phrase “paramount use” as meaning a reservation of an exclusive right, then the “in lieu of” portion of section 835d would be rendered meaningless.

Moreover, even if section 835d were construed as reserving a right to hunt and fish in the Reservation Zone, it would not necessarily follow that the Tribes would have authority to regulate non-Indians in that area. As the Supreme Court noted, the explicit reservation of certain rights does not operate as an implicit reservation of all former rights. *Bourland*, \_\_\_ U.S. at \_\_\_, 113 S.Ct. at 2318. “[W]hen Congress reserves limited rights to a tribe or its members, the very presence of such a limited reservation of rights suggests that the Indians would otherwise be treated like the public at large.” *Id.* at \_\_\_, 113 S.Ct. at 2319.

As can be seen, there is a difference in the degree to which the Reservation Zone and the Oahe Dam Reservoir were opened to the public. However, the Reservation Zone of Lake Roosevelt, like the Oahe Dam Reservoir was “broadly opened” for public use. It is clear that the general public can enter the Reservation Zone and engage in hunting, fishing, and boating along side the Tribes.<sup>10</sup> The distinction is that the Tribes’ right to fish, hunt, and boat in the Reservation Zone is superior to the right of the general public to engage in those activities. Thus, if the two begin to conflict, the Secretary of Interior could implement regulations restricting the public’s access so that the Tribes’ ability to engage in the designated activities would not be hindered.<sup>11</sup> Although this factor somewhat distinguishes this case from *Bourland*, it does not mandate a different result.

It is undisputed that the Reservation Zone is open to the public for activities other than hunting, fishing, and boating. The Defendants, for example, do not appear to suggest that the Tribes can regulate timber harvesting or mining in the Reservation Zone under section 835d. The Defendants' argument focuses only on the three activities specified in section 835d. Therefore, even assuming that the Reservation Zone is somewhat more closed than the Oahe Dam Reservoir because of the possibility that the Secretary of Interior could impose restrictions on the general public's use to protect the Tribes' paramount use, the Reservation Zone is still broadly opened to the public in the sense that it is not set aside for the Tribes' paramount use with respect to any activities other than fishing, hunting, and boating as specifically mentioned in section 835d.

In *Bourland*, the Supreme Court noted that the Cheyenne River Act granted to the tribe a free right of access to the shoreline of the reservoir, including the right to hunt and fish, subject to regulations governing corresponding use by other citizens of the United States. The Court then held that if "Congress had intended by this provision to grant the Tribe the additional right to regulate hunting and fishing, it would have done so by a similarly explicit statutory command." *Bourland*, \_\_\_ U.S. at \_\_\_, 113 S.Ct. at 2317. Similarly, in the case *sub judice*, the Act of 1940 set aside one-quarter of the acquired land for the paramount use of the Tribes for fishing, hunting, and boating, subject only to regulations designed to protect fish and wildlife. If Congress had intended to allow the Tribes to regulate hunting and fishing in the Reservation Zone, it could have expressly so provided in the statute.

In sum, by enacting section 835d, Congress broadly opened the Reservation Zone to the general public. The Tribes, which arguably had regulatory control over the land under the Reservation Zone prior to its acquisition by the United States, lost this control when Congress acquired the lands underlying Lake Roosevelt. As the Supreme Court has held: "Certainly, the power to regulate is of diminished practical use if it does not include the power to exclude: regulatory authority goes hand in hand with the power to exclude." *Bourland*, \_\_\_ U.S. at \_\_\_ n. 11, 113 S.Ct. at 2317 n. 11. Although the Reservation Zone is clearly to be maintained for the paramount use of the Tribes for hunting, fishing, and boating, the fact is that the statute does not preclude the general public from engaging in those same activities in the Reservation Zone, as well as the entire lake. To hold that the Tribes possess some sort of exclusive right would be to render the term "paramount" meaningless, or interpret "paramount" to mean "exclusive." Accordingly, under *Bourland*, the court finds that when Congress acquired the Reservation Zone, the Tribes lost their inherent right of absolute and exclusive use and occupation of the area. "The abrogation of this greater right ... implies the loss of regulatory jurisdiction over the use of the land by others." *Bourland*, \_\_\_ U.S. at \_\_\_, 113 S.Ct. at 2316.

## ***2. Regulatory Authority Delegated by the United States***

Having concluded that the Tribes' regulatory control over the Reservation Zone was terminated when the United States acquired the area pursuant to the Act of 1940, the issue then becomes whether the United States properly delegated regulatory control to the Tribes. The Plaintiffs argue that the State of Washington has the *exclusive* authority to regulate hunting and fishing on Lake Roosevelt. Therefore, they argue, the United States had no authority to delegate such authority to the Tribes. The court finds that the State of Washington does not have *exclusive* authority to regulate hunting and fishing on Lake Roosevelt.

It is agreed that the Columbia River was and is a navigable waterway. The parties agree that the State of Washington was admitted to the Union on equal footing with the other states, and, as part of its sovereignty, the State of Washington acquired all of the soils under navigable waters when it became a state. The Plaintiffs assert that the State of Washington also acquired the right to regulate non-Indians on those waters. The Defendants do not appear to disagree that Washington has some interest in the original bed and banks of the Columbia and Spokane Rivers, but they argue that this interest does not prohibit the United States from exercising regulatory control over Lake Roosevelt.

The Plaintiffs' argument rests on the equal-footing doctrine. The equal-footing doctrine provides that new states enter the Union on an equal footing with the original states, all of which entered the Union owning the land under navigable water within their borders. *Confederated Salish & Kootenai Tribes of Flathead Reservation v. Namen*, 665 F.2d 951, 961 n. 27 (9th Cir.1982).

Through the Constitution, the original states granted the federal government the right to regulate interstate and foreign commerce, thereby giving Congress an expansive right to ensure the navigability of waterways, but the states reserved title to the beds of their navigable waters. Under the equal footing doctrine, as a general principle, new states took title to and trusteeship for the lands under the navigable waters within their borders as an incident of sovereignty upon admission to the Union.

*District of Columbia v. Air Florida, Inc.*, 750 F.2d 1077, 1082 (D.C.Cir.1984) (footnotes omitted). Although the State of Washington arguably continues to have some interest in the original bed and banks of the Columbia River and the portions of the Spokane River which were navigable when Washington entered the Union, this does not give it the exclusive right to regulate non-Indian hunting and fishing on Lake Roosevelt.

When referring to the interest of a riparian owner in the submerged lands in front of his upland bounding on a public navigable waterway, the Supreme Court has held that he possess "a qualified title, a bare technical title, not at his absolute disposal, as is his upland, but to be held at all times subordinate to such use of the submerged lands and of the waters flowing over them as may be consistent with or demanded by the public right of navigation." *United States v. Chandler-Dunbar Water Power Co.*, 229 U.S. 53, 64, 33 S.Ct. 667, 672, 57 L.Ed. 1063 (1913). The Court also has held that the equal-footing doctrine "cannot be accepted as limiting the broad powers of the United States to regulate navigable waters under the Commerce Clause and to regulate government lands under Art. IV, § 3, of the Constitution." *Arizona v. California*, 373 U.S. 546, 597-98, 83 S.Ct. 1468, 1496, 10 L.Ed.2d 542 (1963). Thus, even if the State of Washington has an interest in the original beds and banks of the Columbia and Spokane Rivers, such an interest does not give it the right to regulate Lake Roosevelt to the exclusion of the federal government.

Pursuant to Article IV, section 3, of the Constitution, Congress has the power to dispose of and make all needful rules and regulations respecting property of the United States. "Absent consent or cession a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause." *Kleppe v. New Mexico*, 426 U.S. 529, 543, 96 S.Ct. 2285, 2293, 49 L.Ed.2d 34 (1976). Indeed, it is the Property Clause that provides the basis for the federal government to govern the territories of the United States. *Id.* The federal government's supervisory role over the property of the United States has been characterized as a "complete power" over public lands. *Id.* This complete power "necessarily includes the power to regulate and protect the wildlife living there." *Id.* at 540-41, 96 S.Ct. at 2292.

Congress expressly authorized the Secretary of Interior to administer the public lands acquired for the construction of the Grand Coulee Dam and resulting reservoir. 16 U.S.C. § 835c. Section 835h authorizes the Secretary of Interior to prescribe such regulations as he may deem appropriate to carry out the provisions of the Act (16 U.S.C. §§ 835d et seq.) In addition, Congress specifically stated that the Secretary had the authority to implement regulations to protect fish and wildlife. 16 U.S.C. § 835d. Congress also provided that the Secretary of Interior's functions, powers, and duties could be performed, exercised, or discharged "by his duly authorized representative." 16 U.S.C. § 835c-4.

The legislation that acquired the area in dispute (16 U.S.C. §§ 835 et seq.) does not specifically state that the Secretary has regulatory authority over hunting and fishing in the set-aside area, referred to herein as the Reservation Zone. However, it does provide the Secretary with broad authority to implement regulations to protect project lands and facilitate project development. Under this broad authority, the Secretary of Interior has the authority to regulate hunting and fishing on Lake Roosevelt, including the Reservation Zone. Further, section 835d itself grants the Secretary regulatory power over both Indians and non-Indians in the waters of the Reservation Zone.

Pursuant to section 835d, the Secretary of Interior has the authority to implement regulations to protect fish and wildlife. Congress granted the Secretary this authority after stating that the Tribes had a paramount right to fish, hunt, and boat in the Reservation Zone. Specifically, Congress stated that “the Secretary ... shall set aside approximately one-quarter of the entire reservoir area for the paramount use of the [Tribes] ... 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. § 835d. The Plaintiffs argue that under this section, the Secretary is only allowed to regulate the *Tribes* in the Reservation Zone. However, at page 18 of their opposition memorandum, they acknowledge that there may be some instances when the Secretary could regulate non-Indians pursuant to section 835d.

It would be a strained construction of section 835d to allow the Secretary to regulate only Indian hunting and fishing in the Reservation Zone. Implicit in the Secretary’s directive to regulate hunting and fishing to preserve and protect wildlife against Indian use is a command to engage in the same regulation of non-Indian uses. It was the Tribes to whom Congress granted a “paramount” right to hunt and fish in the Reservation Zone. It would push the bounds of reason to conclude that the Secretary could only regulate the class possessing the right of superior use, while being unable to regulate other user groups. Having concluded that Congress granted the Secretary of Interior authority to regulate both Indian and non-Indian hunting and fishing in the Reservation Zone, the court must determine whether the Secretary of Interior properly delegated this authority to the Tribes.

During the preliminary injunction hearing, this court framed the delegation issue as follows: Does the Lake Roosevelt Cooperative Management Agreement (“Agreement”) delegate to the Tribes the authority to regulate hunting and fishing in the Reservation Zone, and, if it does, is it a valid delegation of authority?

The Agreement, in pertinent part, provides:

The Spokane [and Colville] Tribe[s] shall manage, plan and regulate *all activities*, development, and uses that take place within that portion of the Reservation Zone within the Spokane [and 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.

Lake Roosevelt Cooperative Management Agreement, ¶ IV.D.3. (pages 5-6). Subject to a few specific exceptions, the Agreement delegates to the Tribes the authority to regulate *all activities* within the Reservation Zone. The Tribes’ regulatory authority is subject to Reclamation’s statutory authority and Reclamation’s right to use the Reservation Zone to carry out the purposes of the Columbia Basin Project. The Tribes’ regulations must also be consistent with federal and tribal law and the provisions of the Agreement.

A regulation requiring non-Indians to obtain a permit before fishing in the Reservation Zone is clearly action which could be taken by the Government. It is not one that conflicts with the provisions of the Agreement or federal or tribal law, nor does it interfere with the Reclamation’s statutory responsibility to carry out the purposes of the Columbia Basin Project. Thus, if the delegation was proper, it would appear that the Tribes can regulate fishing and hunting in the Reservation Zone.

Section 835c-4 provides that “[w]herever in this Act functions, powers, or duties are conferred upon the Secretary, said functions, powers, or duties may be performed, exercised, or discharged by his duly authorized representatives.” (Emphasis added.) One could argue that through the Agreement, the Secretary has made the Tribes his “*duly authorized representative*” with respect to regulatory control over the Reservation Zone.

As mentioned above, section 835d grants the Secretary authority to regulate hunting and fishing in the Reservation Zone to protect fish and wildlife. Although the Plaintiffs contend that this authority to regulate runs only against the Tribes, the court finds that it gives the Secretary authority to regulate all users of the Reservation Zone, including non-Indians. It could be argued that pursuant to sections 835c-4 and 835d, the Tribes are the Secretary's "representatives" and, therefore, it was proper for the Secretary to "duly authorize" the Tribes to regulate hunting, fishing, and boating in the Reservation Zone.

#### ***D. Applicability of 18 U.S.C. § 1165***

The focus of the criminal case is slightly different than the civil case. In the criminal case, the issue is whether 18 U.S.C. § 1165 was violated. That section provides:

Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish therefrom, shall be fined not more than \$200 or imprisoned not more than ninety days, or both, and all game, fish, and peltries in his possession shall be forfeited.

18 U.S.C. § 1165.

This section is applicable here only if the Reservation Zone has been "reserved for Indian use" for the purpose of hunting, fishing, or trapping. If "reserved for Indian use" requires that the land be reserved exclusively for Indian hunting, fishing, and boating, it is clear that the statute is inapplicable here. As discussed above, Congress granted the Tribes a paramount right, not an exclusive one.

Additionally, the statute is inapplicable if Mr. Cassidy did not unlawfully enter the Reservation Zone and fish. As discussed above, the Tribes do not possess the authority to regulate fishing, hunting, or boating in the Reservation Zone under section 835d. Because one of the elements of section 1165 is unlawful or non-permissive entry upon land reserved for Indian use for hunting or fishing, if Mr. Cassidy did not need the Spokane Tribe's permission to fish in the area, and he was not otherwise there unlawfully, section 1165 was not violated. Thus, unless the Tribes possess regulatory authority by way of a delegation by the United States, Mr. Cassidy was not "unlawfully" fishing in the Reservation Zone.

At oral argument, the Government conceded that it could not prove a proper delegation of regulatory authority to the tribes. Consequently, Mr. Cassidy was not "unlawfully" fishing in violation of section 1165.

### **III. CONCLUSION**

The parties have agreed that resolution of the motions pending before this court will decide this matter. Having found that the Tribes are not “necessary” parties, and, therefore, not “indispensable” parties, the court rules as a matter of law against the Government’s summary judgment motion, and for the Plaintiffs’ implied cross-motion for summary judgment. There is no genuine issue of material fact remaining in this case since this proceeding turns on the legal interpretation of “paramount” in section 835d. “Paramount” does not mean “exclusive.” Consequently, the general public is not precluded from the Indian portions of Roosevelt Lake. IT IS HEREBY ORDERED:

1. The Colville and Spokane Tribes do not have authority under the existing laws and regulations of the United States to regulate or prohibit fishing by non-Indians in any of the waters of Lake Roosevelt.
2. Fishing in all of the waters of Lake Roosevelt by non-Indians duly licensed by the State of Washington where such fishing activities are in compliance with the laws and regulations of the State of Washington is not and will not be in violation of 18 U.S.C. § 1165.
3. Joseph Cassidy’s Renewal of Motion to Dismiss Information (Ct.Rec. 25, CR-92-194-JLQ) is GRANTED. The Superseding Information filed December 8, 1992 is hereby DISMISSED WITH PREJUDICE.
4. The Government’s Motion to Dismiss for Failure to Join Indispensable Parties (Ct. Rec. 28, CS-93-19-JLQ) is DENIED.
5. The Government’s Motion for Summary Judgment (Ct.Rec. 32, CS-93-19-JLQ) is DENIED. The Plaintiffs’ implied crossmotion for summary judgment is GRANTED.
6. The Government’s Motion to Clarify and Supplement Record (Ct.Rec. 57, CS-93-19-JLQ) is DENIED AS MOOT.
7. Plaintiffs’ Motion to Strike and Expunge Portions of the Record or, in the Alternative, Motion to Compel Discovery (Ct. Rec. 60, CS-93-19-JLQ) is DENIED AS MOOT.

IT IS SO ORDERED. The Clerk is hereby directed to enter this Order; enter Judgment for Plaintiff; and close the file.

## FootNotes

1. 18 U.S.C. § 1165 states:

2. The Solicitor’s Opinion is based, in part, on a determination that section 835d merely shifted the Tribes’ exclusive fishing rights from the flooded area of their Reservation land to the Indian Zone created under the Act. Congress’ use of the phrase “paramount use” clearly indicates that non-exclusive use of the set-aside area was contemplated by Congress. In fact, the Government even disagrees with the Solicitor’s conclusion that the Tribes possess exclusive rights: “The United States is asserting that [section 835d] established an “exclusive use” nor an “absolute and undisturbed use and occupancy” for the benefit of the Spokane and Colville Indians.” (Defendants’ Reply Brief at page 4.)

3. It appears to be undisputed that the Tribes possess sovereign immunity and, therefore, cannot be joined in this action without their consent. , 1499 (9th Cir. 1991) (“Indian tribes ... are sovereign entities and are therefore immune from nonconsensual actions in state or federal court.”).

4. The fact that the Tribes could intervene, but have chosen not to, is not a factor that necessarily lessens the prejudice they might suffer if this case were resolved in their absence. In it was argued that the absentee tribe could minimize the potential prejudice by intervening in the action and asserting its interests. However, citing the court held that “the ability to intervene if it requires waiver of immunity is not a factor that lessens prejudice.” 928 F.2d at 1500 (citing 910 F.2d at 560).

5. The Plaintiffs, however, argue that under the equal-footing doctrine, the State of Washington retains ownership of the lands underlying the original navigable portion of the Columbia and Spokane Rivers. Whether the application of the equal-footing doctrine in this case affects the regulatory control of the Reservation Zone will be discussed

6. The Defendants distinguish on the basis that there was no specific “set-aside” for the tribes in Interestingly, in the tribe had a free right of access to the entire reservoir and shoreline for hunting and fishing, not just one-quarter of the area, as is the case here.

7. No reference or statement was made in the Executive Order establishing the Colville Reservation that the area was for the exclusive use of the Confederated Tribes of the Colville Indian Reservation. Similarly, the Executive Order establishing the Spokane Reservation made no reference of exclusive use or occupancy by the Spokane Tribe. (Ct.Rec. 56, ¶ 21 and ¶ 24.)

8. The Defendants claim that the issue here is not whether the Tribes can regulate hunting and fishing within the Reservation Zone, but whether non-Indians need to get the Tribes’ permission before hunting or fishing in the Reservation Zone. The Defendants assert that this distinction makes this case distinguishable from This is a distinction without a difference. If the Tribes require a non-Indian to obtain permission before hunting or fishing in the Reservation Zone, they are “regulating” that area in the same sense as the tribe was attempting to regulate non-Indians in

9. This is not to say that the Secretary could not grant the Tribes exclusive access to fish, hunt, and boat if such a restriction were necessary to protect the Tribes’ ability to engage in those activities. The relevant inquiry here, however, is whether Congress reserved an exclusive right in the Tribes to fish, hunt, and boat in the Reservation Zone. The court holds that it did not.

10. Congress expressly directed the Secretary of the Interior to dedicate portions of the land acquired to construct and maintain the Grand Coulee Dam and Lake Roosevelt for public purposes. 16 U.S.C. § 835c.

11. The Defendants point out that the Secretary of the Interior can only regulate the Tribes’ ability to fish, hunt, and boat in order to protect fish and wildlife. However, this fact does not favor the Defendants’ position that the Reservation Zone is “closed.” It is but a further indication that Congress did not intend to infringe upon the Tribes’ ability to engage in the designated activities.

## Appendix B: Analysis of Fundamental Resources and Values

Fundamental Resource or Value	Lake Roosevelt
Related Significance Statements	Significance statements 1 and 2
Current Conditions and Trends	<p><b>Conditions</b></p> <ul style="list-style-type: none"> <li>• Range of experiences and activities for visitors</li> <li>• Easily accessible (i.e., proximity to Spokane and Seattle)</li> <li>• Long, complex area to manage</li> <li>• Visitor capacity varies from location to location</li> </ul> <p><b>Trends</b></p> <ul style="list-style-type: none"> <li>• Visitation is increasing (more than 1 million visitors per year)</li> <li>• Visitation is seasonal, trend will probably continue</li> <li>• Total receipts at park were down in 2014</li> <li>• Decline/fluctuation in economy, decreasing disposable income may impact frequency of visitation</li> </ul>
Threats and Opportunities	<p><b>Threats</b></p> <ul style="list-style-type: none"> <li>• Linear nature of park creates challenges for maintenance and law enforcement response</li> <li>• Invasive species (e.g., nonnative crayfish, black locust, risk of quagga and zebra mussel inhabitation)</li> <li>• Visitation counters are not consistent, not located in ideal locations, and not capturing important information</li> <li>• Washington Support Office facility management annual work plan is problematic due to optimized funding priorities (e.g., park needs outside of bands 1 and 2 may not be funded)</li> <li>• Climate change may shift seasonal flow of the Columbia River toward larger winter and spring flows and smaller summer and autumn flows</li> <li>• State of Washington Department of Ecology considers the lake impaired under the Clean Water Act due to both point and nonpoint sources</li> <li>• The park is working with US Environmental Protection Agency and other partners/trustees to assess the potential impacts of pollutants originating outside the park, such as those from mining operations. Sediment transported into the reservoir from upstream is potentially toxic to the ecology due to historic releases of heavy metals and organic pollutants</li> </ul> <p><b>Opportunities</b></p> <ul style="list-style-type: none"> <li>• Connect with potential visitors due to proximity of regional population centers in Spokane and Seattle</li> <li>• Requests for new recreational opportunities</li> </ul>
Data and/or GIS Needs	<ul style="list-style-type: none"> <li>• Comprehensive visitor use survey – focus on use levels</li> </ul>
Planning Needs	<ul style="list-style-type: none"> <li>• Visitor use management plan</li> <li>• Terrestrial and aquatic invasive species management plan</li> </ul>

Fundamental Resource or Value	Lake Roosevelt
<p><b>Laws, Executive Orders, and Regulations That Apply to the FRV, and NPS Policy-level Guidance</b></p>	<p><b>Laws, Executive Orders, and Regulations That Apply to the FRV</b></p> <ul style="list-style-type: none"> <li>• Executive Order 11988, “Floodplain Management”</li> <li>• Executive Order 11990, “Protection of Wetlands”</li> <li>• Executive Order 12088, “Federal Compliance with Pollution Control Standards”</li> <li>• Executive Order 11514, “Protection and Enhancement of Environmental Quality”</li> <li>• Executive Order 13112, “Invasive Species”</li> <li>• Clean Air Act (42 USC 7401 et seq )</li> <li>• Clean Water Act of 1972, as amended</li> <li>• Secretarial Order 3289 “Addressing the Impacts of Climate Change on America’s Water, Land, and Other Natural and Cultural Resources”</li> </ul> <p><b>NPS Policy-level Guidance (NPS <i>Management Policies 2006</i> and Director’s Orders)</b></p> <ul style="list-style-type: none"> <li>• Director’s Order 77-1: <i>Wetland Protection</i></li> <li>• Director’s Order 77-2: <i>Floodplain Management</i></li> <li>• NPS <i>Natural Resource Management Reference Manual 77</i></li> <li>• NPS <i>Management Policies 2006</i> (chapter 4, “Natural Resource Management”)</li> </ul>





Fundamental Resource or Value	Public Shoreline
Related Significance Statements	Significance statements 1 and 2
Current Conditions and Trends	<p><b>Conditions</b></p> <ul style="list-style-type: none"> <li>• No charge for any shoreline camping</li> <li>• Certain areas of park shorelines may reach or exceed capacity, while ample capacity is available in other areas of the park to foster increased visitation</li> </ul> <p><b>Trends</b></p> <ul style="list-style-type: none"> <li>• Summertime water levels are expected to continue to decline</li> <li>• Large fluctuations in water levels associated with seasonal reservoir management</li> <li>• Changes in traditional recreation vehicles and equipment styles (e.g., many campsites are too small; recreational vehicle campers have expectations for larger sites and hookups; some campers seek Wi-Fi, cell service, and electricity for personal and emergency devices)</li> <li>• Increase in trash volumes removed from managed sites</li> </ul>

Fundamental Resource or Value	Public Shoreline
<b>Threats and Opportunities</b>	<p><b>Threats</b></p> <ul style="list-style-type: none"> <li>• Decreased accessibility to shoreline as water levels decline (e g , unusable boat launches and high costs to move certain boat launches to deeper waters)</li> <li>• Changes in visitor expectations, such as park campsites that were not designed for the size of newer recreational styles vehicles</li> <li>• Continued development adjacent to park with little or no planning for infrastructure needs and minimal adherence to defensible space</li> <li>• Park’s neighbors use park facilities for personal purposes (e g , dumping trash at park facilities)</li> <li>• Human waste (continued need for new, upgraded toilets at park facilities)</li> <li>• Potable water system upgrades are needed in campgrounds</li> <li>• Conflicts between visitors and homeowners related to use of the shoreline</li> <li>• Confusion between recreation and reservation zones for visitors</li> <li>• Many visitors feel large sections of shoreline are private</li> <li>• Extensive number of encroachments parkwide</li> <li>• Visitor trespass</li> <li>• Prevent introduction of potential aquatic invasive species (e g , quagga mussels)</li> <li>• Management of existing aquatic invasive species, such as Eurasian milfoil and Asian clams</li> <li>• Landslides</li> </ul> <p><b>Opportunities</b></p> <ul style="list-style-type: none"> <li>• Coordination with adjacent counties on zoning and development</li> <li>• Maintain outstanding opportunities for boating, swimming, camping, fishing, and hunting</li> <li>• Encourage other appropriate uses such as hiking, horseback riding, etc</li> <li>• Cultural resource studies may be enhanced by lower water levels in certain areas of park</li> </ul>
<b>Data and/or GIS Needs</b>	<ul style="list-style-type: none"> <li>• Comprehensive visitor use survey</li> </ul>
<b>Planning Needs</b>	<ul style="list-style-type: none"> <li>• Visitor use management plan</li> <li>• Shoreline management plan – update</li> <li>• Terrestrial and aquatic invasive species management plan</li> </ul>
<b>Laws, Executive Orders, and Regulations That Apply to the FRV, and NPS Policy-level Guidance</b>	<p><b>Laws, Executive Orders, and Regulations That Apply to the FRV</b></p> <ul style="list-style-type: none"> <li>• “Resource Protection, Public Use and Recreation: Fishing” (36 CFR 2 3)</li> <li>• Executive Order 11514, “Protection and Enhancement of Environmental Quality”</li> </ul> <p><b>NPS Policy-level Guidance (NPS <i>Management Policies 2006</i> and <i>Director’s Orders</i>)</b></p> <ul style="list-style-type: none"> <li>• <i>NPS Management Policies 2006</i> <ul style="list-style-type: none"> <li>• Sections 1 4, 1 6, 3 1, 4 4, and 4 7 call for the National Park Service to conserve and protect scenery, scenic vistas, and air quality</li> </ul> </li> </ul>

Fundamental Resource or Value	High-Quality Recreational Opportunities
<b>Related Significance Statements</b>	Significance statements 1 and 2
<b>Current Conditions and Trends</b>	<p><b>Conditions</b></p> <ul style="list-style-type: none"> <li>• Ample recreational space for visitors</li> <li>• Spokane Arm of the reservoir may have reached carrying capacity</li> <li>• Much of park infrastructure was designed for a different era of recreational activity (e.g., recreational vehicle and camper sites are small and cramped in certain campgrounds)</li> <li>• Relatively inexpensive recreation</li> <li>• Undergoing recreational fee program development (2014)</li> </ul> <p><b>Trends</b></p> <ul style="list-style-type: none"> <li>• Annual visitation is increasing (Spokane area population is increasing)</li> <li>• Infrastructure quality is decreasing</li> <li>• Increasing development and encroachments</li> </ul>
<b>Threats and Opportunities</b>	<p><b>Threats</b></p> <ul style="list-style-type: none"> <li>• Park is unable to provide technological connectivity expected by many visitors</li> <li>• User conflicts</li> <li>• Diminishing staffing levels (e.g., lack of adequate funding for law enforcement rangers)</li> <li>• Carrying capacity may be exceeded in certain areas of park</li> <li>• Encroachments and regional urbanization</li> <li>• Lack of capacity to gather adequate visitor use data</li> </ul> <p><b>Opportunities</b></p> <ul style="list-style-type: none"> <li>• Continuation of Federal Lands Recreation Enhancement Act, whose funds can be used to enhance existing recreational opportunities</li> <li>• Project Management Information System project requests</li> <li>• Developing sustainable facilities</li> <li>• Incorporation of new technology for education and visitor experience (e.g., social media and web cams)</li> <li>• Encourage return visitation</li> <li>• Maintain positive public image</li> </ul>
<b>Data and/or GIS Needs</b>	<ul style="list-style-type: none"> <li>• Comprehensive visitor use survey</li> <li>• Night skies and light pollution analysis</li> </ul>
<b>Planning Needs</b>	<ul style="list-style-type: none"> <li>• Long-range interpretive plan</li> </ul>

Fundamental Resource or Value	High-Quality Recreational Opportunities
<p><b>Laws, Executive Orders, and Regulations That Apply to the FRV, and NPS Policy-level Guidance</b></p>	<p><b>Laws, Executive Orders, and Regulations That Apply to the FRV</b></p> <ul style="list-style-type: none"> <li>• NPS Concessions Management Improvement Act of 1998</li> <li>• “Resource Protection, Public Use and Recreation: Fishing” (36 CFR 2.3)</li> <li>• Secretarial Order 3289 “Addressing the Impacts of Climate Change on America’s Water, Land, and Other Natural and Cultural Resources”</li> <li>• Clean Air Act (42 USC 7401 et seq)</li> </ul> <p><b>NPS Policy-level Guidance (NPS Management Policies 2006 and Director’s Orders)</b></p> <ul style="list-style-type: none"> <li>• NPS Management Policies 2006 (chapter 8, “Use of the Parks”)</li> <li>• Director’s Order 4: <i>Diving Management</i></li> <li>• Director’s Order 6: <i>Interpretation and Education</i></li> <li>• Director’s Order 9: <i>Law Enforcement Program</i></li> <li>• Director’s Order 17: <i>National Park Service Tourism</i></li> <li>• Director’s Order 28: <i>Cultural Resource Management</i></li> <li>• Director’s Order 42: <i>Accessibility for Visitors with Disabilities in National Park Service Programs and Services</i></li> <li>• Director’s Order 53: <i>Special Park Uses</i></li> <li>• Director’s Order 83: <i>Public Health</i></li> <li>• NPS Natural Resource Management Reference Manual 77</li> <li>• NPS Transportation Planning Guidebook</li> </ul>



Fundamental Resource or Value	Fort Spokane Complex
Related Significance Statements	Significance statement 4
Current Conditions and Trends	<p><b>Conditions</b></p> <ul style="list-style-type: none"> <li>• Visitor center is open seasonally</li> <li>• Interpretive trails are open year round</li> <li>• Visitation is seasonal and depends on the water level in the lake Lower lake levels generally mean lower visitation</li> <li>• Recent shift in interpretation – no longer include the historic weapons collection so the program can focus on programming more appropriate to the Fort Spokane Boarding School, use of the fort by the military, and the tuberculosis sanitarium</li> <li>• Largest stretch of undeveloped land in the park</li> </ul> <p><b>Trends</b></p> <ul style="list-style-type: none"> <li>• Increase in visitation at the Fort Spokane Visitor Center</li> <li>• A small number of visitors visit the center as part of their camping activities; however, Fort Spokane is not typically a destination</li> </ul>
Threats and Opportunities	<p><b>Threats</b></p> <ul style="list-style-type: none"> <li>• Decline in historic vegetation</li> <li>• Water distribution infrastructure (pump, storage, and distribution lines) is very old and should be upgraded Additional testing is needed</li> <li>• Site is open and is vulnerable to vandalism and looting</li> <li>• Theft of archeological resources</li> </ul> <p><b>Opportunities</b></p> <ul style="list-style-type: none"> <li>• Target interpretation to a wider range of audiences</li> <li>• New partnerships could allow mules to return to the mule barn</li> <li>• Leverage partnerships with Native American tribes related to interpretation at Fort Spokane and care and cultivation of historic orchard</li> <li>• Increase visits from school and tour groups</li> <li>• Expand interpretation to include Native American culture, early exploration, and western expansion</li> <li>• Move administrative and maintenance facilities out of the historic zone</li> <li>• Engage digital tools to educate the public about Fort Spokane</li> </ul>
Data and/or GIS Needs	<ul style="list-style-type: none"> <li>• Comprehensive visitor use survey</li> <li>• Cultural resource condition assessment (including a comprehensive condition assessment of all four buildings and foundations)</li> </ul>
Planning Needs	<ul style="list-style-type: none"> <li>• Long-range interpretive plan</li> </ul>

Fundamental Resource or Value	Fort Spokane Complex
<p><b>Laws, Executive Orders, and Regulations That Apply to the FRV, and NPS Policy-level Guidance</b></p>	<p><b>Laws, Executive Orders, and Regulations That Apply to the FRV</b></p> <ul style="list-style-type: none"> <li>• Archeological and Historic Preservation Act of 1974</li> <li>• Executive Order 11593, "Protection and Enhancement of the Cultural Environment"</li> <li>• "Protection of Historic Properties" (36 CFR 800)</li> <li>• Secretarial Order 3289 "Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resources"</li> <li>• National Historic Preservation Act of 1966, as amended (16 USC 470)</li> </ul> <p><b>NPS Policy-level Guidance (NPS Management Policies 2006 and Director's Orders)</b></p> <ul style="list-style-type: none"> <li>• Director's Order 28: <i>Cultural Resource Management</i></li> <li>• Director's Order 28A: <i>Archeology</i></li> <li>• NPS <i>Management Policies 2006</i> (chapter 5, "Stewardship" and chapter 4, "Natural Resource Management")</li> <li>• Historic preservation guidelines and standards</li> </ul>



Fundamental Resource or Value	Archeological Sites and Ethnographic Resources at Kettle Falls
Related Significance Statements	Significance statement 3
Current Conditions and Trends	<p><b>Conditions</b></p> <ul style="list-style-type: none"> <li>• Kettle Falls fishery is completely submerged</li> <li>• The park does not manage the fishery</li> <li>• Department of the Interior / solicitor retains decision-making and land management authority</li> <li>• Tribes desire to manage resources</li> </ul> <p><b>Trends</b></p> <ul style="list-style-type: none"> <li>• Increasing public attention on the management of native fish species (e.g., some fishing clubs are upset that nonnative species, such as walleye, may be more intensely controlled, while some conservation groups support reintroducing native anadromous fish)</li> <li>• Increased public use of the reservation zone and confusion relating to tribal jurisdiction</li> </ul>
Threats and Opportunities	<p><b>Threats</b></p> <ul style="list-style-type: none"> <li>• Opposition from nontribal entities in managing reservation zone resources</li> </ul> <p><b>Opportunities</b></p> <ul style="list-style-type: none"> <li>• Interpretive and educational programming (e.g., provide virtual interpretation of the dam's legacy, climate change, and the story of NPS management of the recreation zone)</li> <li>• Social media programming</li> <li>• School group programming</li> <li>• Cooperative management with tribes</li> <li>• New research for wildlife management</li> <li>• Restoration of anadromous fish species</li> </ul>
Data and/or GIS Needs	<ul style="list-style-type: none"> <li>• None identified</li> </ul>
Planning Needs	<ul style="list-style-type: none"> <li>• Long-range interpretive plan</li> </ul>
Laws, Executive Orders, and Regulations That Apply to the FRV, and NPS Policy-level Guidance	<p><b>Laws, Executive Orders, and Regulations That Apply to the FRV</b></p> <ul style="list-style-type: none"> <li>• Archeological and Historic Preservation Act of 1974</li> <li>• Executive Order 11593, "Protection and Enhancement of the Cultural Environment"</li> <li>• "Protection of Historic Properties" (36 CFR 800)</li> <li>• Secretarial Order 3289 "Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resources"</li> <li>• National Historic Preservation Act of 1966, as amended (16 USC 470)</li> </ul> <p><b>NPS Policy-level Guidance (NPS Management Policies 2006 and Director's Orders)</b></p> <ul style="list-style-type: none"> <li>• Director's Order 28: <i>Cultural Resource Management</i></li> <li>• Director's Order 28A: <i>Archeology</i></li> <li>• <i>NPS Management Policies 2006</i> (chapter 5, "Stewardship" and chapter 4, "Natural Resource Management")</li> <li>• <i>The Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation</i></li> </ul>

## Appendix C: Inventory of Administrative Commitments

Name	Agreement Type	Start Date / Expiration Date	Stakeholders	Purpose	Notes
Lake Roosevelt Cooperative Management Agreement (also known as the "five-party agreement")	Cooperative agreement	April 5, 1990 / Ongoing	Bureau of Reclamation, Bureau of Indian Affairs, National Park Service, Confederated Tribes of the Colville Reservation, and the Spokane Tribe of Indians	Identified areas, types and levels of facilities, and responsible managing partners Recognizes that Lake Roosevelt National Recreation Area is an existing unit of the national park system and is subject to all NPS laws, regulations, policies, and guidelines	
Grazing allotments	Special use permit	1997 / Sunset date 2021	National Park Service / Bureau of Reclamation and ranchers		They are mandated by Congress, but are administered through a permit process that the permittee must abide by. If they break the conditions of the permit, the Superintendent has the authority to revoke the permit.
Community access points	Special use permit	2000 / Varies	National Park Service, local communities	Develop and maintain access points to the lake within local communities	
Easements	Special use permit	Varies	Various	Fuel sales (Daisy Station); public access; utility maintenance; water withdrawal	
Vacation cabin sites	Special use permit	Varies	Cabin owners		
Two (2) concessions	Contract	Varies / 2017 and 2029	Concessioners, National Park Service, visiting public	Fuel sales, marina operation, house / power boat rental	
Camp NaBorLee	Cooperative agreement		National Park Service, various partners, visiting public	Summer camp geared to youth hosts over 2,500 youth and adults each summer as a nonprofit opportunity dedicated to providing outdoor opportunities to youth and families of the region	
NPS law enforcement concurrent jurisdiction with State of Washington	Concurrent jurisdiction		National Park Service, State of Washington	Concurrent jurisdiction with State of Washington, which establishes the law enforcement authority within the park	



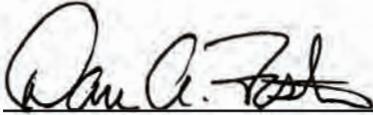
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**Pacific West Region Foundation Document Recommendation  
Lake Roosevelt National Recreation Area**

July 2015

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This Foundation Document has been prepared as a collaborative effort between park and regional staff and is recommended for approval by the Pacific West Regional Director



RECOMMENDED

Dan Foster, Superintendent, Lake Roosevelt National Recreation Area

7/30/2015

Date



APPROVED

Patricia L. Neubacher, Acting Regional Director, Pacific West Region

8/23/15

Date



As the nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering sound use of our land and water resources; protecting our fish, wildlife, and biological diversity; preserving the environmental and cultural values of our national parks and historic places; and providing for the enjoyment of life through outdoor recreation. The department assesses our energy and mineral resources and works to ensure that their development is in the best interests of all our people by encouraging stewardship and citizen participation in their care. The department also has a major responsibility for American Indian reservation communities and for people who live in island territories under U.S. administration.

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August 2015

# Foundation Document • Lake Roosevelt National Recreation Area

