D-17
LARD
IN
STORAGE

COULEE DAM--ETHNOHISTORICAL BACKGROUND AND SUMMARY OF LEGISLATION REGARDING THE LOWER SPOKANE INDIANS, WITH REFERENCE TO THE UPPER AND MIDDLE SPOKANE AND THE CONFEDERATED TRIBES OF THE COLVILLE

by

John G. Herron

ON MICROFILM

DENVER SERVICE CENTER
PACIFIC NORTHWEST/WESTERN TEAM
NATIONAL PARK SERVICE
UNITED STATES DEPARTMENT OF THE INTERIOR
DENVER, COLORADO

March 1979

NATIONAL PARK SERVICE
DENVER SERVICE CENTER
BRANCH OF MICROGRAPHICS
LIBRARY COPY

CONTENTS

Foreword 1
Introduction 2
Ethnohistorical Background of the Spokane Indian Reservation 4
Early Culture: Pre-1730 4
Political Organization 4
Kinship 6
Religion 7
Economy 8
Spokane Culture: Circa 1730 to 1872 9
Political Organization 10
Kinship 10
Religion 10
Economy 11
The Reservation Period: Circa 1872 to the Present 11
Political Organizaton 12
Kinship 13
Religion 13
Economy 14
Summary 14
Agreements, Legislation, and Interior Decisions Pertaining to the Spokane Indian Reservation 16
Historical Overview of the Spokane Indian Reservation, 1877 to the Present 17
Treaty Agreement of 1877 17
Executive Order 1881 18
Treaty of 1887 18
Mineral Lands Openingof 1902 19
Water Rights Acquisition of 1905 and 1906 19
Opening of the Reservation to Settlement of 1908 19
Creation of Grand Coulee Dam of 1935 20
Reservoir Lands Acquisition of 1940 20
Solicitor's Opinion of 1945 20
Jurisdictional Transfer of 1953 21
Land Restoration of 1958 21
Solicitor's Opinion of 1974 21
Summary of Agreements, Legislation, and Opinions 22
Spokane Treaty Agreement of August 18, 1877 22
Executive Order of January 18, 1881 22
Agreement with Spokane Indians of March 18, 1887 . . . 23
Acts Opening Spokane Mineral Lands of 1902 24
Act Allowing Acquisition of Water Rights in the Spokane River of March 3, 1905. Modified by the Act of June 21, 1906 24
Act Opening the Spokane Reservation to Settlement of May 29, 1908 25

Act Authorizing Construction of Grand Coulee Dam of August 30, 1935 26
Act to Acquire Indian Lands for the Grand Coulee Dam Reservoir of June 29, 1940. Modified by the Act of December 16, 1944 26
Solicitor's Opinion of December 29, 1945 27
Act Transferring Jurisdiction Over Indian Reservations From the Federal Government to the State Governments of August 15, 1953 27
Act to Restore Lands to Tribal Ownership of May 19, 1958 28
Solicitor's Opinion of June 3, 1974 28
Appendix I. Tribes of the Lake Roosevelt Area 30
Appendix II. Traditional Subsistence Items 31
Appendix III. Agreements, Legislation, and Opinions 34
Appendix IV. Brief Land History of the Colville Reservation . . 114
References Cited 133

FOREWORD

This ethnohistorical study, including a search for traditional land-use and other rights, has been prepared for use with the General Management Plan for Coulee Dam National Recreation Area. National Park Service Special Directive 78-1 of February 6, 1978, in accordance with the American Indian Religious Freedom Act, passed into law on August 11, 1978 (92 Stat. 469; P.L. 95-341), directs that each park shall:

> . . . develop and execute its programs in a manner that reflects informed awareness, sensitivity, and serious concern for the traditions, cultural values and religious beliefs of Native Americans who have ancestral ties to such lands.

Each park shall also develop:

> . . . means for reasonable access to and non-recreational use of sites with traditional, ceremonial or religious significance . . . (78-1:1).

To this end, this report is an initial step toward assisting implementation of any religious or residual rights of Indians that might be expressed at Coulee Dam National Recreation Area.

INTRODUCTION

The Spokane Reservation and the Colville Reservation, adjoining Lake Roosevelt in the State of Washington, are occupied by the Lower Spokanes and the eleven Confederated Tribes of the Colville (e.g., Colville, Lake, Nez Perce, etc.--all of which are listed in Appendix I). These peoples are part of the Columbia Plateau Culture Area, the characteristics of which are as follows:

1. Location in a region of great environmental diversity

2. Adaptation to a riverine environment with water craft and elaborate fishing technology which provided about half of the food base. Remaining food was secured from large game animals and relatively abundant tuberous roots. Most of the time there was a comfortable margin of survival in this culture area

3. Intensive interrelationships between local groups based on kinship, trade, and political ties. These interactions were facilitated by either common language, multilingualism, or a trade language

4. Band and composite band political organization, bilateral kinship, polygyny, primarily patrilocal residence, local communities rarely larger than 100 individuals, and winter residence in the major river valleys in semi-subterranean houses

5. Emphasis on democratic and peaceful relations among individuals and groups

6. Shaman-centered religions with an emphasis on the individual vision quest for a tutelary spirit, annual observance of first fruits and first salmon ceremonies, and winter tutelary spirit dances (Walker 1977:7).

The Colville Reservation was created by Executive Order in 1872, and the Spokane Reservation was created from the northern portion of Spokane aboriginal lands by the Spokane Treaty Agreement of 1877.

The term Spokane is used to designate what were actually three divisions: the Lower Spokane along the mouth and lower portion of the Spokane River at the present site of the Spokane Reservation; the Upper Spokane directly east of the Lower Spokane along the Little Spokane River to the Idaho border; and the Middle Spokane to the south of these groups (Walker 1977:17). Before 1800, the Indians of the Colville and Spokane Reservations shared many

cultural aspects, many of the same resources, and often intermarried (see Appendix I for a listing of tribes, their location, and their parent linguistic stock). Though some cultural variation existed on the Columbia Plateau, it was superficial, resulting from recent contact with Whites and neighboring aboriginal peoples from the Great Plains, Great Basin, and Northwest Coast culture areas (Walker 1977:7). Shared cultural features permit the following collective description of the present tribes of both the Colville Reservation and the Spokane Reservation to be done within much of the framework of Spokane culture.

ETHNOHISTORICAL BACKGROUND OF THE SPOKANE INDIAN RESERVATION

This ethnohistorical overview is the result of the National Park Service's need to comply with the American Indian Religious Freedom Act of August 11, 1978, as stated in Special Directive 78-1 of February 6, 1978. Therefore, the emphasis will be on cultural categories and specific cultural characteristics that may have application to legislative compliance.

Basic ethnohistorical data about the Spokanes is scattered throughout ethnographic sources which deal with other, related, tribes. No compendium of directly relevant ethnohistorical literature has been found for the Spokanes, thus constraining discussion on some specific cultural categories and features. A lack of definite anthropological knowledge about traditional, ceremonial, or religious activities that may have survived to the present, and could conceivably take place on or have necessary use of park lands and resources is of special concern. Though no traditional use sites have been identified, relevant data is insufficient to allow a more definitive statement. In order to gain the required knowledge as outlined in Special Directive 78-1, ethnographic fieldwork among the lake vicinity tribes and seeking of their advice in matters of traditional activity is clearly indicated when funds become available.

The following traditionally held categories of culture are discussed below: Political Organization, as that jurally active level of social organization beyond the domestic unit; Kinship, as that structured institution in the social organization wherein individuals culturally defined as being genealogically related recognize and accord differential status to one another; Religion, as those ideas and ritually patterned behavior through which people organize and realize their beliefs about the supernatural; and Economy, as the techniques for interacting with the environment to obtain subsistence, and distributing items of material culture necessary for making a living.

EARLY CULTURE: PRE-1730

Political Organization

Originally, Columbia Plateau tribes were not defined by any form of political unity. Rather, the tribes identified themselves, and recognized other tribes as such, on the basis of cultural unity; shared languages and dialects, specific customs, social ties, and common economic and village level interests (Ray 1954:109). The largest political unit was the village, and all jural and political

rights and responsibilities were expressed at that level. Village occupancy changed from generation to generation. Full membership was determined by simple residence. Both men and women possessed religious and social rights by virtue of village membership. Group unity at all levels both inside and outside the village was maintained primarily by kinship ties. Intergroup trade, cross-utilization of resources, and common language served to strengthen that unity and maintain peace. (Walker 1977:1-9).

Village leadership was provided through the advisory and conciliatory ability of the chief. The customs of the peoples of the Plateau indicate an ideal that may be termed egalitarian*. Except in crisis situations, governance and policy making was by means of democratic consensus in the village assembly in which all married village members, male and female, could participate. Selection of a chief provided for an unusual compromise between hereditary succession and popular selection. Though in principle the chieftainship was patrilineally inherited (going from father to son, to brother, to brother's son with one son not having priority over another), it was possible to have more than one eligible (e.g., two sons, two brothers, etc.). When this happened, one of the eligibles was selected by the village assembly. If there were no eligibles or if none desired to become chief, some other village resident--male, never female--was selected. The assembly viewed the eligibles' recognized advisory and conciliatory abilities and knowledge of customs as the primary selection criteria. In turn, the chief selected his sub-chief based on ability. Though accorded due respect in other villages, the chief was properly active as such only in his own village. And there, he was given no special honors, but he was accorded respect. Every village was autonomous and its assembly had final word in all village matters. (Ray 1954:109-112).

Just as no village was ranked within an institutional structure over another, no one was ranked over others, except within aspects of kinship, where degree and category of relationship always ascribes status. The individual, based upon his own abilities and accomplishments could gain achieved status, though he was not honored over others. An example of achieved status was that held by the shaman because of his extraordinary spiritual abilities, but he did not have political power beyond that of others. The

---

*There being as many prestige positions in any given age-sex grade as there are persons capable of filling them. Egalitarian societies may be characterized as having equal access to status positions and a heavy dependence on sharing of economic resources. (Fried 1967:33).

Spokanes at the time of White contact (early 1800's) were noted for courtesy, affability, hospitality, liberality, kindness, honesty, truthfulness, and courage--all egalitarian qualities (Teit 1930:325). A lack of generosity, as in the gift giving ceremonies held during salmon runs, was reason for social rebuke and, in extreme cases, sorcery to cause ill health. The Spokanes expected each other to freely share human and natural resources in the same manner that voice in the village assembly was shared equally by all adults.

Kinship

Through rules of descent, differential status relations between persons culturally defined as genealogically related are designated and those relations are therein ordered through rights and obligations for social purposes (Fortes 1969:56). Although many people determine their kinship unilineally (through either the male or female line), the Plateau peoples employed a bilateral rule of descent. That is, there was no institutionalized difference in status between mother's relatives and father's relatives; e.g. an "uncle" on one side was equivalent to and recognized as just as much a relative as an "uncle" on the other side, as in our society.

Ideally, kinsmen were bound to share freely, reciprocating if anything was loaned, rendered, or given. In this egalitarian, bilateral system, returns were expected to be made out of mutual amity, and thus, debts as such did not occur. Among the Plateau peoples, this system functioned well with changing membership between autonomous villages and the emphasis placed on the individual's development of abilities. Adaptation to an economic diversity that requires mobility and a concomitant broad sharing of resources, as practiced on the Plateau, was therefore facilitated by a bilateral rule of descent. This rule allowed one to draw from both sides of his family, providing a broader and more diverse base of relatives with whom an individual could share.

The amount of tribal and village exogamy (obtaining a spouse from outside of one's own group) is not known. Though exogamy may have later resulted from depopulation by epidemics or from the fur trade, most authorities agree that it was most probably an indigenous pattern (Chance 1973:22).

Even though patrilocal residence (the newly married couple living with the husband's father after marriage) was one of the Columbia Plateau Culture Area's characteristics, ethnohistorical analysis of the Kettle Falls Indians has demonstrated some diversity in the area. There is a possibility that they practiced uxorilocal residence (going to live with the wife's family after marriage). See Chance (1973:22-23) for a discussion of residence patterns as an expression of subsistence activities.

Religion

The categories to be discussed are those which characterize traditional Spokane religion: the vision quest for personal acquisition of a tutelary spirit; the shaman and his role in the social order; and those calendrical ceremonies which could possibly occur at Coulee Dam National Recreation Area. Those categories and activities that would neither require use of park lands and resources or do not bear upon a basic understanding of Plateau culture, and so do not affect park planning, are not discussed. Particulars of any activity shall not be detailed, since the discussion would then be too lengthy for the scope of this document. If more detail is needed in the future, it can be found in the following sources: Ray (1954), Ruby (1970), Schultz (1971), Teit (1930), and Walker (1977).

The vision quest or guardian spirit quest for acquiring a spiritual assistant usually took place before puberty. It was carried out during a series of one-night vigils, or sometimes six or seven consecutive days. Most often, the quest was conducted in the summer or autumn. The sources from which an individual might gain his power were extremely diverse and included a wide range of animals, insects, and inanimate objects, such as particular rocks and lakes. It included physical conditioning, fasting, and ritualistic observances such as daily sweat bathing. This daily practice was stressed because the neophyte had to be pure, both physically and spiritually. A tutelary spirit (a teaching or guardian spirit) provided to its acquirer spirit power over certain activities, animals, or plants. Acquisition of a supernatural assistant was considered necessary for both social and material success in life; achieved wealth and success in the community being directly related to the type and degree of power obtained. Both males and females could go on vision quests, but females did so less frequently--possibly because of the demands of subsistence activities. Those women who did obtain a spirit helper found themselves in positions competitive with men, and new doors opened to them (Schultz 1971:13-15), such as the role of shaman.

As the most important and influential figure in the traditional religious system, the shaman represented the top of the social ladder. A shaman's duties included officiating at the winter spirit dances and conducting funerals, each of which placed him in an unrivaled position with respect to life crises (e.g., illness, death, etc.). When a neophyte announced his power at the winter spirit dance, the shaman instructed him in proper social behavior. By exerting influence on behavior, the shaman aided in maintaining stability. The basic difference between those with shamanistic powers and those without revolved around the shaman's ability to both cause and cure illness. Through this ability, and the respect given it by others, the shaman was further able to maintain social

order. The most frequent reasons for a shaman to cause illness were: property damage and personal slight; adultery and attempts to steal one's spouse; lack of generosity; displays of arrogance or superiority; and theft. Any male or female that desired to become a shaman could do so with the proper vision quest. The vision quest for becoming a shaman was similar to the guardian spirit quest. (Schultz 1971:19-21).

Rituals and ceremonies may be divided into two categories, critical and calendrical. Critical rituals are associated with life crises (e.g., famine, fear, and illness) or the arrival of key transitional periods in an individual's life, called rites de passage (e.g., birth, puberty, marriage, and death). Calendrical rituals are associated with seasons of the year and particular activities (e.g., first fruits ceremony, first salmon ceremony, winter spirit dance, etc.). The first fruits and first salmon ceremonies were economically oriented, serving to show supplication and gratitude to spirits for food. The winter spirit dance, besides being the occasion for announcing one's spirit power and reinforcing the shaman's position in society, was the time for relatives to reunite. It also accommodated singing and individualism, power contests, shamanistic or healing performances, prolonged physical exertion, and, finally, feasting. (Schultz 1971:22-23).

Economy

In general, the Plateau peoples occupied a region of great environmental diversity (Walker 1977:7). As with other Plateau inhabitants, the Spokanes were a seminomadic people, obtaining their living in a yearly cycle of subsistence activities, moving from one resource to another. Spring through fall was spent in the summer villages located in about the same place each year. During this time, men hunted and fished and women gathered roots, berries, and herbs. This was also a time for visiting and trading. And, the fishing season was enlivened with gift giving ceremonies which Ruby calls potlatches (Ruby 1970:16). Temporary camps were also used during hunting, fishing, and berrying expeditions. The remainder of the year was spent at the winter villages, located in the mild climate zones along the river. Winter villages were permanent, with numerous permanent structures and a nucleus population of those who could not travel to summer villages. Though hunting was conducted year round, it was more intense during the winter (November to March) because it was the only subsistence activity supplementing the summer stores. Winter was also a time for social entertainment, dancing, and manufacturing items for the coming year. (Walker 1977:14-25).

Hunting was done both individually and in groups. Individually, whether the hunter used bow and arrow, traps, or snares, would

depend on the game being taken. In groups, game might be driven into a circle to be killed by the hunters or driven over a cliff (Ruby 1970:22; Walker 1977:25).

Salmon and trout fishing with spear and/or trap, was most often a community affair, making up approximately fifty percent of the diet. Fisheries were owned by different bands, but were shared (Walker 1977:9). Though every fishery was owned by some tribe and all other tribes were guests there, everyone considered salmon to be communal property, and so the catch was distributed according to the numbers present and the work contributed (Ruby 1970:16-19).

The margin of survival was usually comfortable (Walker 1977:7), but was not always abundant (Chance 1973:20-22). When there was a lean winter, the Spokanes subsisted on black moss gathered from pine trees to tide them over, rather than abandoning their old and young, as some of the Kalispels and Coeur d'Alenes sometimes did (Ruby 1970:23). (See Appendix II for a listing of traditional subsistence items.)

SPOKANE CULTURE: CIRCA 1730 TO 1872

The cultures of the various Plateau Area tribes have been changing at different rates since 1730. Those living in less mountainous areas, such as the Spokanes, were more accessible to people and ideas from outside the Plateau, and were thereby more affected by cultural introductions from other areas. This period (1730 to 1872) was marked by an expanding Euro-American influence and an acceleration of trade with other areas.

The single most revolutionary introduction of the period was the horse, circa 1730 (Walker 1977:13). The greater mobility brought about by the horse helped to shift tribal boundaries, break village isolation, and alter warfare and hunting patterns. But most importantly, the horse permitted Plateau people to come into closer contact with those from the Great Plains Culture Area from east of the Rocky Mounains (Ruby 1970:25-26). Though peace at almost any cost may still have been considered by the Spokanes and others to be ideal behavior, it was not what they were actually doing. After the horse was introduced the amount of warfare increased, as evidenced by a hundred years of war, circa 1700 or 1750 to 1880-84, against the Blackfoot, Crow, and all the eastern tribes over rights to hunt buffalo west of the Rocky Mountains (Teit 1930:360).

Later, from circa 1820 to 1870, fur trappers were active on the Plateau. Their impact on the culture may have been farther reaching than that of the horse. Smallpox was reintroduced and measles was brought in for the first time, depleting the native

population. Introduction of firearms and commercial hunting and fur trapping decreased game supplies. And, Euro-American social and religious ideas progressively displaced and modified the native institutions (Change 1973).

Political Organization

The Spokanes had begun to adopt concepts of government above the village level. This is not wholly true for other tribes of the area. Apparently, and Plateau experts do not know for sure, this cultural aspect (and others in the realm of kinship, discussed below) was adopted from the Plains cultures. By the mid-nineteenth century, circa 1850, the Spokanes had become a single confederated entity under Chief Raven of the Lower Spokanes. He resided at Little Falls where an all-Spokane council met once or twice a year to consider important issues (Ruby 1970:297-298). Other tribes began to fall under the leadership of the trading post managers (Chance 1973:96).

Kinship

By the time of direct White contact (1805-06), traditional Plateau life had changed. The Spokanes had adopted a primarily patrilocal residence pattern; i.e., a couple living with the husband's father after marriage (Walker 1977:7). A bilateral rule of descent continued to be used, but this may have begun to change resulting from contact with the lineal descent systems in use on the Plains. If it did begin to change, as is evidenced by the adoption of patrilocal residence, contact with Euro-American culture and later removal to reservations prevented its completion. These sorts of change did not take place for most of the other tribes of the area.

Religion

Pre-1730 traditional religious activities continued with very little modification, but, Christianity was introduced by the fur traders (Chance 1973:70-73). By 1838 Sun-worship similar to that of the Plains was reported.

> Believing the sun to be the master of life, they humbled themselves in the Sun Dance by acknowledging their weaknesses. This dance, unlike the Sun Dance of the Great Plains, was practiced beyond the mid-nineteenth century; it was held at the solstice. Later, the Sun Dance and praying dances were combined, gradually losing their original reason for being held. Spokane scalp and buffalo dances were similar to those of the plain. (Ruby 1970:27).

Economy

With the introduction of the horse, Spokane men now left in October and November immediately after the salmon runs to hunt buffalo on the Great Plains. They returned in February and March. The intensified hunting which the horse allowed also caused Plateau game to dwindle, circa 1840's (Ruby 1970:46, 86, 105), as did the fur traders' increasing of trapping and hunting activities for trade (Chance 1973:53-60).

The men came back with more than buffalo hides and trade goods from the Great Plains. They also brought back some Plains Indian social institutions and religious concepts, and European diseases (Walker 1977:13, 16-17). Smallpox epidemics struck the Plateau in the years 1782-83, 1846, and 1852, and a severe outbreak of measles occurred in 1847 (Ray 1954:21). The Spokanes suffered the worst from these epidemics, resulting in a tremendous loss of manpower. This decrease in population seemed to act as a uniting force, particularly for the hunting of buffalo (Walker 1977:16-17).

THE RESERVATION PERIOD: CIRCA 1872 TO THE PRESENT

Only very scant ethnographic material about recent Spokane culture has been located. However, between 1968 and 1970, John Schultz (1971) did fieldwork among the Colville Reservation's tribes. He researched factors involving changes in religion as a measure of degree of acculturation (the process of transmission of culture through first-hand contact, in this case, with Whites). Because the Confederated Colville are in the same culture area, some inferences can be made about the Spokanes.

By 1870, it had become the policy of the United States Government to treat with Indians for the purpose of settling them and making them a part of non-Indian society. To this end, the Colville Indian Reservation was established by Executive Order issued by President Grant on April 9, 1872. The reservation was to have contained the Methow, Okanogan, Sanpoil, Lake, Kalispel, Coeur d'Alene, Colville, and Spokane. This reservation had existed only three months when its boundaries were changed by Executive Order on July 2, 1872 (I Kappler 916). The Spokanes never moved to it. A later extension of the Colville Reservation, the Spokane Indian Reservation, was created specifically for the Lower Spokanes by a treaty agreement on August 18, 1877. The Upper and Middle Spokanes had refused to participate in the agreement and move there. Following their own agreement with the Government during 1887, they removed to the Coeur d'Alene Indian Reservation in Idaho. Though there may be a conflict of opinions on the matter, the majority on the Colville and Spokane Reservations of today show a high degree of acculturation and broad-based cultural solidarity with the main-stream of American society.

English speakers on the Colville make up ninety-seven percent of the population, with eighteen percent of them being either English and Salishan or English and Shahaptian speakers.

Political Organization

The reservations were administered by Bureau of Indian Affairs, Department of the Interior, superintendency between the time of establishment and the time of reorganization under the Indian Reorganization Act of 1934. This was from 1872 to 1965 for the Colville and 1877 to 1951 for the Spokane. It was the intent of the 1934 Act to cause reservations to become self-governing, and with this completed, to terminate the privileges which reservation status gives its members. Until 1934, the Bureau of Indian Affairs formed agreements with and acted through the various tribal chiefs and headmen, who were sometimes appointed by the Bureau. Beginning in 1934, it became Government policy under the Reorganization Act to no longer recognize chiefs and headmen as tribal spokesmen in legal affairs. Tribal assemblies and democratically elected tribal councils were recognized instead. By this action, the Bureau caused the Confederated Tribes of the Colville to actually become confederated, even though they in fact did not reorganize until 1965.

The respective lands of the two reservations today comprise what are actually semi-autonomous nations created by treaty. Their governments are sovereign in much the same manner as are state governments, being required only to operate in a democratic manner under an approved constitution and to pass no laws that conflict with federal laws. In matters within reservation jurisdiction, the Spokanes and Confederated Colville express their jural and political selves through their governments.

Their cultural heritage is reflected in the present tribal governments of the Spokane and Colville Reservations. Traditionally, these Plateau peoples had governed themselves in a democratic manner by a consensus of opinion, arrived at by the village assembly, with the chief being charged with carrying out that policy. This form of government was readapted to the modern reservations. Both reservations operate under constitutions drafted by tribal members, with policy and all major decisions being arrived at by popular vote of adult tribal members--consensus. Routine matters of government are run by popularly elected business councils.

The Spokane Tribe's Constitution, approved in May 1951, established an elected business council composed of three tribal members. An amendment to that constitution of August 10, 1972, established a five-man business council. Council members are

elected by popular vote for 3-year, 2-year, and 1-year terms (U.S. Department of Commerce 1977:568).

At present, the Confederated Tribes of the Colville operate under a constitution that was approved on April 19, 1938, even though they had not reorganized at that time. The business council is composed of 14 members elected by popular vote from four voting districts. They also have an economic development and planning committee, assisted by an advisory committee, which also acts as the Overall Economic Development Program committee (U.S. Department of Commerce 1977:533).

In the 1950's and 1960's, the Colville Reservation was involved in a termination versus anti-termination conflict, which has since subsided. Their business council is now moving toward comprehensive planning and economic development (Walker 1977:54).

Kinship

No ethnographic data has been found which treats recent kinship practices. It therefore appears that bilateral rules of descent still pertain.

The composition of the household has changed. In the past, a number of nuclear families related through the male line would often live together in an extended family, as was evidenced by patrilocal residence patterns. Today, the Colville Reservation has mostly adopted the Euro-American pattern of single family households, with only fifteen percent continuing to have extended family arrangements. This change may have been brought about by the need for mobility in today's highly competitive labor markets (Schultz 1971:81).

Religion

The result of Christian missionization in the Colville area was that it became a prime factor in cultural disintegration. Almost immediately, religious factionalism developed. Two opposing factions emerged: (1) the Christian group that accepted the religious teachings and welcomed culture change, and (2) the "pagan" group who still believed in the aboriginal religion and resisted change. This factionalism still exists today (Schultz 1971:37).

Resulting from early (1842) and continued missionary work, primarily by the Jesuits, the Colvilles and Spokanes are virtually all Catholics. "As acculturation proceeded, it became increasingly difficult to maintain a total commitment to the aboriginal religion,

but Christianity did not offer a suitable alternative" (Schultz 1971:23). Therefore, sects developed that are socially transitional between these two religions, i.e., Indian Shakers and Pentecostals. The conservative minority, composed mostly of full-blooded Nez Perce on the Colville Reservation, still participate in a form of traditional vision quest religion.

Because of acculturation, it is no longer practical or in many cases possible to go on a vision quest. Therefore, power is usually either inherited or given away. The shaman, by performing certain rituals, can transfer spirit power from one person to another. In this manner, those who still believe that having spirit power is necessary for success in life are provided with a culturally acceptable means for obtaining it (Schultz 1971:102-103).

Presently, shamans still practice on the Colville Reservation, but are few in number, because very few adolescents still seek this type of occupation. The shaman's role has been reduced to officiating at the winter dances and to the curing of certain illnesses. In most respects, their role in controlling social behavior and in being cultural innovators no longer exist (Schultz 1971:103-104).

Economy

The people of the Spokane and Colville Reservations began agricultural practices as early as 1830, and have continued to take up agriculture since their removal. After 1900, pollution of the rivers threatened salmon fishing as a livelihood. Grand Coulee Dam eliminated it altogether. Since the 1950's, uranium mining and milling on the Spokane Reservation has accelerated economic development. Revenue from uranium operation has combined with a continuing heavy lumber harvest to provide a substantial tribal income. This income funds many social and economic programs (Walker 1977:53-54).

On the Colville Reservation, only nine percent of the population continues to utilize what they consider to be Indian food items (e.g., jerky, camas, and berries). Fifty percent utilize both Euro-American and Indian food items and forty-one percent primarily Euro-American food items (Schultz 1971:86).

Summary

A large majority of the Colville population has adopted Euro-American values and exhibits little, if any, Indian orientation, having made the transition relatively easily. Others staunchly adhere to older, traditional customs and continue to resist

assimilation. The values adopted by the conservative minority are directed primarily toward providing economic stability, improving education and social services, and securing better employment. Younger Indians are more progressive than their elders, but there is a growing resentment of Euro-American culture. Perhaps this reflects the rapid growth of the Pan-Indian movement during the past decade (Schultz 1971:v, 46, 60-63, 102, 105).

As mentioned above, most of the Confederated Colville are English speakers. Again, in all areas where degree of acculturation was measured by Schultz (1971), the conservative minority coming from among the Nez Perce were least assimilated: e.g., preferring a tribal legal system over state jurisdiction, opposing termination of reservation status, and preferring aspects of the traditional culture and religion. The non-conservative majority holds views opposite to these (Schultz 1971:70-112).

Even though the majority are almost totally acculturated, it must be kept in mind that they are legally Indians and many still identify ethnically with their ancestral ways. They are also members of Indian reservations. Their identity is with a particular culture and history not shared by other Americans. Revitalization of traditional institutions is an expression of ethnicity--of their pride as Indians in their own particular cultural heritage within and as a part of the larger American society.

What all this means to the National Park Service is that the Spokanes and Confederated Colvilles are probably sensitive in many matters that may affect reservation land status and their jurisdiction and control over that land. Further, any action which could be viewed as a transgression of their cultural values and social identity could cause the Service considerable problems in this area of ethnicity.

AGREEMENTS, LEGISLATION, AND INTERIOR DECISIONS PERTAINING TO THE SPOKANE INDIAN RESERVATION

After an exhaustive search of all known treaties and legislation which deals with the (Lower) Spokane Indians, two items have been found which should be given special consideration by the National Park Service. The opinion given by Solicitor Frizzell (84 I.D. 72) should be a factor in all service activities at Coulee National Recreation Area, and the Chief Ranger should acquaint himself with the Act Transferring Jurisdiction Over Indian Reservations of 1953 (67 Stat. 588).

1877 TO THE PRESENT HISTORICAL OVERVIEW OF THE SPOKANE INDIAN RESERVATION

The Spokane Indian Reservation was created by an agreement in 1877 between the Lower Spokanes and the United States, wherein the exterior boundaries of the reservation were specified. A subsequent 1881 Executive Order reaffirmed the legitamacy of the reservation and refined the boundaries specified. In 1887, the United States entered into an agreement with the Upper and Middle Spokanes who had refused to participate in the Lower Spokanes' agreement of 1877. The Upper and Middle Spokanes agreed to remove to reservations previously created in both Washington and Idaho, and thereon receive individual land allotments. Discovery of gold on the Spokane Reservation resulted in a 1902 act opening mineral lands on that reservation only. An act of 1905, modified by an act of 1906, allowed taking of Spokane Reservation lands to permit necessary development on both sides of the Spokane River for purposes of electrical generation and irrigation. An act of 1908 allowed settlement of land within the Spokane Reservation by non-Indians. This 1908 act did not diminish the reserve. Undisposed-of lands ceded by the 1908 settlement act were returned to Spokane tribal ownership by an act of 1958. Construction of Grand Coulee Dam on the Columbia River was authorized by act in 1935. Authority to take lands of the Colville and Spokane Reservations that were to be inundated by backwaters from the dam was granted in 1940 and modified by amendment in 1944. The 1940 act allowing taking of Indian lands for Grand Coulee Dam reservoir purposes specified the setting aside of one-quarter of the reservoir area for Indian use. A 1945 opinion issued by the Office of the Solicitor advised the Secretary of the Interior how to best implement creation of an Indian zone on the reservoir, as called for by the act of 1940. In 1974, another solicitor's opinion decided that the Indians of the Colville and Spokane Reservations should properly have jurisdiction over the Indian zone. In 1953, Congress transferred all criminal and civil jurisdiction on reservations to those states that wanted it. The State of Washington accepted jurisdiction over some reservations in 1957, and extended partial jurisdiction to all others in 1963.

Treaty Agreement of 1877

Beginning in about 1875, White settlers exerted pressure on Washington to have the Spokanes removed to a reservation, thereby allowing settlement of the Indians' lands without interference from them. Resulting tensions over land ownership induced the Department of the Interior's Commissioner of Indian Affairs on May 7, 1877, to direct Indian Inspector Colonel E.C. Watkins to gather roving Indians upon permanent reservations--whereon, they would

be caused to engage in agriculture. This decision was to have resulted in a conference relative to removal on June 27 at Spokane Falls (now the city of Spokane). But, the Nez Perce war of 1877-78 caused postponement of the meeting until August 16. Despite government concessions which included the principle fisheries on the Columbia and Spokane Rivers and arable lands between, the Upper and Middle Spokanes were not willing to leave their farms and improvements. On August 18, 1877, a treaty agreement was reached in council at Spokane Falls between certain Lower Spokane chiefs and headmen, speaking for their peole, and Colonel Watkins, representing the Department of the Interior, and General Frank Wheaton and Captain M.C. Wilkinson, representing the Department of War. The Lower Spokane agreed to move to a permanent reservation created exclusively for them by November 1 and remain at peace. Both the Government and the Indians performed in good faith. Thus, some tension between White and Indian was eased (Ruby 1970:167-171 and 246 U.S. 283, 285; 1918).

Executive Order of 1881

Following the 1877 Agreement, non-Indians began to squat on the Lower Spokanes' newly created reservation. Resulting from this, Brigadier-General O.O. Howard issued Field Order No. 3, September 3, 1880. He commanded that the reservation ". . . be protected against settlement by other than said Indians . . . based upon plain necessity to preserve the peace until the pledge of the Government shall be fulfilled . . ." (I Kappler 924-925). The Government's pledge was fulfilled on January 18, 1881, when President R.B. Hayes issued an Executive Order giving formal sanction to the Treaty Agreement of August, 1877 (246 U.S. 283, 288; 1918), for the purpose of ending White trespass. (Ruby 1970:1978).

Treaty of 1877

The lands of the Upper and Middle Spokanes were more desirable to settlers than those of the Lower Spokanes. Because they did not have the protection afforded by reserved land, the Upper and Middle groups were progressively dispossessed. With no other place to go and with no means to make what in their eyes was an honorable living, other than the farming of their own land, the social structure began to degenerate and many members of these groups became troublesome to the settlers. White settlers and officials appealed to the U.S. Government to place these non-treaty Indians on reservations. With the further recommendation of Indian agents, Congress on May 15, 1886, established a commission whose purpose it was to remove non-treaty Indians. In council at Spokane Falls, Washington Territory, on March 18, 1887,

Government commissioners John V. Wright, Henry W. Andrews, and Jared W. Danials entered into an agreement with certain chiefs, headmen, and other Indians of the Upper and Middle Spokane groups. The purpose of the agreement was to place the non-landed members of the groups onto previously created reservations where they would engage in agriculture and to extinguish tribal title and claim to all other lands. On March 26, 1887, the commission reached an agreement with the Coeur d'Alenes to accept the Spokanes onto their reservation. (Ruby 1970:179-193).

Mineral Lands Opening of 1902

Discovery of gold on the Spokane Reservation resulted in Congress enacting legislation on May 27, 1902. The Act opened mineral lands for entry on the Spokane Reservation only (except those lands already in use). Joint Resolution No. 25 of 1902 specified the date upon which the law would become operative. More importantly, on June 19, 1902, Joint Resolution No. 31 was passed which was designed to protect the Spokanes' interests from the prospectors. Wherein, the Secretary of the Interior was directed to make allotments in severalty to the Indians (Ruby 1970:231-237).

Water Rights Acquisition of 1905 and 1906

Growth of White settlement in the area and of the city of Spokane increased demand for improved transportation and electrical power generation. On March 3, 1905, Congress directed the Secretary of the Interior to permit development of the potential of the Spokane River for hydroelectric power and other beneficial uses in the area of the Spokane Reservation. In 1905, diversion of waters by non-Indians for either power generation or irrigation would probably not have adversely affected the Spokanes, as few of them practiced irrigation. And, the Indian agent believed that the possible creation of rapid transportation allowed for by electric power ". . . would help surround the natives with the beneficial cloak of civilization" (Ruby 1970:238). Nothing of immediate consequence came of the act (Ruby 1970:237-239).

Opening of the Reservation to Settlement of 1908

Increased demand by non-Indians for arable land to settle resulted in the Lower Spokanes meeting in council with Inspector Edgar A. Allen on January 30 through February 1, 1908, and agreeing to sell their surplus lands.

> "the farm land to be opened to white entry was near Tshimapin Creek, as well as along the Spokane River.

> Forest lands were not to be opened to entry, but Indians were to draw all the proceeds from the sale of timber from these lands. As a result of the council with Inspector Allen, an act was passed May 29, 1908, authorizing the sale of unallotted agricultural lands on the reservations. The President signed a proclamation May 22, 1909, to open them" (Ruby 1970:240).

Entry began on April 10, 1910 (Ruby 1970:239-243).

Creation of Grand Coulee Dam of 1935

On August 30, 1935, an act was passed authorizing construction of Grand Coulee Dam under the direction of the War Department. The purpose of the dam was to control flooding, improve navigation, provide for storage and delivery of water, reclaim public and Indian reservation lands, and for hydroelectric power generation to financially aid and assist such undertakings. (49 Stat. 1028, 1039-1040).

Reservoir Lands Acquisition of 1940

The need to take Indian lands to be inundated by the reservoir that would be created was not addressed in the 1935 Act. On June 29, 1940, Congress passed an act to allow necessary taking of Indian lands. Although some lands had been taken for reservoir purposes prior to the 1940 Act, the Secretary of the Interior was now hereby authorized by Congress, under certain prescriptions, to take lands from Indian ownership in aid of the project (54 Stat. 703).

Solicitor's Opinion of 1945

Section 1 of the Act of 1940 allowing taking of Indian lands in aid to Grand Coulee Dam (54 Stat. 703) directed the Secretary of the Interior to ". . . set aside approximately one-quarter of the entire reservoir area for the paramount use of the Indians of the Spokane and Colville Reservations for hunting, fishing, and boating purposes." On January 25, 1944, the Secretary requested the Office of the Solicitor to ". . . consider the legal problems involved in determining the rights of Indians . . ." to the reservoir area in satisfaction of the act. In response to this request, an opinion by Solicitor Warner W. Gardner, titled Indian Rights in Columbia River Reservoir, was given on December 29, 1945 (59 I.D. 147). By this opinion not addressing the fact that the area involved was still within the boundaries of the reservations, the Indians temporarily lost jurisdiction and some rights within the area. This would be reversed by another solicitor's opinion in 1974 (84 I.D. 72).

Jurisdiction Transfer of 1953

The Federal Government enacted legislation in 1953 (67 Stat. 588) to allow consenting individual states to exercise civil and criminal jurisdiction under their laws on Federal Indian reservations. This transfer was done in part to decrease the lawlessness on some reservations that was caused by inadequate tribal law enforcement institutions.

Land Restoration of 1958

The Indian Reorganization Act of June 18, 1934, among other things, sought to again permit tribes to manage themselves and their economic resources. This was to be done through a tribal constitution and bylaws. The Lower Spokanes refused reorganization in 1934 and 1949. They finally did approve formal organization on May 12, 1951 (Ruby 1970:277-278). By the Spokanes having a constitution and bylaws, along with a fish and wildlife code (passed in 1944), this allowed Congress to restore to Spokane Tribal ownership all undisposed-of ceded lands on the Spokane Indian Reservation on May 19, 1958 (72 Stat. 121).

Solicitor's Opinion of 1974

The Secretary of the Interior requested the Solicitor's office to give a legal opinion on the boundaries of and status of title to the "Indian Zone" of the Grand Coulee Dam reservoir area. (The reason of what caused the Opinion to be requested has not been ascertained).

An opinion was given by Solicitor Kent Frizzell on June 3, 1974, and issued as 84 I.D. 72 on February 2, 1977. It overruled in part the opinion of Solicitor Gardner (59 I.D. 147) in that tribal jurisdiction within said zone was affirmed on the basis of the zone being within reservation boundaries.

SUMMARY OF AGREEMENTS, LEGISLATION, AND OPINIONS

Spokane Treaty Agreement of August 18, 1877 (citied in 246 U.S. 283, 285-286; 1918)

The Lower Spokane group of the Spokane Tribe agreed to move upon and permanently occupy a reservation by November 1, 1877, for the purpose of engaging in agriculture. The delimited territory, thenceforth the Spokane Reservation, composed what had been the northern part of the Lower Spokanes' traditional lands. Thereon, they would remain at peace with and abide by the laws of the Government and obey the Indian Bureau.

Ramifications of the Agreement. Though the title to a large amount of traditional lands was extinguished (Fig. 1), the Lower Spokanes did not give up the right to carry-on traditional activities on the ceded lands or on any other lands. This fact would lead to a claim against the Government beginning in 1914 (refer to the Agreement of 1887 for details). Within the titled lands that remained, the Lower Spokanes were guaranteed the rights of exclusive use and to continue all traditional lifeways. They would be protected in these rights as limited by law. The rights of exclusive use and to continue in their lives without interference were not stated, but were assumed by all parties and de facto guaranteed by the Government. (Witness to the assumed rights of exclusive use and protection was shown in 1880 by the Army's removal of non-Indian settlers from the land (246 U.S. 283, 287; 1918. See also, Special Field Orders No. 3 in 1 Kappler 924-925).

Executive Order of January 18, 1881 (cited in 1 Kappler 925)

The boundaries of the Spokane Reservation, agreed to at Spokane Falls in 1877, were again defined and revised as follows (revisions underscored): "Commencing at a point where Chemankane Creek crosses the forty-eighth parallel of latitude; thence down the east bank of said creek to where it enters the Spokane River; thence across said Spokane River westwardly along the southern bank thereof to a point where it enters the Columbia River; thence across the Columbia River, northwardly along its western bank to a point where said river crosses the said forty-eighth parallel of latitude [in the 1877 agreement, Nimchin Creek was used in place of the forty-eighth parallel]; thence east along said parallel to the place of beginning."

Ramifications of the Order. White trespass was stopped (Ruby 1970:178), and the Lower Spokane Indians have continued within the said new boundaries of the reservation. Although the Lower Spokanes lost lands of the 1877 agreement between Nimchin Creek

and the forty-eighth parallel, they gained title to the neighboring portions of the Columbia and Spokane Rivers. Also, the revisions resulted in an overlap between the Colville and Spokane Reservations' Columbia River boundary. Both tribes by a joint resolution dated September 17, 1973, ". . . agree that the Secretary [of the Interior] may establish a boundary line between the Colville and Spokane portions . . . at the center of the [Grand Coulee Dam] reservoir despite the overlap, and that the question of title to the underlying riverbed should be reserved for future determination" (84 I.D. 72, 76; 1977).

Agreement with Spokane Indians of March 18, 1887: Ratified by Act of Congress on July 13, 1892 (27 Stat. 120, 193) (I KAPPLER 453-454)

The Upper and Middle Spokane groups of the Spokane Tribe agreed to ". . . cede to the United States all right, title, and claim . . . to any and all lands lying outside of the Indian reservations in Washington and Idaho Territories . . . [and] remove to and settle upon the Coeur d'Alene Reservation in the Territory of Idaho" (Article 1). They would share the Coeur d'Alene Reservation with the same, and there receive individual land allotments under the allotment act for the purpose of engaging in agriculture. This was agreed to by the Coeur d'Alenes on March 26, 1887; ratified by Congress on March 3, 1891 (refer to: 26 Stat. 989, 1026; Sec. 19 and Articles 3 and 5). The Upper and Middle Spokanes would receive nominal payment for lands lost, to be used for their relocation; receive monetary rewards for breaking land; be trained in the necessary manual and agricultural arts; and receive support for the old, infirm, and some chiefs. Those who preferred to move to either the Colville or Jocko (Flathead) Reservations would be allowed to do so (Fig. 2). Within the context of the legislation, the Colville Reservation was meant to include the Spokane. Also, Spokanes who had already settled upon and made improvements to any non-reservation land would be offered citizenship and not be made to move (27 Stat. 120, 139; 1892).

Ramifications of the Agreement. Ratification of the Agreement on July 13, 1892, followed removal of most of those affected. Both the Indians and the Government acted in good faith. But, beginning in 1914, 'The Spokanes maintained that the 1887 land agreement had been obtained for an "unconscionable consideration" under duress through unfair and dishonorable means; namely, they ceded 3,140,000 acres . . . and the Government paid them only $95,000 (which included the cost of their [the Upper and Middle groups] removal to the reserves).' The Spokanes in general entered a claim against the Government in 1914 for all lost land south of the Spokane River (the southern boundary of the Spokane Reservation) and damages ". . . for loss of fishing rights on the Columbia River

and its tributaries and of hunting rights and privileges held with other Indians in the "common hunting grounds" east of the Rocky Mountains.' This claim by all Spokanes was not found to have merit. Later, in another action, "It was put forth . . . that the Lower Spokanes had not ceded the area they claimed (Fig. 1), as the Upper and Middle Spokanes had already ceded the Spokane areas in the 1887 agreement." On February 21, 1967, the Indian Claims Commission awarded to the Lower Spokane Tribe $6.7 million. "With this compromise settlement, the boundaries (of the land claimed) were never fixed by [illegible] . . . Commission." Similar claims by the Coeur d'Alenes, Kootenays, Kalispels, and confederated Salish-Kootenays were awarded between 1958 an 1967 (Ruby 1970:294-304).

Acts Opening Spokane Mineral Lands of 1902 (32 Stat. 45 and 32 Stat. 742 of May 27, 2902 and 32 Stat. 744 of June 19, 1902)

Excepting allotted and some other specified lands, mineral lands on the Spokane Reservation only were open for entry with no remuneration going to the Spokanes (32 Stat. 245, 266). The Act would not become operative until December 31, 1902 (32 Stat. 742). No entry would be permitted until after the Indians of the Spokane Reservation had received allotments in severalty (32 Stat. 744).

Ramifications of the Acts. Miners began entering the lands in June, 1902, before any Indian received an allotment under the Act, and some miners obtained already allotted lands from Indian owners. Allotting of land to the Indians did not actually begin until October, 1906, and was completed in September, 1908. The process of allotting land in severalty, as counterposed to tribal ownership, was to have caused all the Indians to permanently settle. It also allowed the leasing of some of those allotments for grazing lands to non-Indians (Ruby 1970:231-237).

Act Allowing Acquisition of Water Rights in the Spokane River of March 3, 1905 (33 Stat. 1006). Modified by the Act of June 21, 1906 (34 Stat. 325, 377)

For the purpose of power development, the Secretary of the Interior could grant to any entity the right to use the waters of the Spokane River where the river formed the southern boundary of the Spokane Reservation. For that purpose and for the erection of needful structures, the Secretary could also grant any unallotted land and allotted land if lacking full power of alienation. (Sec. 2. "That the Secretary of the Interior be . . . authorized and empowered to grant such appropriator and appropriators land on said reservation, whether the same has been allotted in severalty . . . but which has not been conveyed to the allottee

with full power of alienation, or whether the same remains unallotted, on the north bank of the said Spokane River . . .") Approval of applications was provisional on the Secretary being satisfied of the entity's good faith, intent, and ability to perform (33 Stat. 1006; 1905). A minor modification to the Act of 1905 was created by the Act of 1906. This subsequent act allowed the taking of up to 360 acres for townsite and terminal purposes to be used in conjunction with power developments (34 Stat. 325, 377; 1906).

Ramifications of the Acts. Few lands changed hands as a result of the Acts. No power plants were developed. More importantly, the Acts increased awareness of the potential of the Columbia River Basin for hydroelectrical power generation. The Acts also laid some of the groundwork for Grand Coulee Dam by permitting acquisition of some land for the immediate project, but not for the backwaters that would be created (Ruby 1970:237-239).

Act Opening the Spokane Reservation to Settlement of May 29, 1908 (35 Stat. 458)

Allotments were to be made to all Indians that had tribal rights on said reservation and that had not theretofore received allotments. After the Indians had received land, all surplus unallotted agricultural lands would be disposed of by lottery to non-Indians under the homestead laws. The net proceeds of these land sales would be deposited to the credit of the Indians of the Spokane Reservation. The Act further provided that the Indians could pasture their livestock on timber lands.

Ramifications of the Act. In time, the Act caused a question to be raised as to jurisdiction over non-Indian held lands within the reservation's exterior boundaries. Addressing the question in 1974, the Solicitor, Department of the Interior, (84 I.D. 72) cited Seymour v. Superintendent: "The Act did no more than open the way for non-Indian settlers to own land on the reservation in a manner which the Federal Government, acting as guardian and trustee for the Indians, regarded as beneficial to the development of its wards" (238 U.S. 351, 356; 1961). Further, the boundaries of the reservation were ". . . not affected by allotments, patents and other dispositions of land within the reservation made subsequent to its establishment" (84 I.D. 72, 77; 1977). Therefore, the Spokane Tribe continues to have jurisdiction over all reservation lands, including those within the present reclamation project.

Act Authorizing Construction of Grand Coulee Dam of August 30, 1935 (49 Stat. 1028)

Construction of Grand Coulee Dam was authorized, but no authority was granted for the taking of those Indian lands that would be inundated by the backwaters of the dam.

Ramifications of the Act. Besides creation of cause for taking of Indian lands for the project and for recreation purposes, the dam would also create a great potential for development on the Spokane (and Colville) Reservation (Ruby 1970:280).

Act to Acquire Indian Lands for the Grand Coulee Dam Reservoir of June 29, 1940 (54 Stat. 703). Modified by the Act of December 16, 1944 (58 Stat. 813)

All right, title, and interest in both tribal and allotted lands below the elevation of 1,310 feet and other lands designated to be necessary for project development within the Spokane (and Colville) Reservation was granted to the Government. The Act of 1944 (58 Stat. 813) amended this to allow taking of necessary lands above the 1,310 contour line for protection against land slides in the reservoir area. Funds paid for acquisitions would be credited to the allottees from whom taken to be used for acquisition of substitute lands and improvements. Cemeteries inundated by the project could be either paid for or relocated at Government expense, under the discretion of the Secretary. And, Section 1 of the Act directed 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 parmount 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 . . . [R]easonable rights of access to such area or areas across any project lands" would also be granted (54 Stat. 703; 1940). Therein, the Indians' area of interest was consolidated (59 I.D. 147, 148).

Ramifications of the Act. The area taken for reservoir purposes extends from the original river beds (i.e., the Columbia and Spokane) to the nearest 1,310 contour line. But, the river beds themselves were not taken and the tribes were not compensated for them. Therefore, the Act did not alter the tribes' title to the beds (84 I.D. 72, 74; 1977). The whole reservoir--not including the dam area--was temporarily managed until 1946 by the National Park Service: And, pursuant to a tri-party agreement (December 8, 1946) between the National Park Service, Bureau of Reclamation, and Office of Indian Affairs, thereafter until 1974. During this

period, the tribes lost jurisdiction over that part of the reservations that are within their area of "paramount" use. This was the result of a solicitor's opinion issued in 1945.

Solicotor's Opinion of December 29, 1945 (59 I.D. 147)

The possible area of the reservoir that could be used for compliance with Section 1 of 54 Stat. 703 was defined. "Paramount" use was defined as not necessarily being "exclusive" use, but instead as preferential use. Therefore, the question of whether or not the Indians could license others to use that one-quarter of the reservoir area was not answered. The special rights accorded the Indians were defined as "lieu rights," and therefore deemed to be an exclusive substitute for whatever rights the Indians may have previously had over the area.

Ramifications of the Opinion. The area of the reservoir defined for the tribes' paramount use, by direction of the Secretary of the Interior, was contiguous and approximately one-quarter of the total reservoir area. This area subsequently became known as the "Indian zone" in the Tri-Party Agreement of 1946. The Indian zone was determined to be an area of preferential rather than exclusive use. The special rights accorded the tribes were hunting, fishing, and boating only; the rights of access were commensurate with the others. That these rights were inappropriately deemed to be a full substitute for previous rights lost by the taking of land (59 I.D. 147, 149) was shown a few years later. "The Spokane Tribal Council passed a resolution March 17, 1949, asking the Secretary of the Interior to compensate them for damage to lands below the 1,310 foot contour . . . They received it" (Ruby 1970:280). Because the 1945 Opinion did not address the Indian zone as being part of the reservations, the tribes did not exercise jurisdiction therein. Another Solicitor's opinion was issued in 1974 that reversed the previous opinion on jurisdictional matters, and thereby on "paramount" use (rf. 84 I.D. 72). Prior to the 1974 Opinion, the general public was permitted to have equal use of the Indian zone.

Act Transferring Jurisdiction Over Indian Reservations from the Federal Government to the State Governments of August 15, 1953 (67 Stat. 588)

Under certain restrictions and provisos, jurisdiction in criminal and civil matters on Federal Indian reservations was given to the states. Jurisdiction was to be applied under the same statutes that govern the State citizens.

Hunting, trapping, or fishing or the control, licensing, or regulation thereof were specifically exempted from being affected by

the Act. The rights, privileges, immunities, and status of lands and resources afforded to Indians under Federal treaty, agreement, statute, or any regulation made pursuant thereto were in no way altered. By inferrence, this extended to include the Spokanes' (and Colvilles') specific rights to regulate boating, camping, and commercial navigation within the Indian zone, as per the 1974 Solicitor's Opinion (see 84 I.D. 72).

Any tribal ordinance or custom, if not inconsistent with state civil law, continued to have full force and effect in the determination of civil causes.

Ramifications of the Act. In its application of the Act (under R.C.W.A. 37.12.010 of 1963) the State of Washington accepted jurisdiction as follows: Unless otherwise requested by a reservation, Washington excluded assumption of jurisdiction over Indians on trust or restricted lands, except in those matters that fell within eight specified categories. The eight categories are: compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and operation of motor vehicles on public streets, alleys, roads, and highways. The State has jursidiction only in these eight listed categories upon the Spokane Reservation. (By permission of the Confederated Tribes of the Colville, the State assumed full jurisdiction over all civil and criminal actions within the Colville Reservation.)

Act to Restore Lands to Tribal Ownership of May 19, 1958 (72 Stat. 121)

Approximately 5,451 acres of vacant and undisposed-of lands except those within reclamation projects was returned to tribal ownership.

Ramifications of the Act. Returned lands became part of the Spokane Reservation. Because the ceded lands had always continued in the beneficial ownership of the Indians, the net effect of the Act was to clarify title so that the tribe could manage and administer the lands (Senate Report No. 1508; May 29, 1958).

Solicitor's Opinion of June 3, 1974 (84 I.D. 72; Issued February 2, 1977)

The Solicitor's opinion of 1945 (59 I.D. 147) was overruled in part. The 1974 opinion adopts the 1945 conclusion that ". . . the tribes do in fact hold the equitable title to those portions of the original riverbed within the boundaries of their reservations." But, based on Supreme Court and legislative precedent (citing: 215 U.S. 278; 232 U.S. 442; 268 U.S. 351; 62 Stat. 757; and 350 F. Supp. 106)

the more recent opinion reverses the earlier in determining that the "paramount" rights of hunting, fishing, and boating ". . . are reserved rights, preserved by Congress in the 1940 Act, and that those rights are exclusive of any such rights of non-Indians." This is becaue the Indian zone remained part of the reservation, irregardless of who might hold title. The "reserved rights" are subject only to Interior conservation regulations and the proviso of non-interference with project operations. Therefore, ". . . the tribes have the power to regulate hunting, fishing and boating by non-Indians in the Indian zone." "There is no provision in the 1940 Act for any non-Indian use of areas included within the Indian zone." Finally, the Act of 1940 only shifted the geographical location of those preexisting rights (84 I.D. 72, 75-83).

Ramifications of the Opinion. By the Indian zone being mostly within the exterior boundaries of the reservations and by the Indians having "exclusive" rights within the zone, the tribes have the right to regulate all activities within the zone, including commercial navigation (84 I.D. 72, 86) (and probably including camping), under their constitutions and bylaws. This regulation of activities supercedes state law (35 F. Supp. 106, 107; 1972), and federal jurisdiction where not in conflict. The Department of the Interior has been directed to adopt these conclusions, thus nullifying the 1946 Tri-Party Agreement.

APPENDIX I

TRIBES OF THE LAKE ROOSEVELT AREA

Spokane; Salishan language stock (Spencer 1965:214).

Upper Spokane -- removed to Coeur d'Alene Reservation, Idaho, 1887.
Middle Spokane -- removed to Coeur d'Alene Reservation, Idaho, 1887
Lower Spokane* -- Spokane Reservation.

Confederated Tribes of the Colville (Reservation): "With the exception of the Nez Perce who are of Shahaptian language stock, all of the other tribes now included under the Colville Confederated Tribes are of Salishan stock" (Bloodworth 1959:2). (Refer to: Bloodworth 1959:31-33 for details.)

Colville*
Chelan
Lake Salish (Lake)*
Methow
Nespelem*
Nez Perce
Northern Okanogan
Sanpoil*
Sinkaietk (Southern Okanogan)
Sinkauise (Columbia or Moses band of the Isle de Pierres)
Wenatchi
(Bloodworth 1959:2-6).

*traditionally in the Lake Roosevelt Area (Walker 1977:6).

APPENDIX II

TRADITIONAL SUBSISTENCE ITEMS

Large Game	Hunting Methods
Antelope	Bow and arrow; often alone.
Black Bear	Bow and arrow; often alone; along rivers and in berry patches.
Grizzly Bear	Bow and arrow; always in groups; along rivers and in berry patches.
Elk and Deer	Bow and arrow; in wooded areas, the prey was surrounded and communally driven toward a central kill area or into narrow coulees.
	Bow and arrow; in clear areas, fired portions of the plateau and encircled game as in the woods hunt.
	Driven over cliffs. (Ruby 1970:22; Walker 1977:25)

Small Game	Hunting Methods
Mink	Dead falls or traps
Wildcat	Dead falls, traps, or snares
Fox	Dead falls or traps
Lynx	Dead falls, traps, or snares
Fisher	Dead falls or traps
Marten	Dead falls or traps
Badger	Dead falls or traps
Otter	Dead falls or traps
Cougar	Dead falls or traps
Coyote	Dead falls, traps, or snares
Wolf	Dead falls or traps
Muskrat	Bow and arrow
Rabbit	Bow and arrow
Woodchucks	Bow and arrow
Squirrel	Bow and arrow (HRS 1978:3)
Birds	Bow and arrow (HRS 1978:3)
Burrowing animals	Flooded out (Walker 1977:26-26)
Turtles	

Never Eaten

Snakes
Dogs
Insects
Frogs
Mice
Wood Rats
(Walker (1977:26)

Pets

Raccoons
(Walker 1977:26)

Fish	Method Taken
Salmon	Little Falls and downstream, Spokane River; communally; a rock barrier was built part way across the river, then upstream from the barrier, they built a weir to trap the fish, and then speared the catch.
	Further upstream from Little Falls, Little Spokane River; communally; a barrier was constructed at an oblique angle. From this obstruction were placed funnels leading into basketwork traps. When full, the catch was speared.
	(Big) Spokane Falls, Spokane River; communally; a rock barrier was constructed across one arm of the river, leaving a space in the rock extremity where nets were placed to catch the fish.
	Kettle Falls, Columbia River; communally; baskets were set beneath the falls to catch the fish when they failed to clear the falls. Fishermen would then jump into the baskets and throw the salmon ashore.

Fish	Method Taken
Trout	Though sometimes fished for alone, trout were most often caught along with the salmon. (Ruby 1970:16-19)

Roots, Berries, and Herbs

"In the coulees and meadows rimming their rivers, the women dug for camass bulbs, using threefoot deerhorn-handled thornbush or other hardwood sticks. The Spokanes shared camass meadows with Kalispels along the Pend Orielle River, with Coeur d'Alenes in grounds south of the falls, and with Nez Perces and Yakimas in their respective countries. . . . In one day, with an early start, a woman in a good field could dig a bushel of camass . . ." (Ruby 1970:21).

Camassis quamash
Camassia leichtlinii
balsamroot
bitterroot (spetlum)
wild onion
wild carrott (parsnip)
wild currant
golden currant
squaw currant
hawthorne
gooseberry
Oregon grape
chokeberry
huckleberry
serviceberry
blue elderberry
(Ruby 1970:21-22)

APPENDIX III

AGREEMENTS, LEGISLATION, AND OPINIONS

Contents:

Spokane Treaty Agreement--of 1877 35
Special Field Orders No. 3--of 1880 36
Executive Order--of 1881 37
26 Stat. 989--of 1891 38
27 Stat. 120--of 1892 43
I Kappler 453--Agreement with Spokane Indians of 1887 . . . 45
32 Stat. 245--of 1902 47
32 Stat. 742--of 1902 49
32 Stat. 744--of 1902 50
33 Stat. 1006--of 1905 51
34 Stat. 325--of 1906 52
35 Stat. 458--of 1908 54
49 Stat. 1028--of 1935 57
54 Stat. 703--of 1940 61
58 Stat. 813--of 1944 63
59 I.D. 147--of 1945 65
67 Stat. 588--of 1953 94
72 Stat. 121--of 1958 97
84 I.D. 72--of 1977 98

Spokane Treaty Agreement
[cited in: 246 U.S. 283, 286; 1918]

In Council at Spokane Falls, W.T. August 18, 1877.

We, the undersigned chiefs and headmen of the Spokane Tribe of Indians for ourselves and our people herby agree to accept the following described land for our reservation: Beginning at the source of the Chimokan creek in Washington territory, thence down said creek to the Spokane river, thence down said river to the Columbia river, thence up the Columbia river to the mouth of Nimchin creek, thence easterly to the place of beginning.

And we so further agree to go upon the same by the first of November next with the view of establishing our permanent homes thereon and engaging in agricultural pursuits. We hereby renew our friendly relations with the whites and promise to remain at peace with the government and abide by all laws of the same, and obey the orders of the Indian Bureau and the officers acting thereunder.

Special Field Orders No. 3.
[cited in: I Kappler 924, 925]

Headquarters Department of the Columbia
In the Field, Spokane Falls, Wash., September 3, 1880.

Whereas in consequence of a promise made in August, 1877, by E.C. Watkins, inspector of the Interior Department, to set apart, or have set apart, for the use of the Spokane Indians the following-described territory, to wit: Commencing at the mouth of Cham-a-kane Creek, thence north 8 miles in direction of said creek, thence due west to the Columbia River, thence along the Columbia and Spokane Rivers to the point of beginning--the Indians are still expecting the Executive order in their case, and are much disturbed by the attempts of squatters to locate land within said limits: It is hereby directed that the above-described territorry, being still unsurveyed, be protected against settlement by other than said Indians until the survey shall be made, or until further instructions. This order is based upon plain necessity to preserve the peace until the pledge of the Government shall be fulfilled, or other arrangements accomplished.

The commanding officers of Forts Coeur d'Alene and Colville and Camp Chelan are charged with the proper execution of this order.

By command of Brigadier-General Howard.

H.H. Pierce,
First Lieutenant, Twenty-first Infantry, Acting Aid-de-Camp.

Executive Order

[cited in: I Kappler 925]

Executive Mansion, January 18, 1881.

It is hereby ordered that the following tract of land, situated in Washington Territory, be, and the same is hereby set aside and reserved for the use and occupancy of the Spokane Indians, namely: Commencing at a point where Chemakane Creek crosses the forth-eighth parallel of latitude; thence down the east bank of said creek to where it enters the Spokane River; thence across said Spokane River westwardly along the southern bank thereof to a point where it enters the Columbia River; thence across the Columbia River, northwardly along its western bank to a point where said river crosses the said forth-eighth parallel of latitude; thence east along said parallel to the place of beginning.

R.B. Hayes.

For printing and binding the monographs and bulletins, twenty-five thousand dollars;

For the Department of Justice, seven thousand dollars;

For the Post-Office Department, two hundred thousand dollars;

For the Agricultural Department, including ten thousand dollars for the Weather Bureau, seventy-five thousand dollars;

For the Department of Labor, eight thousand dollars;

For the Supreme Court of the United States, seven thousand dollars;

For the supreme court of the District of Columbia, one thousand five thousand dollars;

For the Court of Claims, twelve thousand dollars;

For the Library of Congress, fifteen thousand dollars;

For the Executive Office, three thousand dollars.

Limited periods for expenditure of allotments.

And no more than an allotment of one-half of the sum hereby appropriated shall be expended in the two first quarters of the fiscal year, and no more than one-fourth thereof may be expended in either of the two last quarters of the fiscal year, except that, in addition thereto, in either of said last quarters, the unexpended balances of allotments for preceding quarters may be expended.

Unexpended balances.

New printing presses.

For purchase of new printing presses, one hundred thousand dollars;

Annual leaves to employees of Government Printing Office.

To enable the Public Printer to comply with the provisions of the law granting thirty days' annual leave to the employees of the Government Printing Office, one hundred and fifty thousand dollars, or so much thereof as may be necessary;

Pro-rata leaves upon resignation, etc.

To pay pro-rata leaves of absence to employees who resign or are discharged (decision of the First Comptroller), fifteen thousand dollars:

Proviso.
Purchase, etc., of land for new Government Printing Office, suspended.
Ante, pp. 412, 413.

Provided, That the appropriation made in the sundry civil appropriation act approved August thirtieth, eighteen hundred and ninety, "to provide accommodations for the Government Printing Office," and the authority for the expenditure of the same, therein conferred, be and the same are hereby suspended.

Approved, March 3, 1891.

March 3, 1891.

CHAP. 543.—An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and ninety-two, and for other purposes.

Indian Department appropriations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department for the year ending June thirtieth, eighteen hundred and ninety-two, and fulfilling treaty stipulations with the various Indian tribes, namely:

Pay of agents at specified agencies.

For pay of fifty-eight agents of Indian affairs at the following named agencies, at the rates respectively indicated, namely:

At the Warm Springs Agency, at one thousand two hundred dollars;

At the Klamath Agency, at one thousand two hundred dollars;

At the Grand Ronde Agency, at one thousand two hundred dollars;

At the Siletz Agency, at one thousand two hundred dollars;

At the Umatilla Agency, at one thousand two hundred dollars;

At the Neah Bay Agency, at one thousand two hundred;

At the Yakama Agency, at one thousand eight hundred dollars;

At the Colville Agency, at one thousand five hundred dollars;

At the Puyallup (consolidated) Agency, embracing Nisqually and

Immediately available.

this appropriation to be immediately available and to become operative upon the execution by the duly appointed delegates of said respective nations specially authorized thereto by law of releases and conveyances to the United States of all the right, title, interest, and claim of said respective nations of Indians in and to said land (not including Grier County, which is now in dispute) in manner and

Indian title extinguished.

form satisfactory the the President of the United States: and said releases and conveyances, when fully executed and delivered, shall operate to extinguish all claim of every kind and character of said Choctaw and Chickasaw Nations of Indians in and to the tract of country to which said releases and conveyances shall apply.

Lands opened to homestead settlement only.

SEC. 16. That whenever any of the lands acquired by either of the three foregoing agreements respecting lands in the Indian or Oklahoma Territory shall by operation of law or proclamation of the President of the United States be open to settlement they shall be

R. S., sec. 2301, p. 421.

disposed of to actual settlers only, under the provisions of the homestead and town site laws (except section twenty-three hundred and one of the Revised States of the United States which shall not

Proviso.

apply): *Provided, however,* That each settler, on said lands shall before making a final proof and receiving a certificate of entry, pay

Additional payment.

to the United States for the land so taken by him, in addition to the fees provided by law, and within five years from the date of the first original entry, the sum of one dollar and fifty cents per acre, one-half of which shall be paid within two years; But the rights of honor-

Soldiers and sailors.

ably discharged Union soldiers and sailors as defined and described

R. S., sec. 2304-2305, p. 422.

in Sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States shall not be abridged except as to the sum to be paid as aforesaid, and all the lands in Oklahoma are hereby declared to be agricultural lands, and proof of their non-mineral character shall not be required as a condition precedent to final entry

Division into counties. Oklahoma lands.

SEC. 17. That before any lands in Oklahoma are open to settlement it shall be the duty of the Secretary of the Interior to divide the same into counties which shall contain as near as possible not less than nine hundred square miles in each county. In establishing said county line the Secretary is hereby authorized to extend the lines of the counties already located so as to make the area of said counties equal, as near as may be, to the area of the counties

Election.

provided for in this act. At the first election for county officers the people of each county may vote for a name for each county, and the name which receives the greatest number of votes shall be the name

Provisos.

of such county: *Provided, further,* That as soon as the county lines

County seats.

are designated by the Secretary, he shall reserve not to exceed one-half section of land in each county to be located near the center of

R. S., secs. 2287, 2288, p. 437.

said county, for county seat purposes to be entered under sections twenty-three hundred and eighty-seven and twenty-three and eighty-eight of the Revised Statutes: *Provided,* That in addition to the jurisdiction granted to the probate courts and the judges thereof in Oklahoma Territory by Legislative enactments which enactments are hereby ratified, the Probate Judges of said Territory are hereby granted such jurisdiction in town site matters and under such regulations as are provided by the laws of the State of Kansas.

Lease of school lands.

SEC. 18. That the school lands reserved in the Territory of Oklahoma by this and former acts of Congress may be leased for a period not exceeding three years for the benefit of the school fund of said Territory by the Governor thereof, under regulations to be prescribed by the Secretary of the Interior.

Agreement with Coeur d'Alene Indians ratified.

SEC. 19. The following agreement entered into on the part of the United States by John V. Wright, Jared W. Daniels and Henry W. Andrews, Commissioners with the Coeur d'Alene Indians in Idaho Territory signed on the part of said Indians by Chief Andrew Seltice, and others which bears date March twenty-sixth, eighteen

hundred and eighty-seven, and now on file in the Interior Department, is hereby accepted, ratified, and confirmed and is in the following words, to-wit:

AGREEMENT WITH CŒUR D'ALENE. Agreement.

This agreement made pursuant to an item in the act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and eighty-seven, and for other purposes," approved May fifteenth, eighteen hundred and eighty-six, by John V. Wright, Jared W. Daniels, and Henry W. Andrews, duly appointed commissioners on the part of the United States and the Cœur d'Alene tribe of Indians now residing on the Cœur d'Alene Reservation, in the Territory of Idaho, by their chiefs, headmen, and other male adults, whose names are hereunto subscribed, they being duly authorized to act in the premises, witnesseth: *Post*, p. 1030.

ARTICLE 1. ARTICLE 1.

Whereas said Cœur d'Alene Indians were formerly possessed of a large and valuable tract of land lying in the Territories of Washington, Idaho, and Montana, and whereas said Indians have never ceded the same to the United States, but the same, with the exception of the present Cœur d'Alene Reservation, is held by the United States and settlers and owners deriving title from the United States, and whereas said Indians have received no compensation for said land from the United States: Therefore, Preamble.

ARTICLE 2. ARTICLE 2.

For the consideration hereinafter stated the said Cœur d'Alene Indians hereby cede, grant, relinquish, and quitclaim to the United States all right, title, and claim which they now have, or ever had, to all lands in said Territories and elsewhere, except the portion of land within the boundaries of their present reservation in the Territory of Idaho, known as the Cœur d'Alene Reservation. Lands ceded.

ARTICLE 3. ARTICLE 3.

The said Cœur d'Alene Indians agree and consent that the Upper and Middle bands of Spokane Indians residing in and around Spokane Falls, in the Territory of Washington, may be removed to the Cœur d'Alene Reservation and settled thereon in permanent homes on the terms and conditions contained in an agreement made and entered into by and between John V. Wright, Jared W. Daniels, and Henry W. Andrews, commissioners on the part of the United States and said Spokane Indians, concluded on the fifteenth day of March, eighteen hundred and eighty-seven, at Spokane Falls, in the Territory of Washington. Consent to settlement of Spokanes.

ARTICLE 4. ARTICLE 4.

And it is further agreed that the tribe or band of Indians known as Calespels, now residing in the Calespel Valley, Washington Territory, and any other bands of non-reservation Indians now belonging to the Colville Indian Agency, may be removed to the Cœur d'Alene Reservation by the United States, on such terms as may be mutually agreed on by the United States and any such tribes or bands. Consent to settlement of Calespels and other Indians.

ARTICLE 5.

ARTICLE 5.

Cœur d'Alene Reservation to remain Indian land.

In consideration of the foregoing cession and agreements, it i agreed that the Cœur d'Alene Reservation shall be held forever a Indian land and as homes for the Cœur d'Alene Indians, now resid ing on said reservation, and the Spokane or other Indians who may be removed to said reservation under this agreement, and their posterity: and no part of said reservation shall ever be sold, occupied open to white settlement, or otherwise disposed of without the consent of the Indians residing on said reservation.

ARTICLE 6.

ARTICLE 6.

Payment to Cœur d'Alenes.

Distribution.

Mill.

Articles.

And it is further agreed that the United States will expend for the benefit of said Cœur d'Alene Indians the sum of one hundred and fifty thousand dollars, to be expended under the direction of the Secretary of the Interior, as follows: For the first year, thirty thousand dollars, and for each succeeding year for fifteen years, eight thousand dollars. As soon as possible after the ratification of this agreement by Congress, there shall be erected on said reservation a saw and grist mill, to be operated by steam, and an engineer and miller employed, the expenses of building said mill and paying the engineer and miller to be paid out of the funds herein provided. The remaining portion of said thirty thousand dollars, if any, and the other annual payments shall be expended in the purchase of such useful and necessary articles as shall best promote the progress, comfort, improvement, education, and civilization of said Cœur d'Alene Indians, parties hereto.

ARTICLE 7.

ARTICLE 7.

Cash payments instead of articles.

It is further agreed that if it shall appear to the satisfaction of the Secretary of the Interior that in any year in which payments are to be made as herein provided said Cœur d'Alene Indians are supplied with such useful and necessary articles and do not need the same, and that they will judiciously use the money, then said payment shall be made to them in cash.

ARTICLE 8.

ARTICLE 8.

Balances.

It is further agreed that any money which shall not be used in the purchase of such necessary articles or paid over, as provided in article seven, shall be placed in the Treasury of the United States to the credit of the said Cœur d'Alene Indians, parties hereto, and expended for their benefit, or paid over to them, as provided in the foregoing articles.

ARTICLE 9.

ARTICLE 9.

Selection of articles.

It is further agreed that in the purchase for distribution of said articles for the benefit of said Indians the wishes of said Indians shall be consulted as to what useful articles they may need, or whether they need any at all, and their wishes shall govern as far as it is just and proper.

ARTICLE 10.

ARTICLE 10.

Employment of Indians.

It is further agreed that in the employment of engineers, millers, mechanics, and laborers of every kind, preference shall be given in all cases to Indians, parties hereto, qualified to perform the work and labor, and it shall be the duty of all millers, engineers, and mechanics to teach all Indians placed under their charge their trades and vocations.

ARTICLE 11. ARTICLE 11.

Physician, blacksmith, and carpenter

It is further agreed that in addition to the amount heretofore provided for the benefit of said Cœur d'Alene Indians the United States, at its own expense, will furnish and employ for the benefit of said Indians on said reservation a competent physician, medicines, a blacksmith, and carpenter.

ARTICLE 12. ARTICLE 12.

Marriages with white men.

In order to protect the morals and property of the Indians, parties hereto, no female of the Cœur d'Alene tribe shall be allowed to marry any white man unless, before said marriage is solemnized, said white man shall give such evidence of his character for morality and industry as shall satisfy the agent in charge, the minister in charge, and the chief of the tribe that he is a fit person to reside among the Indians; and it is further agreed that Stephen E. Liberty, Joseph Peavy, Patrick Nixon, and Julien Boutelier, white men who have married Indian women and with their families reside on the Cœur d'Alene Reservation, are permitted to remain thereon, they being subject, however, to all laws, rules, and regulations of the Commissioner of Indian Affairs applicable to Indian reservations.

ARTICLE 13. ARTICLE 13.

Lands for De Smet Mission.

It is further agreed and understood that in consideration of the amount expended in buildings and other improvements on said Cœur d'Alene Reservation for religious and educational purposes by the De Smet Mission, and valuable services in the education and moral training of children on said reservation, and, in consideration that the Indians, parties hereto, have donated for said purposes one section of land on which is situated the boys' school, one section on which is situated the girl's school, and one section of timbered land for use of the schools, that said De Smet Mission and its successors may continue to hold and use said three sections of land and the buildings and improvements thereon so long as the same shall be used by said De Smet Mission and its successors for religious and educational purposes.

ARTICLE 14. ARTICLE 14.

Effect.

This agreement shall not be binding on either party until ratified by Congress.

Signatures.

In testimony whereof the said John V. Wright, Jared W. Daniels, and Henry W. Andrews, on the part of the United States, and the chiefs, headmen, and other adult Indians, on the part of the Indians, parties hereto, have hereunto set their hands and affixed their seals.

Done at De Smet Mission on the Cœur d'Alene Reservation, in the Territory of Idaho, on this the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and eighty-nine.

Agreement with Cœur d'Alenes ratified.

SEC. 20. That the following agreement entered into with the said Cœur d'Alene Indians by Benjamin Simpson, John H. Shupe, and Napoleon B. Humphrey, Commissioners on the part of the United States, signed by said Commissioners and by said Andrew Seltice, Chief, and others, on the part of said Indians, which agreement bears date September ninth, eighteen hundred and eighty-nine, and is now on file in the Interior Department, is hereby accepted, ratified, and confirmed, and is in the following words, to wit:

AGREEMENT. Agreement.

Vol. 25, p. 1002.

This agreement, made pursuant to an item of an Act of Congress, namely; Section 4 of the Indian appropriation act, approved March

Lights. For lights, seven hundred and fifty dollars.

Stationery, etc. For stationery and other necessary expenses, to be approved by the Secretary of the Interior, thirty-five thousand dollars.

Rent. For rents, twenty-two thousand eight hundred and fifty dollars.

Approved, July 13, 1892.

July 13, 1892.

CHAP. 162.—An act to amend the act approved March first, eighteen hundred and eighty-seven, relating to the Hospital Corps of the Army.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section six of the act approved March first, eighteen hundred and eighty-seven, entitled "An act to organize the Hospital Corps of the Army of the United States, to define its duty, and fix its pay," be, and hereby is, amended to read as follows:

Hospital Corps, Army. Vol. 24, p. 435.

Pay of privates. "SEC. 6. That the pay of privates of the Hospital Corps shall be eighteen dollars per month, with the increase on account of length of service as is now or may hereafter be allowed by law to other enlisted men. They shall be entitled to the same allowance as a corporal of the arm of service with which they may be on duty."

Approved, July 13, 1892.

July 13, 1892.

CHAP. 163.—An act authorizing the issuing of patents for locations with Certificates granted under the Act of Congress approved August fifth, eighteen hundred and fifty four, entitled "An act for the relief of the legal heirs of Benjamin Metoyer."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the case of all locations of land heretofore made, or which hereafter may be made, with certificates issued under the Act of Congress approved August fifth, eighteen hundred and fifty four, entitled "An act for the relief of the legal heirs of Benjamin Metoyer" it shall be lawful for the Commissioner of the General Land Office, and he is hereby directed, to cause patents to issue to the heirs and legal representatives of Benjamin Metoyer, or their assigns, who have made or may make such locations, after such locations have been approved by said Commissioner as regularly made and in accordance with law: *Provided*, That said locations be not in conflict with prior valid appropriations of land made in conformity with the laws of the United States.

Benjamin Metoyer. Land patents to heirs of. Vol. 10, p. 824.

Proviso. Not to conflict with prior claims.

Approved, July 13, 1892.

July 13, 1892.

CHAP. 164.—An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the fiscal year ending June thirtieth, eighteen hundred and ninety-three, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department for the year ending June thirtieth, eighteen hundred and ninety-three, and fulfilling treaty stipulations with the various Indian tribes, namely:

Indian Department appropriations.

Pay of agents at specified agencies. For pay of fifty-seven agents of Indian affairs at the following named agencies, at the rates respectively indicated, namely:

Proviso. Army officers to be detailed as agents. *Provided*, That from and after the passage of this act the President shall detail officers of the United States Army to act as Indian Agents at all Agencies where vacancies from any cause may hereafter occur,

to be appointed hereunder shall be of the same political party, and any agreement entered into shall be ratified by Congress.

Indian depredation claims.
Increase pay to Assistant Attorney-General.

For increase of compensation to the Assistant Attorney-General in charge of Indian depredation claims, to make his compensation the same as that allowed by law to the other assistant Attorneys-General in the Department of Justice, two thousand five hundred dollars, or so much thereof as may be necessary.

Matrons to teach housekeeping.

To enable the Commissioner of Indian Affairs to employ suitable persons as matrons to teach Indian girls in house-keeping and other household duties, at a rate not exceeding sixty dollars per month, five thousand dollars.

Upper and Middle bands Spokanes.
Agreement with, ratified.
Removal to Coeur d'Alene Reservation, etc.

For the purpose of carrying into effect the agreement entered into with the Upper and Middle bands of Spokane Indians, dated March eighteenth, eighteen hundred and eighty-seven, and filed in the office of the Commissioner of Indian Affairs July first, eighteen hundred and eighty seven, which agreement is hereby accepted, ratified and confirmed, the sum of thirty thousand dollars is hereby appropriated, out of any money in the Treasury not otherwise appropriated, as the first installment of the sum of ninety-five thousand dollars mentioned in said agreement; the above amount of thirty thousand dollars to be expended for the benefit of those removing to the Coeur d'Alene Reservation, in the erection of houses, assisting them in breaking land, purchase of cattle, seeds, agricultural implements, saw and grist mills, clothing, subsistence, and so forth.

Umatilla Reservation, Oreg.
Sale and allotment.
Vol. 23, pp. 341, 342.

Sale and allotment of Umatilla Reservation, reimbursable: To carry into effect sections one and two of "An act providing for allotment of lands in severalty to the Indians residing upon the Umatilla Reservation, in the State of Oregon, and grant patents therefor, and for other purposes," approved March third, eighteen hundred and eighty-five, eight thousand dollars, or so much thereof as may be necessary, said amount to be reimbursed to the United States out of the proceeds of sale of Umatilla lands.

Menomonee Indians, Wis.
Repayment for logs sold.
Vol. 26, p. 146.

Repayment to Menomonee Indians: To repay to the Menomonee tribe of Indians in Wisconsin the sum of twenty-seven thousand four hundred and fifty-three dollars and forty cents, amount covered into the Treasury, being the balance of proceeds of sales of logs cut on their reservation during the years eighteen hundred and ninety and eighteen hundred and ninety-one, to be used in the same manner as other moneys received as proceeds of sale of logs from said reservation.

RELIEF OF FOND DU LAC CHIPPEWA INDIANS.

Fond du Lac Chippewas.
Payment to, of amount recovered from timber depredations.

This amount to be expended under the direction of the Secretary of the Interior for the benefit of the Fond du Lac Chippewa Indians, of the State of Minnesota, being the sum recovered by the United States in compromise of suits against certain parties for timber depredations upon the Fond du Lac reservation, in Minnesota, and which sum has been deposited in the United States Treasury as a miscellaneous receipt, twenty thousand four hundred and forty-six dollars and fifty-two cents.

Turtle Mountain band, Chippewas.
Commission to treat with, for lands, removal, etc.

That the President of the United States is hereby authorized to appoint a commission to consist of three persons familiar with Indian affairs, not more than two of whom shall be of the same political party, who shall negotiate with the Turtle Mountain band of Chippewa Indians in North Dakota for the cession and relinquishment to the United States of whatever right or interest they may have in and to any and all land in said State to which they claim title, and for their removal to and settlement upon lands to be hereafter selected and determined upon by the Secretary of the Interior upon the recommendation of the proposed commissioners, subject to the approval of Congress. Said commissioners shall also report to the Secretary of the Interior the number of the said Chippewa Indians and the number of Mixed Bloods, if any, who are entitled to consideration by the United States Government;

Number of Indians, etc., to be reported.

Damages.

Referees.

SEC. 3. That before said railway shall be constructed through any lands held by individual occupants according to the laws, customs, and usages of any of the Indian nations or tribes through which it may be constructed, full compensation shall be made to such occupants for all property to be taken or damage done by reason of the construction of such railway. In case of failure to make amicable settlement with any occupant, such compensation shall be determined by the appraisement of three disinterested referees, to be appointed one (who shall act as chairman) by the President, one by the chief of the nation to which said occupant belongs, and one by said railway company, who, before entering upon the duties of their appointment, shall take and subscribe, before a district judge, clerk of a district court, or United States commissioner, an oath that they will faithfully and impartially discharge the duties of their appointment, which oath, duly certified, shall be re-

---

deduct the cost of the same from any moneys received by said Indians from grazing leases on said reservation.

Ninth. The existing provisions of all former treaties and agreements, not inconsistent with this agreement, are hereby continued in force.

Tenth. This agreement shall take effect upon its approval by the Secretary of the Interior.

[Schedules "A" and "B" referred to in the agreement and made a part thereof, filed in the Indian Office—file mark, "38068—1892."]

[Reference for note b on page 449.]

b This agreement is as follows:

AGREEMENT WITH SPOKAN INDIANS.

Articles of agreement made and concluded at Spokane Falls, in the Territory of Washington, the 18th day of March, eighteen hundred and eighty-seven, by and between John V. Wright, Jarred W. Daniels, and Henry W. Andrews, commissioners duly appointed and authorized, on the part of the United States, and the undersigned, chiefs, head-man, and other Indians of the Upper and Middle bands of Spokane Indians, they being authorized to act for said bands by them.

ARTICLE 1.

The aforesaid bands of Spokane Indians hereby cede to the United States all right, title, and claim which they now have, or ever had, to any and all lands lying outside of the Indian reservations in Washington and Idaho Territories, and they hereby agree to remove to and settle upon the Cœur d'Alêne Reservation in the Territory of Idaho.

ARTICLE 2.

It is further agreed by the parties hereto, that said Indians will be permitted to select their farms and homes on a tract of land to be laid off and surveyed and the boundaries marked in a plain and substantial manner under the direction of the Secretary of the Interior, on said Cœur d'Alêne Reservation, provided that in laying out said tract of land, the lands taken and occupied by the Indians now on said Cœur d'Alêne Reservation shall not be interfered with; and it is further agreed that said Spokane Indians will take lands in severalty under and according to an act of Congress entitled "An act to provide for the allotments of land in severalty to Indians on the various reservations and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," which act was passed and approved during the second session of the Forty-ninth Congress, and is known as the allotment act.

ARTICLE 3.

It is further agreed that the homes and lands selected, as provided for in the foregoing article, are to be and remain the permanent homes of the Indians, parties hereto, and their children forever.

ARTICLE 4.

It is further agreed that in case any Indian or Indians, parties hereto, have settled upon any of the unoccupied lands of the United States outside of said reservation, and have made improvements thereon with the intention of perfecting title to the same under the homestead, preemption, or other laws of the United States, and residing on the same at the date of the signing of this agreement, he or they shall not be deprived of any right acquired by said settlement, improvement, or occupancy by reason of signing this agreement or removal to said Cœur d'Alêne Reservation, and

turned with their award to and filed with the Secretary of the Interior within sixty days from the completion thereof; and a majority of said referees shall be competent to act in case of the absence of a member, after due notice. And upon the failure of either party to make such appointment within thirty days after the appointment made by the President, the vacancy shall be filled by the district judge of any United States court in the Indian Territory, upon the application of the other party. The chairman of said board shall appoint the time and place for all hearings within the nation to which such occupant belongs. Each of said referees shall receive for his services the sum of four dollars per day for each day they are engaged in the trial of any case submitted

Substitution on failure to appoint.

Hearings.

Compensation.

---

said tract or tracts of land shall continue to be held by said parties, and the same patented to them by the United States.

ARTICLE 5.

In consideration of the foregoing cessions and agreements the United States agrees to expend for the benefit of said Indians, parties hereto, the sum of ninety-five thousand dollars, as follows, to wit: For the first year, thirty thousand dollars; for the second year, twenty thousand dollars, and for each succeeding year thereafter for eight (8) years, five thousand dollars, said money to be expended under the direction of the Secretary of the Interior in the removal of the said Indians to the Cœur d'Alêne Reservation, in erecting suitable houses, in assisting them in breaking lands, in furnishing them with cattle, seeds, and agricultural implements, saw and grist mills, thrashing machines, mowers, clothing, provisions, in taking care of the old, sick, and infirm; in affording educational facilities, and in any other manner tending to their civilization and self-support: *Provided*, That in case any of the money herein provided for is not used or expended in any year for which the same is appropriated, said money shall be deposited in the Treasury of the United States to the credit of the Indians, parties hereto, to be used for their benefit under the direction of the Secretary of the Interior.

ARTICLE 6.

It is further agreed that in addition to the foregoing provisions the United States shall employ and furnish a blacksmith and a carpenter to do necessary work and to instruct the Indians, parties hereto, in those trades.

ARTICLE 7.

It is further agreed that in the employment of carpenters, blacksmiths, teamsters, farmers, or laborers, preference shall in all cases be given to Indians, parties hereto, who are qualified to perform the work or labor.

ARTICLE 8.

In order to encourage said Indians in taking allotments of land, and in preparing the same for cultivation, it is agreed that when all of said Indians shall have selected and shall have broken five acres or more on each farm, the sum of $5,000 in money shall be given them out of the funds herein provided and distributed pro rata among them, provided that in the discretion of the Secretary of the Interior and the Commissioner of Indian Affairs, a pro rata payment out of said fund may be made to any ten families who shall have complied with the provisions of this article as to breaking land.

ARTICLE 9.

In consideration of the ages of Chiefs Louis, Spokane Garry, Paul Schulhault, Antarchan, and Enoch, the United States agrees, in addition to the other benefits herein provided, to pay to each of them for ten years the sum of $100 per annum.

ARTICLE 10.

In case any Indian or Indians, parties hereto, shall prefer and elect to remove either to the Colville or Jocko reservations instead of the Cœur d'Alêne Reservation, and shall give reasonable notice of the same, after the ratification of this agreement by Congress, he or they shall be permitted to do so, and shall receive a pro rata share of all the benefits provided for in this agreement.

ARTICLE 11.

This agreement shall not be binding upon either party until the same is ratified by Congress.

his bond, which bond must be at least equal in amount to the sum hereby appropriated: *And provided further*, That in all cases where the original claimants were adjudicated bankrupts the payments shall be made to the next of kin instead of to assignees in bankruptcy; but these provisions shall not apply to payments in the cases of the French spoliation claims, which shall be made as heretofore prescribed in this bill.

Next of kin instead of bankrupts' assignee.

French spoliation claims.

Wherever under this bill it is provided that a payment be made to an executor or an administrator, whether original or ancillary or de bonis non, and such executor or administrator is dead or no longer holds his office, the payment shall be made to the successor therein, his title to hold such office being established to the satisfaction of the Secretary of the Treasury.

Substitution in case of death of executor, etc.

Approved, May 27, 1902.

CHAP. 888.—An Act Making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes.

May 27, 1902.
[Public, No. 125.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department and in full compensation for all offices the salaries for which are specially provided for herein, for the service of the fiscal year ending June thirtieth, nineteen hundred and three, and fulfilling treaty stipulations for the various Indian tribes, namely:

Indian Department appropriations.

CURRENT AND CONTINGENT EXPENSES.

For pay of forty-three agents of Indian affairs at the following-named agencies, at the rates respectively indicated, namely:

Pay of agents at agencies.

At the Blackfeet Agency, Montana, one thousand eight hundred dollars;

At the Cheyenne and Arapahoe Agency, Oklahoma Territory, one thousand eight hundred dollars;

At the Cheyenne River Agency, South Dakota, one thousand seven hundred dollars;

At the Colville Agency, Washington, one thousand five hundred dollars;

At the Crow Creek Agency, South Dakota, one thousand six hundred dollars;

At the Crow Agency, Montana, one thousand eight hundred dollars;

At the Devils Lake Agency, North Dakota, one thousand two hundred dollars;

At the Flathead Agency, Montana, one thousand five hundred dollars;

At the Fort Apache Agency, Arizona, one thousand five hundred dollars;

At the Fort Belknap Agency, Montana, one thousand five hundred dollars;

At the Fort Berthold Agency, North Dakota, one thousand five hundred dollars;

At the Fort Hall Agency, Idaho, one thousand five hundred dollars;

At the Fort Peck Agency, Montana, one thousand eight hundred dollars;

hundred and ninety-one (Twenty-sixth Statutes, ten hundred and forty-one), among the members of said tribe, to be held by them as individuals in the same manner as their other individual stock is held, after which the common herd shall cease to exist. The Secretary of the Interior is also authorized to distribute among the tribe per capita all of the money due or to become due said Indians from sales from the common herd, known as the "Crow herd fund": *Provided*, That the distribution of the cattle and payment of the money shall be made at such time and under such regulations as the Secretary of the Interior in his discretion may prescribe. That the funds now in the Treasury of the United States to the credit of the Crow Indians in Montana, or any portion of it, may, with the consent of the tribe, be used by the Secretary of the Interior, in his discretion, in the purchase of stock cattle to be distributed among the members of the tribe under such regulations as he may prescribe.

Distribution of "Crow herd fund."

Proviso. Regulations.

Purchase of stock cattle.

That the Secretary of the Interior be, and he is hereby, authorized and empowered, under general regulations to be fixed by him, to permit the use of the right of way through the allotted lands of the Southern Ute Indians in Colorado for irrigating ditches to the extent of the ground occupied by the water in said ditches and such number of feet on each side of the marginal limits thereof as may be necessary in maintaining and operating the ditches: *Provided*, That no application for such right of way shall be granted unless accompanied by the consent, in writing, of the allottee or allottees whose land may be affected thereby.

Southern Utes, Colo. Right of way, irrigation ditches.

Proviso. Consent of Indians.

That the Secretary of the Interior shall make investigation as to the practicability of providing a water supply for irrigation purposes to be used on a portion of the reservation of the Southern Utes in Colorado, and he is authorized, in his discretion, to contract for and to expend from the funds of said Southern Utes in the purchase of perpetual water rights sufficient to irrigate not exceeding ten thousand acres on the western part of the Southern Ute Reservation and for annual charges for maintenance of such water thereon such amount and upon such terms and conditions as to him may seem just and reasonable, not exceeding one hundred and fifty thousand dollars for the purchase of such perpetual water rights and not exceeding a maximum of fifty cents per acre per annum for the maintenance of water upon the land to be irrigated: *Provided*, That after such an investigation he shall find all the essential conditions relative to the water supply and to the perpetuity of its availability for use upon said lands such as in his judgment will justify a contract for its perpetual use: *Provided further*, That the Secretary of the Interior, upon making all such contracts, shall require from the person or persons entering upon such contract a bond of indemnity, to be approved by him, for the faithful and continuous execution of such contract as provided therein.

Southern Ute Reservation, Colo. Irrigation contract authorized.

Provios. Conditions.

Bond required.

That the mineral lands only in the Spokane Indian Reservation, in the State of Washington, shall be subject to entry under the laws of the United States in relation to the entry of mineral lands: *Provided*, That lands allotted to the Indians or used by the Government for any purpose or by any school shall not be subject to entry under this provision.

Spokane Reservation, Wash. Only mineral lands subject to entry.

Proviso. Lands excepted.

Post, pp. 742, 744.

To enable the Secretary of the Treasury to pay the claim of Josef Stainer for labor and material used in making repairs to school buildings numbered one, two, and three at Cheyenne River Indian Agency, South Dakota, damaged by windstorm and cyclone on night of July nineteenth, eighteen hundred and ninety-two, as approved by the Secretary of the Interior, two hundred and seventy-eight dollars and thirty-seven cents, to be paid from unexpended balance of appropriation "Education, Sioux Nation."

Josef Stainer. Payment to.

Inscription.

Size.

Expense.

of Agriculture may require for sending out seeds on Congressional orders, the franks to have printed thereon the facsimile signatures of Senators, Representatives, and Delegates, also the names of their respective States or Territories, and the words "United States Department of Agriculture, Congressional Seed Distribution", or such other printed matter as the Secretary of Agriculture may direct; the franks to be of such size and style as may be prescribed by the Secretary of Agriculture; the expense of printing the said franks to be charged to the allotment for printing and binding for the two Houses of Congress.

Approved, May 19, 1902.

May 27, 1902.
[Pub. Res., No 24.]

[No. 24.] Joint Resolution Fixing the time when certain provisions of the Indian appropriation Act for the year ending June thirtieth, nineteen hundred and three, shall take effect.

Indian appropriation act.

Date of effect.
Ante, p. 245.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act making appropriations for the current and contingent expenses of the Indian Department and fulfilling treaty stipulations with the various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes," shall take effect from and after July first, nineteen hundred and two, except as otherwise specially provided therein.

Approved, May 27, 1902.

May 27, 1902.
[Pub. Res. No. 25.]

[No. 25.] Joint Resolution Fixing the time when a certain provision of the Indian appropriation Act for the year ending June thirtieth, nineteen hundred and three, shall take effect.

Spokane Indian reservation.
Mining entries not allowed until December 31, 1902.
Ante, p. 266.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That that provision in the Act entitled "An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes," which relates to the subjecting to entry under the mining laws of the United States certain lands in the Spokane Indian Reservation, in the State of Washington, shall not take effect and be operative until December thirty-first, nineteen hundred and two.

Approved, May 27, 1902.

May 28, 1902.
[Pub. Res., No. 26.]

[No. 26.] Joint Resolution To provide for the printing of five thousand copies of the consolidated reports of the Gettysburg National Park Commission, eighteen hundred and ninety-three to nineteen hundred and one, inclusive.

Gettysburg National Park Commission.
Printing of consolidated reports.

Distribution.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there be printed five thousand copies of the consolidated reports of the Gettysburg National Park Commission, eighteen hundred and ninety-three to nineteen hundred and one, inclusive, of which one thousand shall be for the Senate, two thousand for the House of Representatives, one thousand for the office of the Secretary of War, and one thousand for the Gettysburg National Park Commission.

Approved, May 28, 1902.

pounder boat howitzers, English (bronze), without carriages, relics of the Revolutionary war, now at the Allegheny Arsenal, Pittsburg, Pennsylvania, to be placed at the grave of General Daniel Morgan in such manner that their safety from unlawful removal will be assured and their return if called for by Congress.

Approved, June 6, 1902.

June 19, 1902.
[Pub. Res., No. 31.]

[No. 31.] Joint Resolution Supplementing and modifying certain provisions of the Indian appropriation Act for the year ending June thirtieth, nineteen hundred and three.

Indian appropriation act. Corrections.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the Act "Making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes," are hereby supplemented and modified as follows:

Spokane Indian Reservation, Wash.

The Secretary of the Interior is directed to make allotments in severalty to the Indians of the Spokane Indian Reservation in the State of Washington, and upon the completion of such allotments the President shall by proclamation give public notice thereof, whereupon the lands in said reservation not allotted to Indians or used or reserved by the Government, or occupied for school purposes, shall be opened to exploration, location, occupation, and purchase under the mining laws.

Land not allotted open to purchase, etc. *Ante*, p. 266.

Walker River Indian Reservation. Nonirrigable grazing lands. *Ante*, p. 260.

In addition to the allotment in severalty of lands in the Walker River Indian Reservation in the State of Nevada, the Secretary of the Interior shall, before any of said lands are opened to disposition under any public land law, select and set apart for the use in common of the Indians of that reservation such an amount of nonirrigable grazing lands therein at one or more places as will subserve the reasonable requirements of said Indians for the grazing of live stock.

Uintah and White River Utes. Nonirrigable grazing lands. *Ante*, p. 263. *Post*, p. 997.

In addition to the allotments in severalty to the Uintah and White River Utes of the Uintah Indian Reservation in the State of Utah, the Secretary of the Interior shall, before any of said lands are opened to disposition under any public land law, select and set apart for the use in common of the Indians of that reservation such an amount of nonirrigable grazing lands therein at one or more places as will subserve the reasonable requirements of said Indians for the grazing of live stock.

Uncompahgre Indians. Allotments confined to agricultural lands.

All allotments hereafter made to Uncompahgre Indians of lands in said Uintah Indian Reservation shall be confined to agricultural land which can be irrigated, and shall be on the basis of eighty acres to each head of a family and forty acres to each other Indian, and no more.

Grazing lands. *Ante*, p. 264.

The grazing land selected and set apart as aforesaid in the Uintah Indian Reservation for the use in common of the Indians of that reservation shall be equally open to the use of all Uncompahgre Indians receiving allotments in said reservation of the reduced area here named.

Allotments in severalty to Indians outside Indian Territory. Vol. 24, p. 388.

Insofar as not otherwise specially provided, all allotments in severalty to Indians, outside of the Indian Territory, shall be made in conformity to the provisions of the Act approved February eighth, eighteen hundred and eighty-seven, entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," and other general Acts amendatory thereof or supplemental thereto, and shall be subject to all the restrictions and carry all the privileges incident to allotments made under said Act and other general Acts amendatory thereof or supplemental thereto.

Ante, p. 260.

March 3, 1905.
[H. R. 15609.]
[Public, No. 173.]

CHAP. 1440.—An Act Providing for the acquirement of water rights in the Spokane River along the southern boundary of the Spokane Indian Reservation, in the State of Washington, for the acquirement of lands on said reservation for sites for power purposes and the beneficial use of said water, and for other purposes.

Spokane River, Wash. Use of waters.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right to the use of the waters of the Spokane River where the said river forms the southern boundary of the Spokane Indian Reservation may, with the consent of the Secretary of the Interior, be acquired by any citizen, association, or corporation of the United States by appropriation under and pursuant to the laws of the State of Washington.

Spokane Indian Reservation. Grant of lands of, for dams, etc.

SEC. 2. That the Secretary of the Interior be, and he hereby is, authorized and empowered to grant such appropriator or appropriators land on said reservation, whether the same has been allotted in severalty to any individual Indians, but which has not been conveyed to the allottee with full power of alienation, or whether the same remains unallotted, on the north bank of the said Spokane River, such as shall be necessary and requisite for overflow rights and for the erection of suitable water, electrical, or power plants, dams, wing walls, flumes, or other needful structures required for the development of power or for the beneficial use of said water: *Provided*, That no lands shall be granted under this Act until after the Secretary of the Interior is satisfied that the person, association, or company applying has made said application in good faith and with intent and ability to use said lands for the purposes above specified and that it requires the quantity of land applied for in such use, and in case objection to the grant of said land shall be made the said Secretary shall afford the parties so objecting a full opportunity to be heard.

Proviso. Decision of Secretary of the Interior.

Compensation.

SEC. 3. That the compensation to be paid for said land by said applicants shall be determined in the manner prescribed in section three of the Act of March second, eighteen hundred and ninety-nine, entitled "An Act to provide for the acquiring of rights of way by railroad companies through Indian reservations, Indian lands, and Indian allotments, and for other purposes."

Vol. 30, p. 991.

Indian lands.

SEC. 4. That if the land allotted in severalty to any individual Indian which has not been conveyed to the allottee with full power of alienation be granted to any such appropriator, the Secretary of the Interior is empowered to use the moneys received for such land so allotted in the purchase of other suitable lands for such allottee.

Rules, etc.

SEC. 5. That the Secretary of the Interior shall make all needful rules and regulations not inconsistent herewith for the proper execution and carrying into effect of this Act.

Approved, March 3, 1905.

March 3, 1905.
[H. R. 15970.]
[Public, No. 174.]

CHAP. 1441.—An Act To amend section eleven hundred and forty-one of the "Act to establish a code of law for the District of Columbia," approved March third, nineteen hundred and one, as amended by the Act approved June thirtieth, nineteen hundred and two.

District of Columbia Code. Guardianship. Vol. 31, p. 1371, amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section eleven hundred and forty-one of the "Act to establish a code of law for the District of Columbia," approved March third, nineteen hundred and one, as amended by the Act approved June thirtieth, nineteen hundred and two, be, and the same is hereby, amended so as to read as follows:

Ancillary guardians for nonresident infants and lunatics.

"SEC. 1141. NONRESIDENT INFANT OR LUNATIC.—Whenever an infant or lunatic residing without the District is entitled to property in the District or to maintain any action therein, a general guardian or committee of his estate, appointed by a court of competent juris-

River at a point between Columbus, Georgia, and Franklin, Georgia, in the State of Georgia, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March twenty-third, nineteen hundred and six. *Ante*, p. 84.

SEC. 2. That the right to alter, amend, or repeal this Act is hereby expressly reserved. Amendment.

Approved, June 20, 1906.

CHAP. 3449.—An Act To authorize the Georgia, Florida and Alabama Railway Company to construct three railroad bridges across the Chattahoochee River, one at or near the city of Eufaula, Alabama, and two between said city of Eufaula and the city of Columbus, Georgia.

June 20, 1906.
[H. R. 19816.]
[Public, No. 257.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Georgia, Florida and Alabama Railway Company, a corporation organized under the laws of the States of Florida and Georgia, its successors and assigns, be, and they are hereby, authorized to construct, maintain, and operate three railroad bridges and approaches thereto across the Chattahoochee River, one at or near the city of Eufaula, Alabama, and two between said city of Eufaula and the city of Columbus, Georgia, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March twenty-third, nineteen hundred and six. *Ante*, p. 84.

Chattahoochee River.
Georgia, Florida and Alabama Railway Company may build three bridges across, in Alabama and Georgia.

SEC. 2. That the right to alter, amend, or repeal this Act is hereby expressly reserved. Amendment.

Approved, June 20, 1906.

CHAP. 3504.—An Act Making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven.

June 21, 1906.
[H. R. 15331.]
[Public, No. 258.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and in full compensation for all offices the salaries for which are specially provided for herein for the service of the fiscal year ending June thirtieth, nineteen hundred and seven, namely:

Indian Department appropriations.

I. GENERAL PROVISIONS.

General provisions.

PRESIDENT.

Under the President.

To enable the President to cause, under the provisions of the Act of February eighth, eighteen hundred and eighty-seven, entitled "An Act to provide for the allotment of lands in severalty to Indians," such Indian reservations as in his judgment are advantageous for agricultural and grazing purposes to be surveyed or resurveyed, for the purposes of said Act, and to complete the allotment of the same, including the necessary clerical work incident thereto in the field and in the Office of Indian Affairs, and delivery of trust patents, so far as allotments shall have been selected under said Act, twenty-five thousand dollars.

Allotments in severalty. Vol. 24, p. 388.

WASHINGTON.

Washington.

For pay of Indian agent at the Colville Agency, Washington, one thousand five hundred dollars;

Agent, Colville Agency.

For support and civilization of the D'Wamish and other allied tribes in Washington, including pay of employees, five thousand dollars;

Support, etc., D'Wamish, etc., Indians.

For support and civilization of the Makahs, Washington, including pay of employees, two thousand dollars;

Makahs.

For support and civilization of the Qui-nai-elts and Quil-leh-utes, including pay of employees, one thousand dollars;

Qui-nai-elts and Quil-leh-utes.

For support and civilization of Yakimas, and other Indians at said agency, including pay of employees, five thousand dollars;

Yakimas, etc.

For general incidental expenses of the Indian Service in Washington, including traveling expenses of agents, and support and civilization of Indians at Colville and Puyallup agencies, and for pay of employees, thirteen thousand dollars.

Incidentals.

That the Secretary of the Interior, in his discretion, is hereby authorized to sell, under rules and regulations to be prescribed by him, any tract or tracts of land heretofore reserved for the Puyallup Indian School not now needed for school purposes, and to use the proceeds of said sale for the establishment of an industrial and manual training school for the Puyallup and allied tribes and bands of Indians at the site of the present Puyallup Indian School.

Puyallup school. Sale of lands.

Proceeds for industrial, etc., school.

SPOKANES. (Treaty.)

Spokanes.

For pay of a blacksmith and carpenter to do necessary work and to instruct the said Indians in those trades, one thousand dollars each, per sixth article of agreement with said Indians, dated March eighteenth, eighteen hundred and eighty-seven, ratified by Act of Congress approved July thirteenth, eighteen hundred and ninety-two, two thousand dollars;

Blacksmith, etc.

Vol. 27, p. 139.

For purchase of agricultural implements, and support and civilization of Joseph's Band of Nez Perce Indians, one thousand dollars;

Joseph's Band, Nez Perces.

For the extension of the irrigation system on lands allotted to Yakima Indians in Washington, fifteen thousand dollars, to be reimbursed from the proceeds of the sale of surplus lands, as provided by the Act of December twenty-first, nineteen hundred and four, entitled "An Act to authorize the sale and disposition of surplus or unallotted lands of the Yakima Indian Reservation in the State of Washington;" in all, fifteen thousand dollars.

Yakimas. Irrigating allotments.

Vol. 33, p. 597.

That the Secretary of the Interior be, and he is hereby, authorized, in his discretion, to sell and convey by patent with such reservations as to flowage rights, dam sites, and mill sites appurtenant to water powers, as he may prescribe, such tract or tracts of lands of the Spokane Indian Reservation, State of Washington, lying at or near the junction of the Columbia and Spokane rivers, not exceeding three hundred and sixty acres in extent, for town-site and terminal purposes, upon the payment of such price as may be fixed by him, and that the money received therefrom shall be deposited in the Treasury of the United States to the credit of the Spokane Indians.

Spokane Reservation. Sale of flowage rights.

Proceeds for Indians.

COLVILLE RESERVATION.

Colville Reservation.

To carry into effect the agreement bearing date May ninth, eighteen hundred and ninety-one, entered into between the Indians residing on the Colville Reservation and commissioners appointed by the President of the United States under authority of the Act of Congress approved August nineteenth, eighteen hundred and ninety, to negotiate with the Colville and other bands of Indians on said Colville Reservation for the

Cession of portion of.

Vol. 26, p. 355.

Herman Lehman. Patent in fee to.

SEC. 28. That the Secretary of the Interior be, and he is hereby, authorized to make an allotment to Herman Lehman (Montechema), an enrolled member of the Comanche tribe of Indians, who did not get an allotment, of one hundred and sixty acres of unappropriated and unallotted land from the lands to be disposed of under the Act of Congress approved June fifth, nineteen hundred and six (Thirty-fourth Statutes at Large, page two hundred and thirteen), and patent shall issue therefor in fee simple.

Vol. 34, p. 213.

Kiowa, etc., lands, Okla. Repayment of forfeited deposits.

SEC. 29. That all moneys forfeited under the regulations issued October nineteenth, nineteen hundred and six, by the Secretary of the Interior under the Act entitled "An Act to open for settlement five hundred and five thousand acres of land in the Kiowa-Comanche and Apache Indian Reservation in Oklahoma Territory," approved June fifth, nineteen hundred and six, be repaid to the persons by whom such moneys were deposited in every case where it shall be made to appear to the satisfaction of the Commissioner of the General Land Office that the bid upon which the award was made was the result of a clerical error, or was due to an honest mistake on the part of the bidder as to the numbers, the description, or the character of the land upon which his bid was made.

Vol. 34, p. 213.

Regulations.

That the Commissioner of the General Land Office shall make all necessary rules and issue all necessary instructions to carry the provisions of this Act into effect, and the payment of the deposits herein provided for shall be paid out of any moneys deposited in the Treasury of the United States as the proceeds arising from the sale of lands under said Act of June fifth, nineteen hundred and six, and an appropriation, sufficient in amount to cover such case, is hereby made.

Payment of deposits.

Vol. 34, p. 213. Appropriation.

Lawton, Okla. Court-house, etc., in. Use of part proceeds of certain land sale for, authorized. *Post*, p. 545.

SEC. 30. That twenty per centum of the proceeds arising from the sale of the south half of section thirty, townsite two north, range eleven west of the Indian meridian in Oklahoma, is hereby appropriated, to be available immediately after such sale, to begin construction of a court-house and post-office building at Lawton, in said State, to cost not more than one hundred thousand dollars; and all Acts in conflict herewith are hereby repealed. That the Secretary of the Interior is authorized and directed to turn over to the treasurers of the cities of Lawton, Hobart and Anadarko, the unexpended balance of the proceeds arising from the sale of town lots in said cities heretofore appropriated and set apart for public improvements in such cities by the Act of March third, nineteen hundred and one, and the Acts of June thirtieth, nineteen hundred and two and March fourteenth, nineteen hundred and six.

Lawton, Hobart, and Anadarko. Sale of town lots. Unexpended balance paid to.

Vol. 21, p. 1094. Vol. 32, p. 506. Vol. 34, p. 62.

Approved, May 29, 1908.

May 29, 1908. [S. 6163.] [Public, No. 157.]

CHAP. 217.—An Act To authorize the Secretary of the Interior to sell and dispose of the surplus unallotted agricultural lands of the Spokane Indian Reservation, Washington, and for other purposes.

Spokane Indian Reservation, Wash. Allotments, etc., of lands in.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed to cause allotments to be made under the provisions of the allotment laws of the United States to all persons having tribal rights or holding tribal relations and who may rightfully belong on the Spokane Indian Reservation and who have not heretofore received allotments.

Classification of surplus lands.

SEC. 2. That upon the completion of said allotments to said Indians the Secretary of the Interior shall classify the surplus lands as agricultural and timber lands, the agricultural lands to be opened to settlement and entry under the provisions of the homestead laws by proclamation of the President, which shall prescribe the time when

Agricultural lands to be opened to settlement.

and the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation.

Price per acre.

SEC. 3. That the price of the lands classified as agricultural shall be five dollars per acre, and said price shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry and the balance in five equal annual installments to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments, or any of them, promptly when due, all rights in and to the land covered by his entry shall cease and any payments theretofore made shall be forfeited and the entry canceled, and the land shall be reoffered for sale and entry under the provisions of the homestead laws at the same price at which it was first entered: *Provided*, That nothing in this Act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one of the Revised Statutes of the United States by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law where the price of the land is one dollar and twenty-five cents per acre, and when an entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made the required payments as aforesaid he shall be entitled to a patent for the lands entered: *And provided further*, That all lands classified as agricultural remaining undisposed of at the expiration of four years from the opening of said lands to entry shall be appraised by the Secretary of the Interior from time to time and sold at public auction or under sealed bids to the highest bidder for cash at not less than the said appraised value, under such regulations as the Secretary of the Interior may prescribe: *Provided*, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars or the Philippine insurrection as defined and described in sections twenty-three hundred and four, and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridged: *Provided further*, That sections sixteen and thirty-six of the agricultural lands in each township shall not be disposed of, but shall be reserved for the use of the common schools and paid for by the United States at one dollar and twenty-five cents per acre, and the same are hereby granted to the State of Washington for such purpose.

Payments.

Forfeiture.

Provisos.
Commutation.
R. S., sec. 2301, p. 421.

Fees, etc.

Lands remaining to be sold at auction.

Sealed bids.

Soldiers' and sailors' rights not affected.

R. S., secs. 2304, 2305, p. 422.
Vol. 31, p. 847.

School lands.

SEC. 4. That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved so long as needed and so long as agency, school, or religious institutions are maintained thereon for the benefit of the Indians; and he is further authorized and directed to reserve and set aside such tracts as he may deem necessary or convenient for town-site purposes, and he may cause any such reservations to be surveyed into lots and blocks of suitable size and to be appraised and disposed of under such regulations as he may prescribe, and the net proceeds derived from the sale of such lands shall be deposited in the Treasury of the United States to the credit of the Indians of the Spokane Reservation.

Lands reserved for agency, schools, etc.

Townsites.

Deposit of proceeds

SEC. 5. That the lands so classified as timber lands shall remain Indian lands subject to the supervision of the Secretary of the Interior until further action by Congress, and no provision authorizing the sale of timber upon Indian lands shall apply to said lands unless they be

Timber-land restrictions.

Provisos. Cutting timber allowed.

specially designated: *Provided*, That until further legislation the Indians and the officials and employees in the Indian Service on said reservation shall, without cost to them, have the right, under such regulations as the Secretary of the Interior may prescribe, to go upon said timber lands and cut and take therefrom all timber necessary for fuel, or for lumber for the erection of buildings, fences, or other domestic purposes upon their allotments; and for said period the said Indians shall have the privilege of pasturing their cattle, horses, and sheep on said timber lands, subject to such rules and regulations as the Secretary of the Interior may prescribe: *Provided further*, That the Secretary of the Interior is hereby authorized to sell and dispose of for the benefit of the Indians such timber upon said timber lands as in his judgment has reached maturity and is deteriorating and which, in his judgment, would be for the best interests of the Indians to sell, the purpose being to as far as possible protect, conserve, and promote the growth of timber upon said timber lands. The Secretary of the Interior shall deduct from the money received from the sale of such timber the actual expense of making such sale and place the balance to the credit of said Indians, and he is authorized to prescribe such rules and regulations for the sale and removal of such timber so sold as he may deem advisable.

Pasturage.

Sale of timber.

Use of proceeds.

Appropriation to pay for lands granted to Washington.

SEC. 6. That the Secretary of the Interior is hereby vested with full power and authority to make all needful rules and regulations for the purpose of carrying out the provisions of this Act, and there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of five thousand dollars, or so much thereof as may be necessary, to pay the Indians for the lands granted to the State of Washington, as provided in section three of this Act, and there is hereby appropriated the further sum of seven thousand dollars, or so much thereof as may be necessary, for the purpose of carrying out the other provisions of this Act: *Provided*, That the appropriation other than that to pay for the lands granted to the State of Washington shall be reimbursed to the United States from the proceeds of the sale of the lands described herein, or from any money in the Treasury of the United States belonging to the said Spokane Indians.

Further appropriation.

Proviso. Reimbursement.

Nonresponsibility of United States.

SEC. 7. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six of the agricultural lands or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of the said lands and to expend and pay over the proceeds received from the sale thereof only as received as herein provided: *Provided*, That nothing in this Act shall be construed to deprive said Indians of the Spokane Indian Reservation, in the State of Washington, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this Act.

Proviso. Treaty rights not affected.

Approved, May 29, 1908.

May 29, 1908. [S. 1885.]

[Public, No. 158.]

CHAP. 218.—An Act To authorize the sale and disposition of a portion of the surplus and unallotted lands in the Cheyenne River and Standing Rock Indian reservations in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect.

Sioux Indians. Sale of lands in Cheyenne River and Standing Rock reservations, S. Dak. and N. Dak.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Cheyenne River and Standing Rock Indian reservations in the States of South Dakota

"Collector."
"Includes"; "including."

(10) The term "collector" means collector of internal revenue.

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

Separability clause.

SEC. 502. SEPARABILITY CLAUSE

If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Effective date.

SEC. 503. EFFECTIVE DATE OF ACT

Except as otherwise provided, this Act shall take effect upon its enactment.

Approved, August 30, 1935, at 6 p. m.

[CHAPTER 830.]

August 30, 1935.
[H. R. 6250.]
[Public, No. 408.]

AN ACT

To amend the National Defense Act.

National Defense Act, amendment.
Annual call, with consent, of designated Reserve officers, for active Army duty, authorized.
Vol. 39, p. 166; U. S. C., p. 229.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized to call annually, with their consent, upon application to and selection by the War Department, for a period of not more than one year for any one officer, not to exceed at any time one thousand Reserve officers of the combatant arms and the Chemical Warfare Service in the grade of second lieutenant, for active duty with the Regular Army: *Provided*, That nothing herein contained shall affect the number of reserve officers that may be called to active duty under existing laws, nor the conditions under and purposes for which they may be so called.

Proviso.
Existing laws, etc., not affected.

Fifty officers to be commissioned annually in Regular Army.

SEC. 2. That, for the period of ten years beginning July 1, 1936, the Secretary of War is authorized to select annually, in addition to the graduates from the United States Military Academy, fifty officers who shall be commissioned in the Regular Army: *Provided*, That the Secretary of War shall determine for each annual increment the number to be allotted among the promotion list branches: *And provided further*, That the number to be appointed in the promotion list branches shall be selected from such reserve officers who have received the training herein authorized or from graduates of the Army Air Corps Training Center.

Provisos.
Distribution.

Appointees to have received active training, etc.

Approved, August 30, 1935.

[CHAPTER 831.]

August 30, 1935.
[H. R. 6732.]
[Public, No. 409.]

AN ACT

Authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes.

River and harbor improvement.
Prosecution and supervision of work.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following works of improvement of rivers, harbors, and other waterways are hereby adopted and authorized, to be prosecuted under the direction of the Secretary of War and supervision of the Chief of Engineers, in accordance with the plans recommended in the respective reports hereinafter designated and subject to the conditions set forth in such documents; and that hereafter Federal investigations and improvements of rivers, harbors, and other waterways shall be under the jurisdiction of and shall be prosecuted by the War Department

under the direction of the Secretary of War and the supervision of the Chief of Engineers, except as otherwise specifically provided by Act of Congress:

Enumeration of projects.

Criehaven Harbor, Maine; House Document Numbered 310, Seventy-second Congress;

Saco River, Maine; Rivers and Harbors Committee Document Numbered 11, Seventy-fourth Congress;

Corea Harbor, Maine; Rivers and Harbors Committee Document Numbered 27, Seventy-fourth Congress;

Lynn Harbor, Massachusetts; Rivers and Harbors Committee Document Numbered 7, Seventy-first Congress;

Boston Harbor, Massachusetts; House Document Numbered 244, Seventy-second Congress;

Boston Harbor, Massachusetts; Rivers and Harbors Committee Document Numbered 29, Seventy-fourth Congress;

Mystic River, Massachusetts; Rivers and Harbors Committee Document Numbered 33, Seventy-fourth Congress;

Gloucester Harbor and Annisquam River, Massachusetts; Rivers and Harbors Committee Document Numbered 39, Seventy-second Congress;

Weymouth Fore River, Massachusetts; House Document Numbered 207, Seventy-second Congress;

Weymouth Back River, Massachusetts; Rivers and Harbors Committee Document Numbered 32, Seventy-second Congress;

Cape Cod Canal, Massachusetts; Rivers and Harbors Committee Document Numbered 15, Seventy-fourth Congress;

New Bedford Harbor, Massachusetts; Rivers and Harbors Committee Document Numbered 16, Seventy-fourth Congress;

Vineyard Haven Harbor, Massachusetts; Rivers and Harbors Committee Document Numbered 65, Seventy-fourth Congress;

Thames River, Connecticut; Rivers and Harbors Committee Document Numbered 18, Seventy-fourth Congress;

Connecticut River below Hartford, Connecticut; House Document Numbered 49, Seventy-third Congress;

Connecticut River, above Hartford, Connecticut: House Document Numbered 27, Seventy-third Congress;

New Haven Harbor, Connecticut; House Document Numbered 479, Seventy-second Congress;

Southport Harbor, Connecticut; Rivers and Harbors Committee Document Numbered 36, Seventy-fourth Congress;

Stamford Harbor, Connecticut; Rivers and Harbors Committee Document Numbered 8, Seventy-fourth Congress;

Connecticut River, at East Hartford, Connecticut; The Secretary of War is authorized and directed to proceed with the construction of dikes, drainage gates, suitable pumping plants, and other facilities for controlling floods on the Connecticut River at East Hartford, Connecticut, pursuant to a special survey made by the district engineer at Providence, Rhode Island, supplementing the survey in House Document Number 308, Sixty-ninth Congress, First Session, and in conformity with either Plan A or Plan B designated in the report of said supplemental survey; selection of the plan to be executed shall be made by the Secretary of War with the approval of the town of East Hartford: *Provided*, That the cost of such work shall not exceed $658,000: *Provided further*, That the prosecution of this project shall be subject to approval by the Board of Engineers for Rivers and Harbors;

Mamaroneck Harbor, New York; Rivers and Harbors Committee Document Numbered 4, Seventy-fourth Congress;

Projects—Contd.

Grays Haroor and Chehalis River, Washington; House Document Numbered 53, Seventy-third Congress, and Rivers and Harbors Committee Document Numbered 2, Seventy-fourth Congress;

Olympia Harbor, Washington; Rivers and Harbors Committee Document Numbered 21, Seventy-third Congress;

Tacoma Harbor, Washington; Rivers and Harbors Committee Document Numbered 55, Seventy-second Congress;

Seattle Harbor, Washington; House Document Numbered 211, Seventy-second Congress;

Lake Washington Ship Canal, Washington; House Document Numbered 140, Seventy-second Congress;

Port Gamble Harbor, Washington; House Document Numbered 152, Seventy-second Congress;

Swinomish Slough, Washington; Report of the Chief of Engineers, dated May 24, 1933;

Wrangell Harbor, Alaska; House Document Numbered 202, Seventy-second Congress;

Wrangell Narrows, Alaska; House Document Numbered 647, Seventy-first Congress;

Dry Pass, Alaska; House Document Numbered 470, Seventieth Congress;

Stikine River; Alaska; House Document Numbered 210, Seventy-second Congress;

Kodiak Harbor, Alaska; House Document Numbered 208, Seventy-second Congress;

Petersburg Harbor, Alaska; House Document Numbered 483, Seventy-second Congress;

Egegik River, Alaska; House Document Numbered 51, Seventy-third Congress;

Cordova Harbor, Alaska; Rivers and Harbors Committee Document Numbered 33, Seventy-third Congress;

Harbor of refuge at Seward, Alaska; Rivers and Harbors Committee Document Numbered 3, Seventy-fourth Congress;

Nome Harbor, Alaska; House Document Numbered 404, Seventy-first Congress, and Rivers and Harbors Committee Document Numbered 38, Seventy-third Congress;

Sitka Harbor, Alaska; Rivers and Harbors Committee Document Numbered 59, Seventy-fourth Congress;

Honolulu Harbor, Hawaii; House Document Numbered 54, Seventy-third Congress;

Port Allen, Hawaii; House Document Numbered 30, Seventy-third Congress;

Kaunakakai Harbor, Hawaii; House Document Numbered 35, Seventy-third Congress;

San Juan Harbor, Puerto Rico; Rivers and Harbors Committee Document Numbered 38, Seventy-fourth Congress;

Mayaguez Harbor, Puerto Rico; House Document Numbered 215, Seventy-second Congress, and subject to the modification recommended in Rivers and Harbors Committee Document Numbered 1, Seventy-third Congress;

Ponce Harbor, Puerto Rico: The existing project is hereby modified in accordance with the report submitted in Rivers and Harbors Committee Document Numbered 18, Seventy-second Congress;

Arecibo Harbor, Puerto Rico; House Document Numbered 214, Seventy-third Congress.

Projects adopted for controlling floods, etc

SEC. 2. That for the purpose of controlling floods, improving navigation, regulating the flow of the streams of the United States, providing for storage and for the delivery of the stored waters thereof, for the reclamation of public lands and Indian reservations,

and other beneficial uses, and for the generation of electric energy as a means of financially aiding and assisting such undertakings, the projects known as "Parker Dam" on the Colorado River and "Grand Coulee Dam" on the Columbia River, are hereby authorized and adopted, and all contracts and agreements which have been executed in connection therewith are hereby validated and ratified, and the President, acting through such agents as he may designate, is hereby authorized to construct, operate, and maintain dams, structures, canals, and incidental works necessary to such projects, and in connection therewith to make and enter into any and all necessary contracts including contracts amendatory of or supplemental to those hereby validated and ratified. The construction by the Secretary of the Interior of a dam in and across the Colorado River at or near Head Gate Rock, Arizona, and structures, canals, and incidental works necessary in connection therewith is hereby authorized, and none of the waters, conserved, used, or appropriated under the works hereby authorized shall be charged against the waters allocated to the upper basin by the Colorado River compact, nor shall any priority be established against such upper basin by reason of such conservation, use, or appropriation; nor shall said dam, structures, canals, and works, or any of them, be used as the basis of making any such charge, or establishing any such priority or right, and all contracts between the United States and the users of said water from or by means of said instrumentalities shall provide against the making of any such charge or claim or the establishment of any priority right or claim to any part or share of the water of the Colorado River allocated to the Upper Basin by the Colorado River compact, and all use of said instrumentalities shall be in compliance with the conditions and provisions of said Colorado River compact and the Boulder Canyon Project Act.

Construction, etc., authorized.
Post, p. 1784.

Preliminary examinations and surveys authorized.

SEC. 3. The Secretary of War is hereby authorized and directed to cause preliminary examinations and surveys to be made at the following-named localities, the cost thereof to be paid from appropriations heretofore or hereafter made for such purposes: *Provided*, That no preliminary examination, survey, project, or estimate for new works other than those designated in this or some prior Act or joint resolution shall be made: *Provided further*, That after the regular or formal reports made as required by law on any examination, survey, project, or work under way or proposed are submitted no supplemental or additional report or estimate shall be made unless authorized by law: *And provided further*, That the Government shall not be deemed to have entered upon any project for the improvement of any waterway or harbor mentioned in this Act until the project for the proposed work shall have been adopted by law:

Provisos.
Restriction.

Reports.

Adoption.

Localities enumerated.

Long Cove, Maine.
Chandler River, Maine.
Ile au Haut Thoroughfare, Maine.
Eastport Harbor, Maine.
Frenchboro Harbor, Maine.
Stonington Harbor, Maine.
Bagaduce River, Maine.
Prouts Neck, Maine, with a view to the establishment of a harbor of refuge.
Hendrick's Harbor, Maine.
Saint Croix River, Maine.
Bar Harbor, Maine.
Monhegan Harbor, Maine.
Ogunquit-Perkins Cove, Maine.
Cranberry Island Harbor, Maine.

[CHAPTER 460]

AN ACT

June 29, 1940
[H. R. 9445]
[Public, No. 690]

For the acquisition of Indian lands for the Grand Coulee Dam and Reservoir, and for other purposes.

Grand Coulee Dam project.
Acquisition of Indian lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in aid of the construction of the Grand Coulee Dam project, authorized by the Act of August 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 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 of 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.

Proviso.
Restriction; exception.

Construction of pipe lines, etc.

Use of reservoir land for hunting, etc., by Indians.

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.

Proviso.
Noninterference with project operations.

Compensation to Indians.

SEC. 2. As lands or interests in lands are designated from time to time under this Act, the Secretary of the Interior shall determine the amount of money to be paid to the Indians as just and equitable compensation therefor. As to the tribal lands, the amounts so determined shall be transferred in the Treasury of the United States from the funds now or hereafter made available for the construction of the Grand Coulee Dam project to the credit of the appropriate tribe pursuant to the provisions of the Act of May 17, 1926 (44 Stat. 560). The amounts due individual landowners or their heirs or devisees shall be paid from funds now or hereafter made available for the construction of said project to the superintendent of the Colville Indian Agency or such other officer as shall be designated by the Secretary of the Interior for credit on the books of said agency to the accounts of the individuals concerned.

Credit of funds to appropriate tribe.

25 U. S. C. § 155.

Payments to individual landowners.

Use of funds for acquisition of other lands, etc.

SEC. 3. Funds deposited to the credit of allottees, their heirs or devisees may be used in the discretion of the Secretary of the Interior, for the acquisition of other lands and improvements, or the relocation of existing improvements or construction of new improvements on the lands so acquired for the allottees or heirs whose lands and improvements are acquired under the provisions of this Act. Lands so acquired shall be held in the same status as those from which the funds were derived, and shall be nontaxable until otherwise provided by Congress.

Relocation of Indian cemeteries.

SEC. 4. As to any Indian cemetery lands required for the project, the Secretary of the Interior is authorized, in his discretion, in lieu of requiring payment therefor, to establish cemeteries on other lands

Payment of costs.

Sites held in trust by U. S.

Regulations, etc.

that he may select and acquire for the purpose, and to remove bodies, markers, and other appurtenances to the new sites. All costs incurred in connection with any such relocation shall be paid from moneys appropriated for the project. All right, title, and interest of the Indians in the lands within any cemetery so relocated shall terminate and the grant of title under this Act take effect as of the date the Secretary of the Interior authorizes the relocation. Sites of the relocated cemeteries shall be held in trust by the United States for the Spokane or Colville Tribe, as the case may be, and shall be nontaxable.

SEC. 5. The Secretary of the Interior is hereby authorized to perform any and all acts and to prescribe such regulations as he may deem appropriate to carry out the provisions of this Act.

Approved, June 29, 1940.

[CHAPTER 461]

June 29, 1940
[H. R. 9896]
[Public, No. 691]

AN ACT

To authorize appropriations for construction at military posts, and for other purposes.

Military posts.
Appropriation for construction at, authorized.
Ante, p. 390; *post*, p. 958.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby authorized to be appropriated not to exceed $15,000,000 to be expended for the construction, rehabilitation, and installation at military posts of such buildings and utilities and appurtenances thereto as may be necessary, as follows:

Station	Amount
ALASKA	
Anchorage	$6,379,225
HAWAII	
Schofield Barracks	823,200
Fort Shafter	90,000
PANAMA	
Fort Clayton	512,075
Corozal	1,071,300
Panama Canal Department	365,500
PUERTO RICO	
Borinquen Field	571,700
Puerto Rican General Depot	45,000
CONTINENTAL UNITED STATES	
Aberdeen Proving Ground, Md	210,000
Atlanta General Depot, Ga	1,300,000
Fort Belvoir, Va	60,000
Fort Benning, Ga	1,320,500
Edgewood Arsenal, Md	432,476
Fort Sam Houston, Tex	277,200
Fort Knox, Ky	153,124
Fort Lewis, Wash	255,000
Fort McPherson, Fla	65,000
Fort Myer, Va	84,000
Fort Monroe, Va	179,500
Philadelphia Quartermaster Depot	314,000
Picatinny Arsenal	23,000
Fort Pickens, Fla	48,200
Fort Sill, Okla	96,000
Fort Story, Va	25,000
West Point	290,000
Total	15,000,000

Approved, June 29, 1940.

(b) Clauses (1), (2), (3), and (4) of section 1410 of the Federal Insurance Contributions Act (section 1410 of the Internal Revenue Code, relating to the rate of tax on employers) are amended to read as follows:

"(1) With respect to wages paid during the calendar years 1939, 1940, 1941, 1942, 1943, 1944, and 1945, the rate shall be 1 per centum.

"(2) With respect to wages paid during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

"(3) With respect to wages paid after December 31, 1948, the rate shall be 3 per centum."

53 Stat. 175. 26 U. S. C. § 1410; Supp. III, § 1410. *Ante*, p. 93.

Approved December 16, 1944.

[CHAPTER 601]

AN ACT

To authorize the Secretary of the Interior to dispose of certain lands heretofore acquired for the nonreservation Indian boarding school known as Sherman Institute, California.

December 16, 1944
[S. 1580]
[Public Law 496]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized in his discretion and subject to such terms and conditions as he may prescribe, to sell or exchange all or any part of those two certain tracts of land containing ten acres and one hundred acres more or less, respectively, heretofore acquired by the United States for the use of the nonreservation Indian boarding school known as Sherman Institute, Riverside, California, by deed dated August 30, 1900, from Frank A. Miller and Isabella D. Miller and by deed dated September 10, 1901, from George Frost, president of the Riverside Land Company. In effecting any sale or exchange hereunder the Secretary of the Interior is authorized to execute such deeds or other instruments as may be necessary to transfer the title to any land so sold or exchanged, and the proportionate share or shares of capital stock of the Riverside Water Company evidencing the right of the lands so sold or exchanged to participate in the use of water furnished by said company for domestic and/or irrigation purposes. Any exchanges of land and/or water rights effected pursuant to this Act shall be on an equal-value basis.

Sherman Institute, Riverside, Calif. Sale or exchange of land.

SEC. 2. That the proceeds derived from any sale made under authority of this Act shall be deposited in the Treasury of the United States as school revenues, pursuant to the Act of May 27, 1926 (44 Stat. 560), and shall be available in the discretion of the Secretary of the Interior for the purchase of other lands for the use of said Sherman Institute, including the water right or shares of water stock representing the right of the lands so purchased to the use of water for irrigation and/or domestic purposes.

Use of proceeds from sale.

25 U. S. C. § 155.

Approved December 16, 1944.

[CHAPTER 602]

AN ACT

To amend section 1, Act of June 29, 1940 (54 Stat. 703), for the acquisition of Indian lands for the Grand Coulee Dam and Reservoir, and for other purposes.

December 16, 1944
[S. 1597]
[Public Law 497]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first paragraph of section 1 of the Act approved June 29, 1940 (54 Stat. 703), be amended to read as follows: "That, in aid of the construction, operation and maintenance of the Columbia Basin project (formerly the Grand Coulee Dam project), authorized by the Act of August 30,

Columbia Basin project. 16 U. S. C., Supp. III, § 835d. Acquisition of Indian lands.

49 Stat. 1040.
43 U. S. C. §§ 375a, 385a, 387-389, 485-485k.
16 U. S. C., Supp. III, §§ 835 to 835c-5.

1935 (49 Stat. 1028), the Act of August 4, 1939 (53 Stat. 1187), and the Columbia Basin Project Act (Public, Numbered 8, Seventy-eighth Congress, first session, 57 Stat. 14), 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 except where in the judgment of the Secretary of the Interior, special circumstances concerning the reservoir or its operation and maintenance require the taking of land above that elevation; 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."

Restriction on reservoir sites; exception.

Construction of pipe lines, etc.

Approved December 16, 1944.

[CHAPTER 603]

December 16, 1944
[S. 1501]
[Public Law 498]

AN ACT

To authorize the Secretary of the Navy to convey to The Virginian Railway Company, a corporation, for railroad-yard-enlargement purposes, a parcel of land of the Camp Allen Reservation at Norfolk, Virginia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Navy is hereby authorized to convey to The Virginian Railway Company, a corporation, upon such terms and conditions as he may prescribe, all right, title, and interest of the United States of America in and to a strip or parcel of land of the Camp Allen Reservation, Norfolk, Virginia, for the enlargement of its railroad yard, said parcel of land being more particularly described as follows:

Camp Allen Reservation, Norfolk, Va.

Beginning at point "C" on PW Drawing Numbered 10,545, on file in the Navy Department, which point is north forty-nine degrees forty-four minutes west and three hundred and twenty feet more or less distant from the center line of the Seventh Avenue entrance into Camp Allen and is on the present right-of-way line of The Virginian Railway Company; thence north fifty-four degrees twenty-six minutes thirty seconds west two hundred and forty-three and sixty-four one-hundredths feet, more or less, to point "D"; thence north forty-nine degrees forty-four minutes west one thousand and fifty-six and seventy-one one-hundredths feet, more or less, to point "E"; thence north sixty-five degrees nineteen minutes fourteen seconds west three hundred and seventy-three and nine one-hundredths feet, more or less, to point "A"; thence to the right along the arc of a curve having a radius of six hundred and two and eighty one-hundredths feet, more or less, for a distance of three hundred and eighty-six and thirty-two one-hundredths feet, more or less, to point "B"; thence south forty-nine degrees forty-four minutes east one thousand two hundred and ninety-nine and fifty-five one-hundredths feet, more or less to the point of beginning; containing all told ninety-three one-hundredths acre, more or less, situated in Norfolk, Virginia.

Approved December 16, 1944.

tions in class 1 under the exception. The question was as to the "maintenance" of such a valid claim. The Court pointed out that in the case of a valid location *under the mining law* (Rev. Stat. sec. 2324), a default in annual assessment work, although opening the claim to relocation by a third party, does not *ipso facto* forfeit the claim and is without effect insofar as the Government is concerned; that the locator is entitled to resume work before a relocation and that such resumption maintains his claim. The Court then held that these rights of the locator under the mining law are not diminished but saved by section 37 of the Leasing Act; that the owner of a *valid* location is entitled to resume work after a default, and that he *maintains* his claim, within the meaning of the Leasing Act, no less by such resumption than by performance of the annual *assessment* labor.

It is to be noted, however, that although the decision denied the authority of the Secretary to declare the forfeiture of a claim for an *assessment work* default, the Court expressly recognized his authority to determine that an alleged valid claim is invalid for lack of discovery, fraud, or other defect. It is this authority which has been exercised in this case. The claims of discovery for gypsum, stone, oil, and the other materials designated in the location notices, have all been investigated, challenged, and held invalid. Further, it has been found that on the claims explored for oil there had been no discovery and that no diligent discovery work was in course of prosecution on February 25, 1920, and that in consequence these claims were not saved by the exception in section 37 of the Mineral Leasing Act.

The Department therefore finds no reason for disturbing the decisions previously reached that the 539 claims claimed by petitioners are all null and void.

The motion is denied.

OSCAR L. CHAPMAN,
Assistant Secretary.

INDIAN RIGHTS IN COLUMBIA RIVER RESERVOIR

Indian Rights of Hunting, Fishing, and Boating in Columbia River Reservoir—Statutory Construction—Second Paragraph of Section 1 of Act of June 29, 1940 (54 Stat. 703)—Administration of Columbia River Reservoir Area—Constitutionality of Regulatory Provision of the Act.

The second paragraph of section 1 of the act of June 29, 1940, provides: "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"

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."

The act imposes a mandatory duty upon the Secretary to set aside approximately one-quarter of the entire reservoir area for the paramount use of the Indians of the Spokane and Colville Reservations.

Although the act in terms permits the Secretary to set aside one or more areas for Indian use, it also makes separate provision for two different tribes of Indians. The Secretary is, therefore, required to allocate at least one area to each of the two tribes. While he may also set aside more than two areas, his power is limited by a rule of reason which would prevent him from setting aside so many areas that he would bring about the very evil which the statute was designed to prevent. The object of the statute was, so to speak, to secure a consolidation of the areas of Indian interest.

The interest of the Colville and Spokane Indians in one-quarter of the reservoir area is not joint but several. In view of the failure of the statute to prescribe a formula for dividing between the two tribes the 25 percent of the reservoir area to be set aside for both of them, the Secretary may make the apportionment in such a manner as will be equitable under all the circumstances. However, the ratio that was employed in determining the percentage of the entire reservoir area that was to be set aside for both tribes could reasonably be applied in determining the share of each tribe. This ratio was obtained by comparing the length of the original river shore line of Indian lands acquired or to be acquired for the reservoir with the total original shore line of the river in the reservoir area. The result would also be in harmony with the relative populations of the Colville and Spokane Indian Reservations.

While the Secretary has discretion in the location of the Indian areas, his discretion in this respect is limited by the requirement that the areas set aside for the Indians be readily accessible to them. The Indian areas must, therefore, be located in reasonable proximity to the Indian lands, namely, adjacent to such lands. The application of this rule would require the location of the Indian areas along the former shore line of Indian lands. However, in view of the scope of the Secretary's discretion, he is under no duty to locate the Indian areas within the exterior boundaries of the reservations as they existed prior to the construction of the reservoir.

The Secretary is not confined to setting aside one-quarter of the water surface of the reservoir for the use of the Indians. He may include freeboard areas in the areas set aside for the Indians because (*a*) the Indians are given hunting rights which can also be enjoyed on the shorelands; (*b*) the "entire" reservoir area is made the basis for calculating the Indians' share; (*c*) the rights of access to the Indian reservoir areas are granted only "when necessary."

The special rights given to the Indians under the act are expressly limited to hunting, fishing, and boating. These rights are not enlarged by the "access" provision of the act, since a right of access is not a separate and independent right but a means of enjoying property rights or special rights otherwise possessed. However, the rights of access are not limited to mere rights of ingress and egress but are commensurate with the purposes to which the portions of the reservoir to be set aside for the Indians are to be put.

No special rights inure to the Indians from any other source. By virtue of the act of July 1, 1892 (27 Stat. 62), the southern and eastern boundary of

the Colville Reservation extends to the middle of the channel of the Columbia River. By the Executive order of January 18, 1881, the bed of the Spokane River to the south bank thereof was included in the Spokane Indian Reservation. Even if it be assumed that the titles to the beds of the Columbia and Spokane Rivers were not taken and extinguished under the act of June 29, 1940, it cannot be made a source of additional special rights for the Indians. The special rights accorded to the Indians by the act are plainly denominated lieu rights. They are, therefore, to be deemed an exclusive substitute for whatever rights the Indians may have enjoyed prior to the enactment of the statute by reason of their rights of ownership.

However, the Indians are not confined to those parts of the reservoir set aside for their "paramount" use. In such areas of the reservoir they will enjoy special rights. But in the reservoir as a whole, insofar as they may have access to it, they may enjoy such privileges as are accorded to the general public in navigable waters, which include those of hunting and fishing, floating logs, and navigation. The Indians may also take advantage of section 10 of the act of August 4, 1939 (43 U. S. C. sec. 387), which gives the Secretary power to grant leases, licenses, easements or rights-of-way over lands acquired and administered under the Federal reclamation laws.

Since the act declares that the areas set aside for the Indians shall be for their "paramount" use for hunting, fishing, and boating, such use is neither exclusive of the same use by other persons, nor exclusive of any other use by other persons. However, the Secretary is under a duty to maintain the paramount character of the Indian use, and if he finds that this can be accomplished only by according the Indians exclusive rights in the areas set aside for them, he is empowered to do so. He may make such rights exclusive in all parts of the Indian areas, or at particular locations, or at particular times, or give greater freedom to the Indians in making use of the reservoir than is permitted to others.

Since the rights of the Indians will not necessarily be exclusive, there is no present need to decide whether the Indians may license others to enjoy their rights.

Although the Bureau of Reclamation, the Bureau of Indian Affairs, the National Park Service, and the Fish and Wildlife Service are all interested in the Columbia River Reservoir area, its administration is vested in the Secretary of the Interior rather than in any particular bureau, and the Secretary, by virtue of section 161 of the Revised Statutes (now 5 U. S. C. sec. 22), may select any one or more of the interested agencies to administer any part of the reservoir area.

There is no good reason to doubt the constitutionality of the provision of the act, which gives the Secretary of the Interior authority to prescribe reasonable regulations for the protection and conservation of fish and wildlife in the areas set aside for Indian use. The constitutionality of the act is supported by the property interests of the United States in the reservoir area, the power of Congress to control the navigable waters of the United States, and the powers of Congress over Indians and Indian affairs.

M-34326 DECEMBER 29, 1945.

To ASSISTANT SECRETARY CHAPMAN.

This is in response to your memorandum of January 25, 1944, in which you request that this office consider the legal problems involved in determining the rights of the Indians of the Colville and Spokane

Indian Reservations in the Columbia River Reservoir created by the construction of the Grand Coulee Dam. The rights in question arise under the second paragraph of section 1 of the act of June 29, 1940 (54 Stat. 703). I have considered in this connection the memoranda of the Office of Indian Affairs dated December 30, 1943; of the Assistant to the Secretary in Charge of Land Utilization dated January 7, 1944; and of the Assistant Chief Counsel of the Bureau of Reclamation dated July 4, 1944, as well as other documents in the files of the interested agencies.

The second paragraph of section 1 of the act of June 29, 1940, provides:

> 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.

You apparently request that I consider all the legal problems that can immediately be anticipated as arising under the act so that you may be advised concerning the permissible scope of administrative action. This panoramic assignment, going beyond the specific inquiry to which my opinions are ordinarily addressed, seems at least necessary in part because the agencies interested in the administration of the Columbia River Reservoir area have been unable to agree upon a plan for the development of the area.[1]

The statute imposes a mandatory duty upon the Secretary to set aside "approximately[2] one-quarter of the entire reservoir area for the paramount use of the Indians of the Spokane and Colville Reservations * * *."[3] But it does not, at least in specific terms, supply much guidance to the Secretary in carrying out this duty. In order to extract the full implications of the statutory direction, it is necessary to consider first some aspects of the history of the Colville and

---

[1] A Memorandum of Agreement for the administration of the reservoir area was signed on September 26, 1941, by representatives of the Colville Indian Agency, the Colville Business Council, the National Park Service, and the Bureau of Reclamation, but it received the approval of neither the heads of the interested agencies nor of the Department.

[2] Hereafter when reference is made to "one-quarter of the entire reservoir area" or to "one-quarter of the reservoir area," the statement should be understood in an approximate sense.

[3] The language of the act is mandatory. It makes use of the imperative "shall," and nothing in the legislative history of the act casts any doubt upon the mandatory character of the language.

Spokane Indians, and the more immediate events leading to the passage of the act of June 29, 1940.

1. The Background of the Act of June 29, 1940

The Colville Reservation was established by an Executive order of President Grant, dated July 2, 1872, which set aside "the country bounded on the east and south by the Columbia River, on the west by the Okanagan River, and on the north by the British possessions." Pursuant to the act of August 19, 1890 (26 Stat. 336, 355), an agreement was made with the Colville Indians on May 9, 1891, for the cession of the northern half of their reservation for the sum of $1,500,000. Congress, however, refused to ratify this agreement. The reservation was thereafter diminished, subject to the allotment in severalty of the Indians already residing on the vacated portion, by the act of July 1, 1892 (27 Stat. 62), which described the portion to be vacated as follows:

> Beginning at a point on the eastern boundary line of the Colville Indian Reservation where the township line between townships thirty-four and thirty-five north, of range thirty-seven east, of the Willamette meridian, if extended west, would intersect the same, said point being in the middle of the channel of the Columbia River, and running thence west parallel with the forty-ninth parallel of latitude to the western boundary line of the said Colville Indian Reservation in the Okanagon River, thence north following the said western boundary line to the said forty-ninth parallel of latitude, thence east along the said forty-ninth parallel of latitude to the northeast corner of the said Colville Indian Reservation, thence south following the eastern boundary of said reservation to the place of beginning * * *.

Section 8 of this act provided that nothing therein should be construed as recognizing the title or ownership of the Indians in any part of the reservation. However, the purpose of this provision appears to have been merely to prevent the assertion of any rights against the United States by the Indians. As the Supreme Court pointed out in *United States* v. *Pelican*, 232 U. S. 442, 445 (1914), the reservation was repeatedly recognized in subsequent acts of Congress, and was therefore "a legally constituted reservation." Thus the act of March 22, 1906 (34 Stat. 80), made provision for allotments on the diminished reservation and authorized the sale and disposition of the surplus unallotted lands subject to the payment of the proceeds of the sales to the Indians. Indeed, by the act of June 21, 1906 (34 Stat. 325, 377), Congress appropriated the $1,500,000 contemplated by the agreement of May 9, 1891, in payment of the lands restored to the public domain by the act of 1892.

The Executive order of 1872 had set aside the Colville Reservation not only for the Colville Indians but "for such other Indians as the

Department of the Interior may see fit to locate thereon." Under an agreement of July 7, 1883, ratified by the act of July 4, 1884 (23 Stat. 76, 79), which was made with Chief Moses and other Indians of the Columbia and Colville Reservations, the Columbia River Indians were moved to the Colville Reservation. See *United States* v. *Moore*, 161 Fed. 513 (C. C. A. 9th, 1908). The act of March 8, 1906 (34 Stat. 55), provided for the issuance of patents to lands allotted under the Moses agreement of July 7, 1883. Chief Joseph and his band of Nez Perce Indians were also settled on the Colville Reservation.

The Spokane Reservation was established by an Executive order of President Hayes, dated January 18, 1881, with boundaries as follows:

> Commencing at a point where Chemakane Creek crosses the forty-eighth parallel of latitude; thence down the east bank of said creek to where it enters the Spokane River; thence across said Spokane River westwardly along the southern bank thereof to a point where it enters the Columbia River; thence across the Columbia River, northwardly along its western bank to a point where said river crosses the said forty-eighth parallel of latitude; thence east along said parallel to the place of beginning. [1 Kappler 925.]

The act of June 19, 1902 (32 Stat. 744), provided for the allotment of the Spokane Reservation and the opening of the unallotted lands to exploration, location, occupation, and purchase under the mining laws. The act of May 29, 1908 (35 Stat. 458), also provided for allotments, and the opening of the surplus unallotted lands to settlement and entry under the homestead laws. Under an act of March 3, 1905 (33 Stat. 1006), the waters of the Spokane River where it formed the southern boundary of the Spokane Reservation had been made subject to non-Indian appropriation pursuant to the laws of the State of Washington, and the Secretary of the Interior had been authorized to grant allotted and unallotted lands to appropriators when necessary "for the beneficial use of said water."

It should be noted that the boundaries of the Colville Reservation extend to the middle of the bed of the Columbia River. The Department so held in the case of *J. H. Scupelt*, decided May 29, 1914 (43 L. D. 267).[4] It was pointed out in the opinion that while the language of the Executive order of 1872 was not clear, all doubt had been removed by the act of 1892, which ran the boundary from a point "in the middle of the channel of the Columbia River" and referred to the western boundary "in the Okanagon River." This conclusion was supported also by the desirability of protecting "the fishing interests of the Indians, as it is well known that the Indians secure a great

[4] In Port of Seattle v. Oregon & Washington R. R. Co., 255 U. S. 56 (1921), and Silas Mason Co. v. Tax Commission, 302 U. S. 186 (1937), the Court held that title to the bed of the Columbia River was in the State of Washington but the cases involved points in the river where no Indian rights existed.

deal of their subsistence from the fish obtained from the Columbia River." While the disposition of the beds of navigable waters during the territorial period are not favored,[5] the Federal Government has ample power to make such dispositions, and the intention to do so may be inferred in the creation of Indian reservations during the territorial period. The inclusion of tidelands or the beds of navigable waters in Indian reservations has been upheld in the years since the departmental decision in a considerable number of cases.[6] The question in each case is one of intent.

It has also been held in *United States* v. *Big Bend Transit Co.*, 42 F. Supp. 459 (D. C. E. D. Wash., 1941), that the bed of the Spokane River is part of the Spokane Indian Reservation. The Court declared in this case:

> • • • The water of the Spokane River and the bed of the stream to the south bank thereof were included in the Spokane Indian Reservation by Executive Order of January 18, 1881. The 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. [P. 467.]

Fishing was originally a vital part of the economy of the Colville and Spokane Indians, especially salmon fishing, although they also did some farming. The Spokane Indians had several fisheries along the Spokane River. But the great fishery for all the Indians of this region was at Kettle Falls, which is considerably north of the present northern boundary of the Colville Reservation, and even further north of the Spokane Reservation. Fishing by the Indians at Kettle Falls was a right enjoyed by them in common before the establishment of the reservations.[7] The situation was thus very similar to that which later obtained farther west along the reaches of the Columbia River in Oregon where the Indians "likened the river to a great table where all the Indians came to partake."[8] The Indians have never exercised exclusive fishing rights over the whole of the Columbia River. The ownership of the Colville Indians along most of the river where it bordered their reservation was only to the thread of the stream. Where the Columbia River flowed through the Colville and Spokane Reservations, so as to form a common border of the two reservations and to give them complete ownership of the bed of the river, there

---

[5] See Shively v. Bowlby, 152 U. S. 1 (1894), and United States v. Holt State Bank, 270 U. S. 49 (1926).

[6] See Alaska Pacific Fisheries v. United States, 248 U. S. 78 (1918); United States v. Romaine, 255 Fed. 253 (C. C. A. 9th, 1919); United States v. Stotts, 49 F. (2d) 619 (D. C. W. D. Wash., 1930); Montana Power Co. v. Rochester, 127 F. (2d) 189 (C. C. A. 9th, 1942); United States v. Moore, 62 F. Supp. 660 (D. C. W. D. Wash., 1945).

[7] See Report of the Commissioner of Indian Affairs for 1870, pp. 23–27. On the early history of the Colville and Spokane Indians, see, also, Leslie Spier, "Tribal Distribution in Washington" (General Series in Anthropology, No. 3, 1936).

[8] See Seufert Bros. Co. v. United States, 249 U. S. 194, 197 (1919).

appear to have been no fishing locations. In fact, fishing was always at particular sites rather than along the whole river, and this was true also on the tributaries of the river. The San Poil River is the only important fishing stream that flows through the Colville Reservation.

Fishing is now of little importance in the Indian economy, the salmon having largely disappeared as the result of extensive fish-trap operations elsewhere on the river.[9] The construction of the Grand Coulee Dam has been the final step in destroying the salmon fishing. The Columbia River Reservoir will have to be restocked with other fish.[10] On December 2, 1939, the Colville Business Council adopted a resolution calling on the Bureau of Reclamation to compensate the tribe for the destruction of its fishing sites on the San Poil River and at Kettle Falls.

Neither the Colville nor Spokane Reservations were ever very suitable for agriculture. An Indian agent called the reservation established for the Colville Indians by the Executive order of 1872 "mostly a conglomeration of bare, rocky mountains," and another declared, "there is rock enough on the reservation to supply the world." [11]

The present economy of the Colville and Spokane Reservations rests primarily upon the grazing of livestock, and the exploitation of the great timber resources of the two reservations. Of the 3.5 billion feet of lumber on the two reservations, approximately 2 billion feet are located on lands tributary to the Columbia River Reservoir. Some of the range units adjoin the Columbia River Reservoir, and the Indians are to a considerable extent dependent upon its water for their livestock.[12]

The construction of the Grand Coulee Dam was authorized by section 2 of the Rivers and Harbors Act of August 30, 1935. It was estimated that the Columbia Basin project as a whole would cost $393,000,000.[13] The primary purposes of the project are irrigation, power development, and the improvement of navigation,[14] but it was contemplated also that the reservoir area would afford great recreational opportunities. The Columbia River Reservoir,[15] which

[9] See Hearings before a Subcommittee of the House Committee on Indian Affairs on H. R. 9270 (69th Cong., 1st sess., April 6, 1926), on the claims of the Colville Indians. The Indians claimed damages of $1,000,000 for the loss of their fishing rights.

[10] See memorandum of March 23, 1940, from Commissioner of Reclamation to the Secretary, and U. S. Department of the Interior, Bureau of Reclamation, Final Report of the Committee for the Study of Problem No. 26, which sets forth a plan for the recreational development of the reservoir area.

[11] See H. Ex. Doc. 1 (part 5), pp. 663-665, 43d Cong., 1st sess. (1873).

[12] See Indian Office memorandum for the Secretary dated December 30, 1943, p. 2.

[13] See House Hearings on Interior Department Appropriation Bill for 1938, p. 1546 (75th Cong., 1st sess.).

[14] See section 2 of the Rivers and Harbors Act of August 30, 1935 (49 Stat. 1028, 1039).

[15] The Columbia River Reservoir is formed not only from the Columbia River but also from its tributaries, including the Spokane River which formed the southern boundary of the Spokane Reservation.

reaches to the Canadian border, is about 150 miles long, and the total area of the reservoir is approximately 80,000 acres, of which about 5,000 acres are shorelands (at high flood level).[16] Section 1 of the act of June 29, 1940, authorized the acquisition of Indian tribal and allotted lands up to a maximum elevation of 1,310 feet above sea level. The maximum water elevation of the reservoir is 1,290 feet, thus leaving a freeboard margin of 20 feet.

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.[17] 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 Indians and non-Indians alike being appraised upon the same basis.[18] The Indian allotted lands were acquired under memoranda of understanding between the Indian Office and the Bureau of Reclamation approved by the Department on April 6, 1939, and June 14, 1940.[19] 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)." Most of the lands along the river acquired for the reservoir were allotted rather than tribal lands,[20] and among the latter were also some ceded

[16] See Indian Office memorandum for the Secretary dated December 30, 1943, p. 1. The "shorelands" are the uninundated lands above the maximum water elevation of the reservoir. They constitute the so-called freeboard area. See first paragraph of section 2 (c), *infra*.

[17] See letter of September 19, 1938, from F. A. Banks, Construction Engineer, to the Commissioner of Reclamation, which states that "several tracts of Indian tribal and allotted land will be partially or entirely flooded during the coming year."

[18] See memorandum from Acting Supervising Engineer to the Commissioner of Reclamation, dated May 1, 1940, and teletype message from the Office of the Construction Engineer at Grand Coulee to the Commissioner of Reclamation, dated September 25, 1945.

[19] There was a supplemental memorandum of understanding of November 7, 1939, with reference to two tracts. The memoranda of understanding recite that some of the lands had already been inundated.

[20] The following figures are given in the table contained in the letter from Acting Commissioner W. Barton Greenwood to the Secretary, dated September 13, 1939:

	Acres
Colville Reservation:	
Tribal	2,293.3
Allotted	13,034.7
Spokane Reservation:	
Tribal	1,105.1
Allotted	2,481.8

There is some discrepancy between these figures and those given in a teletype message from the Office of the Construction Engineer at Grand Coulee to the Commissioner of Reclamation, dated September 25, 1945. This states that in all 3,441.94 acres of tribal land and 15,032.89 acres of allotted land were acquired.

lands.[21] Only a small percentage of reservation lands had, however, been allotted.[22] Some of the allotted lands acquired for the reservoir were located in the portion of the Colville Reservation vacated and restored to the public domain by the act of July 1, 1892. After the passage of the act of June 29, 1940, the acquisition of Indian lands under the memoranda of understanding was abandoned and regulations governing the acquisition of Indian lands under the act were approved by the Department on September 3, 1940.

My review of the background of the act of June 29, 1940, would be incomplete without note of the fundamental change of plan that occurred in the course of the consideration of the legislation. Originally, the bill drafted in the Department had merely made the grants of title under the act "subject to the reservation for the Indians of an easement to use such lands for hunting, fishing, boating, and other purposes." This type of provision had a precedent in the act of May 9, 1924 (43 Stat. 117), relating to the American Falls Reservoir which gave similar rights to the Fort Hall Indians.[23]

However, the Bureau of Reclamation, although it had originally accepted a solution of the problem along these lines, later objected to the reservation of easements over the former Indian lands along the Columbia River which did not lie in a contiguous block but were scattered all along the river from Grand Coulee to the Canadian border. Such easements would have given the Indians rights in all parts of the reservoir area, and it was feared that this would interfere with the proper development of its recreational possibilities. The Bureau of Reclamation was also opposed to any grant of easements for unspecified purposes.[24] It proposed therefore that the Indian be given "paramount" rights of use; that these rights be limited to hunting, fishing, and boating; and that they be confined to not more than approximately one-quarter of the entire reservoir area. This figure was derived from the ratio of the original river shore line of Indian lands acquired or to be acquired for the reservoir to the total original shore line of the river in the reservoir area. This idea was first broached in a memorandum of March 23, 1940, from the Commissioner of Reclamation to the Secretary. It was suggested in this memorandum that the following language be included in the bill:

---

[21] See memorandum from the Assistant Commissioner of Indian Affairs to Commissioner of Reclamation, dated April 15, 1941.

[22] The Statistical Supplement to the Annual Report of the Commissioner of Indian Affairs for fiscal year ended June 30, 1944 (p. 21), indicates that of 1,175,700 acres of land on Colville Reservation, 294,205 are allotted, and that of 137,609 acres of land on Spokane Reservation, 47,988 are allotted.

[23] The grant under this act was made "subject to the reservation of an easement to the Fort Hall Indians to use the said lands for grazing, hunting, fishing, and gathering of wood, and so forth, the same way as obtained prior to this enactment. In so far as such uses shall not interfere with the use of said lands for reservoir purposes."

[24] See memorandum from the Commissioner of the Bureau of Reclamation to the Commissioner of Indian Affairs, dated February 20, 1940.

* * * The Secretary of the Interior is hereby authorized to designate and set aside not to exceed 25 percent of the entire reservoir area as areas in which the Indians of the Spokane and Colville Reservations shall have, subject to regulation by the Secretary, paramount rights of hunting, fishing, and boating: *Provided*, That the exercise of such rights shall not interfere with project operations; and the grant of lands under this act for reservoir purposes is made subject to the right of said Indians to have access over such lands to the designated areas.

The Commissioner of Reclamation commented thus upon the scheme of the bill:

* * * This is thought desirable so that a study can be made hereafter of the several diverse uses that may be made of the reservoir by the National Park Service, Biological Survey, and the Bureau of Fisheries, as well as the Indians. Based on such a study, a more equitable adjustment of the various interests can be made, taking account of natural advantages of different parts of the reservoir for these diverse interests. The provision that the rights of the Indians in the designated areas shall be subject to regulation is regarded as essential lest the exercise of the granted rights defeat or seriously interfere with the programs of other agencies to have interests in the reservoir area. * * *

In a memorandum of April 5, 1940, the Assistant Commissioner of Indian Affairs made the following comment upon this proposal:

It is desired that certain conservation practices be exercised in the operation of the reservoir with respect to hunting, fishing, and for park purposes. It is recognized, therefore, that while the Indians' rights shall be paramount the Secretary shall have the authority to prescribe reasonable regulations so that the exercise of the paramount rights by the Indians will not destroy the other purposes. This probably can be handled to a large degree through 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.

The Assistant Commissioner of Indian Affairs proposed at the same time that the bill be redrafted as follows:

The Secretary of the Interior shall set aside not less than 25 percent of the entire reservoir area for the paramount use of the Indians of the Spokane and Colville Reservations for hunting, fishing, and boating purposes, the exercise of which rights shall be subject to reasonable regulations of the Secretary for the conservation of fishing and wildlife, provided that the exercise of such rights shall not interfere with project operations and in designating such area or areas the Secretary shall when necessary grant to the Indians the right of access across any lands of the project.

In a memorandum of April 10, 1940, from the Commissioner of Reclamation to the Secretary, it was set forth that the Office of Indian Affairs and the Bureau of Reclamation had agreed upon the draft of a bill. This draft is identical with the language of the act of June 29, 1940. The comment made by the Commissioner of Reclamation upon this draft in the memorandum is in substance the same as that

made by the Department in its report on the bill to Congress on May 28, 1940, as follows: [25]

> In consideration of the rights they now enjoy within the Spokane and Colville Reservations, provisions are contained in the bill concerning the hunting, fishing, and boating rights of the Indians. In substance, such provisions would require the Secretary of the Interior to set aside an area of approximately one-quarter of the entire reservoir area for the use of the Spokane and Colville Reservation Indians for hunting, fishing, and boating purposes, subject to such reasonable regulations as the Secretary would prescribe and provided that the exercise of such hunting, fishing, and boating rights would not interfere with project operations. The rights of the Indians to use this area for hunting, fishing, and boating, will not necessarily be exclusive rights. The location of this area is left to the discretion of the Secretary of the Interior so that, following a study of several probable diverse uses of the reservoir area by the National Park Service, the Bureau of Biological Survey, the Bureau of Fisheries, and the Indians, there may be an equitable adjustment of these uses which will take account of the natural advantages of the different parts of the reservoir in relation to these uses.

2. The Nature and Extent of the Reservoir Area to be Set Aside

The act directs the Secretary to set aside "approximately one-quarter of the entire reservoir area for the paramount use of the Indians of the Spokane and Colville Reservations." Five questions need to be considered in determining the nature and extent of this area: (*a*) Must definite areas be set aside; (*b*) how many areas may be set aside; (*c*) must separate areas be set aside for each of the tribes; (*d*) must the areas set aside be adjacent to reservation lands and within the exterior boundaries of the reservations as they existed prior to the construction of the reservoir; (*e*) may part of the freeboard area be included in the area set aside.

(*a*) *The setting aside of the areas.*—When the act was being considered, the desirability of setting aside a definite area for the Indians was stressed. Since then the practicality of dividing the reservoir into Indian and non-Indian zones has been seriously questioned not only by people in the Indian Office but also in the Bureau of Reclamation. Indeed, the Indian Office in its memorandum of December 30, 1943, argued that the Indians be given the privileges contemplated by the act "without attempting to delimit certain parts of the reservoir for their use." Such a scheme would, however, have to be rejected as a legal possibility under the act because, unless the area or areas were fixed and capable of definite description, no area or areas would have been "set aside," as is commanded by the statute.

(*b*) *The number of areas.*—The language of the act in terms empowers the Secretary to set aside one or more areas for the use of the

[25] The departmental report is printed in H. Rept. No. 2350, 76th Cong., 3d sess. (1940), p. 2.

Indians, provided all the areas set aside do not exceed one-quarter of the reservoir area. While the second paragraph of section 1 of the act speaks of setting aside one-quarter of the "entire reservoir area" in the singular, the reference here is to the total reservoir area from which the Indian area or areas are to be selected. The intention of the statute seems to be plain from the last proviso to this paragraph, which in directing the Secretary to grant the Indians reasonable right of access speaks of "rights of access to such area or areas." [20]

On the other hand, the statute also makes provision for rights of use for two separate tribes of Indians, the Colville and Spokane Indians. Since I conclude in the next section that the interest of the Indians in one-quarter of the reservoir area is not joint but several, the Secretary would be required to allocate at least one area to each of the two tribes. This conclusion is not inconsistent, however, with the language of the statute, which permits the Secretary to set aside one or more areas. The Secretary could set aside areas for the two tribes which would be contiguous, or to put it in another way, the Secretary could subdivide a single area into two parts so that each tribe would be allocated a separate area. The setting aside of a single contiguous area so subdivided would be in harmony with the language of the statute in every respect.

I hold therefore that the Secretary may set aside one or more areas for Indian use. However, the rule of reason must be taken to limit his power in the latter respect. He may not set aside so many areas that he would bring about the very evil which the statute was designed to prevent. The object of the statute was, so to speak, to secure a consolidation of the areas of Indian interest.

(c) *The nature of the interests of the tribes.*—Although the Secretary may set aside one or more areas, the question remains whether he must set aside separate areas for the Colville and Spokane Indians. Each area set aside could be for the joint or several use of the Colville and Spokane Indians. If the setting aside of separate areas had been intended, it would doubtless have been more natural to direct the Secretary to set aside areas for the Colville and Spokane Indians "respectively," and to have provided a formula for dividing between the two tribes the 25 percent of the reservoir area to be set aside for both of them. But this sort of argument would prove altogether too much in the case of a statute that is as ambiguous as the act of June 29, 1940.

[20] I consider it unimportant that in two communications the Commissioner of Reclamation spoke of the location or use of the "area" in the singular, as did the Department in its final report to Congress under date of May 28, 1940, and in commenting on the enrolled bill on June 26, 1940. See memorandum from the Commissioner of Reclamation to the Secretary of the Interior, dated April 10, 1940; letter from the Commissioner of Reclamation to Congressman Charles H. Leavy, dated April 16, 1940.

In a sense, moreover, the statute does impliedly make the necessary provisions. If more than one area may be set aside, then it is more reasonable to suppose that separate areas should be set aside for each tribe. The ratio that was employed in determining the percentage of the entire reservoir area that was to be set aside for both tribes could reasonably be applied in determining the share of each. This ratio would give approximately one-quarter of the Indian areas of the reservoir to the Spokane Tribe.[27] The population of the Spokane Indian Reservation is also about one-quarter of that of the Colville Indian Reservation.[28] The total land areas of the two reservations are quite disproportionate, the Colville Reservation being at least 10 times as large as the Spokane Reservation,[29] but this factor would seem to be of no great importance. While I do not hold, in view of the silence of the statute in this respect, that the Secretary is bound to adopt any particular formula, their availability facilitates any apportionment by the Secretary of the total Indian area in such a manner as would be equitable under all the circumstances.

It should be remembered that the Colville and Spokane Indians are separate tribal groups with separate reservations and that they had separate rights in the lands of the reservations and in the waters flowing through or bordering upon their reservations, although they did have a common border on part of the Columbia River. In the absence of a plain indication in the statute that the rights to be accorded were to be enjoyed in common, a construction should not be indulged which might lead to complexities and difficulties in the relations between the two tribes. If the Secretary were required by the statute to set aside a single area, it would complicate the problem of making the area accessible to both tribes.[30] Indeed, the Secretary might select an area that would lie at least partly within the exterior boundaries of the Colville Reservation. One of the tributaries of the Columbia River, the San Poil River, which forms part of the reservoir system, flows entirely through the Colville Reservation. I hold therefore that the Secretary is empowered to allocate at least one area to each of the two tribes, and that the implications of the statutory provisions are best realized if this be done.

(*d*) *The location of the areas.*—The answer to this question is not as simple as it seems. The statute does not say directly that the areas to be set aside by the Secretary must be adjacent to reservation lands or

---

[27] See *supra*, footnote 20.

[28] In the Statistical Supplement to the Annual Report of the Commissioner of Indian Affairs (p. 12), the population of the Colville Reservation is given as 3,501, and that of the Spokane Reservation as 925.

[29] In the same Statistical Supplement (p. 21), the total area of the Colville Reservation is given as 1,175,700 acres, and that of the Spokane Reservation as 137,609.

[30] See the discussion of this question, *infra*, in subdivision (*d*).

that the areas must lie within the exterior boundaries of the respective reservations as they existed prior to the construction of the reservoir. The legislative history of the statute shows that its purpose was to give the Secretary discretion in determining the location of the reservoir area in which the Indians were to be given special rights. Thus the departmental report states:

> The location of this area is left to the discretion of the Secretary of the Interior so that, following a study of several probable diverse uses of the reservoir area by the National Park Service, the Bureau of Biological Survey, the Bureau of Fisheries, and the Indians, there may be an equitable adjustment of these uses which will take account of the natural advantages of the different parts of the reservoir in relation to these uses.

However, the discretion of the Secretary is not unlimited, and must be exercised in a reasonable manner. The areas to be set aside are for the use of the Indians, and they must be put in a position to make use of them. The departmental report itself recognizes that the Indian use is to be considered in locating the areas to be set aside. The Columbia River Reservoir runs all the way to the Canadian border from the northern boundaries of the Colville and Spokane Reservations. To locate the Indian area or areas near the Canadian border, for example, would be to make them practically inaccessible to the Indians. The act itself grants the Indians access across project lands to the areas set aside for them, but this right of access might be rendered wholly nugatory by the location of these areas at places which could not be reached from the Colville and Spokane Indian Reservations. The Indians would then need rights of access also across considerable areas of privately owned lands, which they could acquire only by purchase. To make the rights of access real, the Indian areas of the reservoir must therefore be located in reasonable proximity to the reservations, which is to say that they must be adjacent to or near the reservation lands. Other things being equal, this means that they should be located along the former shore line of the Indian lands.

In considering the location of the reservoir areas to be set aside, I have spoken throughout of "reservation lands" rather than of Indian lands. The record shows, however, that a number of scattered off-the-reservation allotments lie far to the north of the boundaries of the Colville Reservation along the Kettle and Columbia Rivers. I have no information concerning whether these allottees still maintained their affiliations with the Colville Tribe at the time their lands were acquired, nor do I know where or whether they have been relocated. In view of the fact that these allottees could never have had any special rights in the Kettle and Columbia Rivers at the points at which they were located, I do not believe that it can be said that the

Secretary is under a duty to locate an area adjacent to these former Indian lands, although I suppose that if in fact these allottees have relocated in close proximity to the present reservoir the Secretary would not be barred from doing so.

I think, too, that it cannot be maintained, in view of the scope of the Secretary's discretion, that he is under a duty to locate the Indian areas within the exterior boundaries of the reservations as they existed prior to the construction of the reservoir. This would seem to follow from the possibility of establishing an area for off-the-reservation allottees, as well as from the fact that the areas to be set aside are for the paramount rather than the exclusive use of the Indians. Since the Indian rights of use are not necessarily exclusive,[31] there would not seem to be much point in confining the Indian areas within the exterior boundaries of the reservations, which in the case of the San Poil and Spokane Rivers would make it possible to set aside areas running entirely across the streams, and in the case of the Columbia River would make it possible to extend any area or areas set aside to the middle of the channel of the river. However, in view of the constitutional question that has been raised,[32] I think there would be a distinct advantage in locating the Indian areas in such a way that they would lie within the exterior boundaries of the reservations. If this were done, it would help to avoid the constitutional question. It should, however, expressly be noted that I do not believe that one rather than the other construction is indispensable in maintaining the constitutionality of the act, or is required by the rule that where a statute is susceptible of two constructions by one of which grave constitutional questions may arise, and by the other of which such questions may be avoided, construction should favor the latter.[33]

(*c*) *The inclusion of the freeboard area.*—The first paragraph of section 1 of the act of June 29, 1940, permitted the taking of Indian lands for reservoir purposes up to a maximum elevation of 1,310 feet above sea level.[34] That elevation is, however, approximately 20 feet above the maximum water surface elevation of the reservoir. While this difference in elevation is small, the area of shoreland above the maximum water surface elevation of the reservoir may be quite extensive, depending on the contour of the land above this elevation.

The language of the act is helpful although not conclusive on the question of the inclusion of the freeboard area. The term "reser-

[31] See *infra*, section 3 (*b*).

[32] See *infra*, section 5.

[33] See United States v. Delaware & Hudson Co., 213 U. S. 366, 407 (1909); Addy Co. v. United States, 264 U. S. 239, 245 (1924); Missouri Pacific R. R. Co. v. Boone, 270 U. S. 466, 471 (1926).

[34] This section was amended by the act of December 16, 1944 (58 Stat. 813), to permit the acquisition of Indian lands also for operation and maintenance of the reservoir.

voir area" alone does not necessarily include the freeboard area. According to its dictionary meaning, a reservoir is a basin, either natural or artificial, for collecting and maintaining a supply of water. The "reservoir area" may therefore be only the area covered by the water of the reservoir. The term "reservoir area" does not seem to be an engineering term with a fixed and definite meaning. Diligent search has failed to uncover its use as such in other reclamation legislation. The Construction Engineer at the Grand Coulee Dam, Mr. F. A. Banks, seems to have expressed the opinion, moreover, that the freeboard area is not to be regarded as part of the reservoir area.[25] However, the statute does not speak merely of the "reservoir area." It refers to the "entire" reservoir area, and it may be that the addition of this word was intended to emphasize that the reservoir area was to be deemed to include the freeboard area, as well as the water surface area of the reservoir. Otherwise, the word would be surplusage, and there is a familiar rule of construction that every word in a statute is to be given meaning if at all possible.

The statute also gives the Indians hunting rights in the reservoir areas to be set aside for them. Such rights could be exercised on land as well as water. Although the freeboard area may not now be valuable for hunting, since it must have been practically stripped of game in the process of clearing the land while the project was under construction, the possibility exists that it may be made valuable for such a purpose by the establishment of game refuges in the freeboard area, or by its reforestation, and no construction should be indulged which might deprive the Indians of any future game resources.

The fact that the act provides the Indians with a right of access to the reservoir area to be set aside for them does not in itself rule out the inclusion of part of the freeboard area. I must attach considerable weight to the presence of the words "where necessary" to the clause providing for access to the reservoir area or areas. It reads, "The Secretary shall also, where necessary, grant to the Indians reasonable rights of access to such area or areas across any project lands." It seems to have been assumed therefore that in some circumstances it would not be necessary to grant rights of access. Such could be the case only if shorelands were included in the reservoir areas. If such shorelands adjoined Indian lands, no right of access would be necessary. However, a right of access would *always* be necessary if "reservoir area" meant only the water surface of the reservoir, for the freeboard area would everywhere separate the waters of the reservoir from Indian lands.

---

[25] See his memorandum to the Commissioner of Reclamation dated February 26, 1944, par. 8.

Finally, I must point out that even if any part of the freeboard area were entirely useless to the Indians for hunting purposes, it would nevertheless possess some value for them in affording greater security to them in obtaining access to the water surface of the reservoir. It would be one thing to have only a right of access to a particular freeboard area, but quite another to have the area set aside for their use, especially since the Secretary might make such use exclusive.[36]

The legislative history of the act is inconclusive upon the question whether the freeboard area may be included in the areas to be set aside for the Indians. In the early stages of the consideration of the legislation, the Indian Office and the Bureau of Reclamation thought in terms of allowing the Indians to use "the lands and reservoir" [37] or the "lands and the waters thereon." [38] But at this time the Bureaus were also thinking in terms of the reservation of easements and of permitting the Indians to make use of the reservoir area for such a purpose as grazing—a plan that was finally abandoned. However, even under the plan actually adopted, the Indians would have rights in "lands and waters" if no part of the freeboard area were included in the areas set aside for them, since the shorelands below the maximum water elevation would not always be inundated. On the other hand, in the basic memorandum of March 23, in which the scheme of the present act was first suggested, the Commissioner of Reclamation himself made use of the term "reservoir area" in a sense which suggests that it may have been intended to include the freeboard area. He spoke of "the need for regulation of the Indian hunting rights in relation to game refuges that might be established in the *reservoir* area." [Italics supplied.] However, a refuge for wild fowl would also be a game refuge, and it could be part of the water surface area of the reservoir.

Under all these circumstances, I am not disposed to favor a construction that would limit the Secretary's discretion in this respect in setting aside the Indian reservoir areas, and I hold therefore that the Secretary may include freeboard areas in the areas to be set aside for the Indians.

3. The Character of the Indian Rights Under the Act

Four questions relating to the character of the Indian rights under the act have been raised: (*a*) Whether the rights of the Indians are confined to hunting, fishing, and boating; (*b*) whether the charac-

[36] See *infra*, section 3 (*b*).
[37] Indian Office letter of September 13, 1939, to the Secretary.
[38] Draft of bill submitted by the Bureau of Reclamation to the Indian Office on February 20, 1940.

terization in the statute of the Indian use as "paramount" makes the Indian rights of hunting, fishing, and boating exclusive rights; (*c*) whether the Indian rights are personal rather than assignable; (*d*) whether the Indians may be required to pay license fees in connection with exercising their rights under the act.

(*a*) *The extent of the Indian rights.*—The Indian Office emphasizes the desirability of the Indians also having grazing rights, and of being able to make use of the reservoir in connection with their logging operations. The enjoyment of such privileges would undoubtedly be of much greater value to the Indians than those specifically mentioned in the act, namely, hunting, fishing, and boating. The question is whether the Indians may use the reservoir for any other purposes.

During the drafting period of the bill, the Indian Office sought to secure the acceptance by the Bureau of Reclamation of a form of bill which would have granted to the Indians easements for "hunting, fishing, boating, and other purposes." In its memorandum of February 20, 1940, the Bureau of Reclamation, in objecting to this proposal, thus explained the reasons for its objection:

> • • • This language is at variance from that proposed in the memorandum of your Assistant Commissioner of November 4, 1939. The language proposed by your office named certain specific rights and added a general reservation "for other purposes" not inconsistent with the use of the lands and waters for reservoir purposes. We have omitted this general reservation, have provided that the reserved rights are to be exercised subject to regulation by the Secretary of the Interior, and have more clearly defined the group of Indians entitled to exercise the rights. All of these limitations on the reserved rights are, in my opinion, desirable and necessary. This is particularly true in view of the policy of the Department to sponsor the greatest possible development of reservoirs, such as the Columbia River Reservoir, through such agencies as Biological Survey, Bureau of Fisheries, and the National Park Service. In order for these agencies to plan their work effectively it is necessary that the limits of the reserved rights be clearly defined.

The words "and other purposes" were subsequently eliminated from the act. If the scheme of the act had remained the same, it could hardly be argued that it was intended to permit the Indians to make use of the reservoir for other purposes than those specifically mentioned in the statute.[39] However, although the scheme of the statute was subsequently changed from a reservation of easements across the Indian lands acquired to a grant of rights in a portion of the reservoir area, there is no evidence in the legislative history file bearing on the question of the effect of the change upon the uses to which the area to be set aside might be put.

[39] Such a construction would be reinforced by the doctrine *expressio unius est exclusio alterius*. See Crawford, Statutory Construction, sec. 195.

Nevertheless, in the absence of such evidence, I am bound to assume that the Indian rights in the areas to be set aside were not to be enlarged, unless the possibility of enlargement is suggested by the language of the act. Despite the change in plan, only rights of hunting, fishing, and boating were enumerated in the act. It is true that the provision for access made in the last sentence of the second paragraph of section 1 of the act does not expressly say that the rights of access are to be granted "to enable the Indians to exercise their rights of hunting, fishing, and boating." But the addition of such language would have been superfluous, since a right of access is not a separate and independent right but a means of enjoying property rights or special rights otherwise possessed. The right of access cannot, therefore, be made the basis of additional special rights in the areas set aside for the Indians for purposes not mentioned in the statute. However, I should point out that the rights of access would not be limited to mere rights of ingress and egress, but should be commensurate with the purposes to which the portions of the reservoir to be set aside for the Indians are to be put.[40] Thus the Indians would have the right to construct a reasonable number of docks in connection with their boating operations and to erect such structures as may be necessary in connection with their hunting and fishing activities.

There still remains the question, however, whether there are not other rights that inure to the Indians apart from the provisions of the act of June 29, 1940. Apparently the Bureau of Reclamation, in acquiring the allotted and tribal lands under the act, did not specifically acquire title to such portions of the river bed as were beneficially owned by the Indians, and the appraisals did not specifically include any allowances based upon the ownership of the river bed. The allottees themselves had no title to the river bed, owning the uplands only.[41] Even if the title of the tribe to the river bed abutting the uplands survived allotment,[42] there was still no particular reason why the Bureau of Reclamation should have acquired title thereto The United States has a servitude for the improvement of navigation in the beds of all navigable waters,[43] and the Columbia River had been

[40] Reining v. New York, L. & W. Ry. Co., 13 N. Y. S. 238 (1891); Herman v. Biggs, 150 N. Y. S. 246 (1914); Town of Brookhaven v. Smith, 188 N. Y. 74, 80 N. E. 665 (1907); Alaska Juneau Gold Mining Co. v. Northern Lumber Mills, 5 Alaska 269 (1915); 45 C. J. pp. 501–502.

[41] The grant of title to allotted lands will be construed in accordance with State law (Hall v. Hobart, 186 Fed. 426 (C. C. A. 8th, 1911); Shively v. Bowlby, 152 U. S. 1 (1894); Producers Oil Co. v. Hanzen, 238 U. S. 325 (1915)), and in the State of Washington the owner of upland does not have title to the bed of navigable waters.

[42] It appears to have been held in United States v. Ashton, 170 Fed. 509, 517 (C. C. W. D. Wash., 1909), *app. dism. sub nom.* Bird v. Ashton, 220 U. S. 604 (1911), that allotment extinguished any tribal title.

[43] Lewis Blue Point Oyster Cultivation Co. v. Briggs, 229 U. S. 82 (1913); Greenleaf Lumber Co. v. Garrison, 237 U. S. 251 (1915); Luther J. Bailey *et al.* v. The United States, 62 Ct. Cl. 77 (1926).

held to be navigable.[44] The same servitude existed with respect to the tributaries of the Columbia River even though they may not have been navigable in themselves.[45] Moreover, the United States in improving navigation could cut off the Colville and Spokane Indians from access to deep water without making compensation.[46] The existence of these servitudes permitted the construction of the dam and reservoir without acquisition of title.

Nevertheless, whatever title the Colville and Spokane Tribes had in the beds of the Columbia and Spokane Rivers would not be destroyed by the mere exercise of the servitude for the improvement of navigation.[47] I think, however, that I need not decide the rather puzzling and difficult question of the survival of this title in the process of taking,[48] since I am convinced that it could not be made a source of additional special rights for the Indians. It seems to me apparent from the whole history of the statute, as well as from its terms, that the scheme of rights provided therein was intended as an exclusive substitute for whatever rights the Indians may have enjoyed before its enactment by reason of their rights of ownership. The rights are plainly denominated lieu rights in the statute itself, which provides that the areas to be set aside for the Indians are to be "in lieu of reserving rights of hunting, fishing, and boating to the Indians in the areas granted under this Act." Even if I were to hold the contrary, it would merely necessitate the acquisition of title to the river beds for the taking of which the act would supply ample authority. But I see no necessity for this, because the special rights granted to the Indians under the act were themselves obviously deemed to be a form of compensation for the riparian rights of the Indians for which no separate compensation had been made. To put it in another way, even if it be assumed theoretically that the Indians have title to a portion of the river bed, it is an entirely naked title, since Congress plainly intended to give the Indians only rights of hunting, fishing, and boating in such portions of the reservoir as should be set aside for them by the Secretary. Moreover, the ownership of the river bed would not give the Indians any right to use the waters of the reservoir itself for such

---

[44] Continental Land Co. v. United States, 88 F. (2d) 104 (C. C. A. 9th, 1937), which also relates in some detail the plans for the construction of the Grand Coulee Dam and the Columbia River Reservoir.

[45] Appalachian Electric Power Co. v. Smith, 4 F. Supp. 6 (D. C. W. D. Va., 1933), *reversed* 67 F. (2d) 451 (C. C. A. 4th, 1933), and *cert. denied* 291 U. S. 674 (1934).

[46] Scranton v. Wheeler, 179 U. S. 141 (1900); United States v. Appalachian Electric Power Co., 311 U. S. 377 (1940).

[47] James v. Dravo Contracting Co., 302 U. S. 134, 140 (1937).

[48] While the bed of a stream may be separately owned from the uplands, the ordinary rule is that, unless a contrary intention is clearly expressed, the conveyance of title to the upland carries with it the title to the bed of the stream. See 45 C. J., pp. 568, 569, and authorities there cited. The application of this rule here, however, would be uncertain because title was not conveyed but taken.

923340—52——15

purposes as stock watering and the floating of logs, since the waters of a navigable stream are "in no sense private property." [49]

It does not follow from these views, however, that the Indians may not use the Columbia River Reservoir for any other purpose than hunting, fishing, and boating, and that they may not venture forth into parts of the reservoir area which have not been set apart for their paramount use. Apart from their special rights in the areas set aside for them, they may, of course, enjoy such privileges as are accorded to the general public. They may exercise such privileges as the law allows the public in navigable waters and obtain such rights in the shorelands as the Secretary may grant to any member of the public under existing law, and upon the same terms and conditions. Section 10 of the act of August 4, 1939 (53 Stat. 1187, 1196; 43 U. S. C. sec. 387), provides:

> The Secretary, in his discretion, may * * * grant leases, licenses, easements, or rights-of-way, for periods not to exceed fifty years, affecting lands or interests in lands withdrawn or acquired and being administered under the Federal reclamation laws in connection with the construction or operation and maintenance of any project. Such permits or grants shall be made only when, in the judgment of the Secretary, their exercise will not be incompatible with the purposes for which the lands or interests in lands are being administered, and shall be on such terms and conditions as in his judgment will adequately protect the interests of the United States and the project for which said lands or interests in lands are being administered.

Thus the Secretary, exercising his powers under this act, may grant permits to the Colville and Spokane Indians to use the reservoir area for grazing, stock watering, and logging sites, and may make such charges for these privileges as are exacted when similar applications are made by non-Indians. Thus, too, the Indians may navigate any of the waters of the reservoir and fish and hunt thereon, as well as float logs on the reservoir, for these are public rights in navigable waters,[50] although the extent to which they will be able to enjoy these privileges will depend on their ability to secure access to the reservoir. They may also enjoy such privileges in the use of the shorelands as are accorded to the general public.

(*b*) *The meaning of "paramount use."*—It has been argued that the hunting, fishing, and boating uses assured to the Indians under the act in the areas to be set aside for them are neither exclusive of the same uses by other persons, nor exclusive of other uses by other persons. The uses have even been described as merely "preferential." [51] It is true that the rights of the Indians would not be wholly

---

[49] See United States v. Appalachian Electric Power Co., 311 U. S. 377, 424 (1940).

[50] See 22 Am. Jur., pp. 674, 678; 34 Am. Jur., pp. 528–529; 45 C. J., pp. 444–445; 26 C. J., pp. 602, 604; 27 C. J., p. 944; 38 C. J., pp. 203–205, and authorities there cited.

[51] See memorandum of Assistant Chief Counsel of the Bureau of Reclamation to the Solicitor, dated July 4, 1944.

nugatory if the act were construed to give them "preferential" rights only. It could then be argued that such rights could not be regulated to the point of complete prohibition as could any privileges granted to the general public, and also that such rights could not be burdened with a charge in the form of license fees.

The act declares that the area to be set aside shall be for the "paramount" use of the Indians. It may be conceded that the reliance upon the adjective "paramount" alone in this context was probably unfortunate. The adjective played a great role in the feudal land law, and in American legal terminology it has been employed primarily with reference to the "paramount" authority of the Federal Government in the American constitutional scheme. The complexities and perplexities of both feudalism and federalism should constitute a sufficient warning that a "paramount" use is a somewhat elusive concept. A paramount right is one that is superior to all others, but this necessarily implies that others may have rights in the same thing, and, in any event, the question always remains in what respects the right is paramount, for it may be a right to present enjoyment, or a reversionary right, and it may be subject to limitations.

The act itself, however, does not define the sense in which "paramount" is employed, and the legislative history relating to this question is rather confusing.[62] A clue to this sense is, however, to be found in a sentence in the Department's report on the bill which reads: "The rights of the Indians to use this area for hunting, fishing, and boating, will not necessarily be exclusive rights." This statement clearly implies that it was contemplated that there might be circumstances in which the Indian rights could be made exclusive. The adjective "paramount" rather than "exclusive" must have been employed in the act only because in an absolute sense the Indian rights could not be exclusive. This arose from the fact that the Indians would be granted rights in a reservoir which was constructed primarily for other purposes, namely, for irrigation, power development, and the improvement of navigation. The act also contained the proviso, "That the exercise of the Indians' rights shall not interfere with project operations," and made the hunting and fishing rights expressly subject to regulation by the Secretary. The subordination of the Indian rights to project operations, and the subjection of these rights to regulation, need not have prevented them, however, from being denominated "exclusive" rights; there may have been misunderstanding on this score.

[62] There does not appear to have been any real meeting of the minds on this question. In his memorandum of April 5, 1940, to the Secretary, the Assistant Commissioner of Indian Affairs spoke of setting apart "part or parts of the reservoir for the exclusive use of the Indians in exercising their rights." There is no evidence, however, that this idea was accepted by the Bureau of Reclamation.

It can hardly be doubted that the whole reservoir area, including the Indian area, is subject to the public right of navigation. But there are other uses to which the Indian area could be put without interfering with the Indian rights of hunting, fishing, and boating. Such uses might be both of a commercial and recreational character. An example of the former use would be the floating of logs obtained in lumbering operations, and examples of the latter would be the use of the reservoir for swimming, and of the reservoir area for camping. In view of all of these possibilities, it would not be reasonable to hold that it was intended to make the exercise of the Indian rights in the Indian area of the reservoir exclusive of other uses by other persons unless experience showed that these uses so interfered with the Indians' exercise of their rights that these other uses by other persons would have to be curtailed or abolished by the Secretary.

Indeed, the real purpose of the statute seems to have been to give to the Indians directly neither "preferential" nor "exclusive" rights. It was rather to give a power to the Secretary to make the Indian rights exclusive where necessary to insure the realization of their privileges. In the absence of the declaration in the statute that the rights of use of the Indians in the reservoir area were to be paramount, the Secretary, as a public officer administering the project, could have given special rights to no one. But the declaration having been made, the Secretary, while under no absolute duty to give the Indians exclusive rights of hunting, fishing, and boating, is empowered to do so, as well as to curtail the rights which non-Indians might exercise in the areas of the reservoir set apart for their use. However, the Secretary would be under a duty to make the rights of the Indians exclusive whenever he found as a fact that the protection of the Indians in the exercise of their rights made such a step necessary. Thus, while the rights of the Indians would "not necessarily be exclusive rights," they might be made exclusive rights. That the statute contemplated such a flexible scheme is suggested not only by its language but by the nature of the rights themselves and the problems inherent in according them protection.

In a sense, there can really be no exclusive fishing rights in a portion of a reservoir.[53] The setting aside of various areas of the reservoir for the Indians will not imprison the fish in those areas, which can also be taken from the adjoining areas, and somewhat similar considerations apply to the hunting of waterfowl from the surface of the reservoir. Conceivably, too, a distinction might be made be-

[53] In United States v. Sturgeon, Fed. Cas. 16413, 6 Sawy. 29 (D. C. D. Nev., 1879), the Court said, in speaking of fishing in a lake wholly within the boundaries of an Indian reservation: "It is plain that nothing of value to the Indians will be left of their reservation if all the whites who choose may resort there to fish." But, obviously, such a consideration would be inapplicable to fishing in part of a reservoir.

tween offshore fishing from specified locations, and fishing by boat from the surface of the reservoir, and the Indians might be given the primary right of selecting the offshore fishing locations. Distinctions might also be made as to permissible methods and periods of fishing to the advantage of the Indians in their area of the reservoir.

Boating presents a somewhat different problem from hunting and fishing, since the Indian areas can in no sense be depleted by the movement of pleasure boats over their surface, although, of course, excessive boating might interfere not only with the same use by the Indians but also with their hunting and fishing. Conceivably, too, a distinction might be drawn between "boating" which, according to its dictionary meaning, means rowing or sailing primarily for pleasure or as a pastime, and the use of navigable waters for the purposes of trade or commerce.[54] The latter has anciently been said to be the test of navigability, although the more modern and better view, supported by an increasing number of cases, is that boating is an instance of public navigation,[55]—a view based on the persuasive consideration that the recreational uses of a body of navigable water are as important to the public as the commercial. Thus, while through commercial traffic would in any event have to be allowed to pass through the Indian area of the reservoir, mere pleasure boating, which was confined to the Indian area of the reservoir, could be prohibited.

All these factors may be considered by the Secretary in the exercise of his judgment and discretion. The problem involved here is primarily administrative, and the Secretary's discretion is limited only by his duty to maintain the paramount character of the Indians' rights of use.

(c) *The power of the Indians to license their rights.*—In view of the conclusion that the rights of the Indians to use the reservoir for hunting, fishing, and boating are not necessarily exclusive, it would seem unnecessary at this time to decide the question whether these rights are merely personal, so that the general public may not be licensed by the Indians to enjoy them. No practical problem of licensing by the Indians would probably arise with respect to these activities unless the Secretary should make them exclusive rights, and unless the Indians should then wish to license their use by others. The resulting legal problem is as difficult as it is hypothetical, and I prefer not to resolve an issue which may never arise.

---

[54] See 45 C. J., p. 410, § 6 of title "Navigable Waters": "It is generally, but not in all jurisdictions, held that the stream must be navigable for some useful purpose, such as trade or agriculture, rather than for mere pleasure, and must be capable of sustaining more than small boats such as rowboats or small skiffs or launches."

[55] See Lamprey v. Metcalf, 53 N. W. 1139 (Minn., 1893); State v. Korrer, 148 N. W. 617 (Minn., 1914); Willow River Club v. Wade, 76 N. W. 273 (Wis., 1898); Diana Shooting Club v. Husting, 145 N. W. 816 (Wis., 1914); Nekoosa Edwards Paper Co. v. Railroad Commission, 228 N. W. 144 (Wis., 1929).

(*d*) *The authority to impose license fees.*—The question whether the Secretary may require the Indians to pay license fees in connection with their hunting, fishing, and boating activities in the areas set aside for them must clearly be answered in the negative. A somewhat similar problem was presented in *Tulee* v. *Washington*, 315 U. S. 681 (1942), with respect to the treaty rights of the Yakima Indians to fish at their "usual and accustomed places" on ceded lands without paying license fees to the State of Washington. The Court held that the State could not burden the treaty right by imposing license fees. It is true that this ruling is not precisely in point here. No treaty right is involved, and the question presented is one of Federal rather than State regulation. Nevertheless, the liberal approach of the Supreme Court to the problem is not without significance here. Furthermore, the Court expressly pointed out [56] that "the imposition of license fees is not indispensable to the effectiveness of a state conservation program." The same would seem to be true of a Federal conservation program. But all room for doubt is removed by the provision of the act itself. After making the grant of the rights, the act expressly provides that they "shall be subject *only* to such reasonable regulations as the Secretary may prescribe for the protection and conservation of fish and wildlife." [Italics supplied.] The Secretary may not charge the Indians a fee for hunting and fishing privileges because it would be unnecessary to an effective conservation program, and he may not charge the Indians a fee for boating because such an exaction would not be within the restricted power given to him under the act.

4. The Administration of the Reservoir Area

No less than four agencies of the Department are interested in one way or another in the administration of the Columbia River Reservoir. These agencies are the Bureau of Reclamation, the Bureau of Indian Affairs, the National Park Service, and the Fish and Wildlife Service. At present the reservoir area as a whole is being administered by the National Park Service under a temporary arrangement. The Indian Service requests that it be entrusted with the administration of whatever areas are set apart for the Indians.

The problem of administrative jurisdiction presents for consideration only a question of policy. If the applicable legislation expressly vested a particular function in relation to the reservoir area in one rather than another of the interested Bureaus, some question might conceivably be raised as to the propriety of relieving it altogether of any connection with the discharge of such function. But it is obvious

that each one of the interested agencies may have some function to perform in relation to the reservoir area. On the other hand, the administration of the Columbia Basin project is vested in the Secretary, and it is the Secretary who is directed to set aside a part of the Columbia River Reservoir for the benefit of the Colville and Spokane Indians. The Secretary also has a general power of selection among the interested agencies by virtue of section 161 of the Revised Statutes (now 5 U. S. C. sec. 22), which provides that "The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business * * *."

5. The Question of Constitutionality

The act makes the use of the reservoir by the Indians subject to "such reasonable regulations as the Secretary may prescribe for the protection and conservation of fish and wildlife." On April 6, 1940, while the legislation was under consideration, the Acting Commissioner of the Bureau of Fisheries addressed a memorandum to the Assistant Chief Counsel of the Bureau of Reclamation, which suggested that the proposed plan of Federal regulation might present a constitutional question. Strangely enough, it does not appear that this question was further explored prior to the passage of the act. However, in his memorandum of July 4, 1944, to the Solicitor, the Assistant Chief Counsel of the Bureau of Reclamation again raised the question of constitutionality, referring to the decision in *Silas Mason Co.* v. *Tax Commission*, 302 U. S. 186 (1937), which involved merely the question whether the State of Washington could levy an occupation tax on a private contractor on the Grand Coulee Dam, whose activities were carried on at Mason City on land ceded by the State of Washington to the Federal Government, as to which the Court held there had been no cession of exclusive jurisdiction. Moreover, there was in this case no act of Congress which expressly conferred a power of regulation upon an officer of the Federal Government.

Article IV, Section 3, of the Federal Constitution, confers upon Congress the power to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." The title to the shorelands is undoubtedly in the United States in fee simple absolute. While the United States has no property interest in the waters of the reservoir, and the title to the river bed is rather complicated,[67] the property interest of the United States

[67] As already indicated, the complexities arising from this state of the title could be avoided by locating the Indian areas of the reservoir within the exterior boundaries of the reservations.

would seem to be sufficiently broad to justify Federal regulation. While normally State conservation laws would govern even on Federal property, there is no doubt that Congress could override them if it had reasonable basis for supposing that such a step was necessary. See *Hunt* v. *United States*, 278 U. S. 96 (1928).

While the power to preserve fish and game is inherent in the sovereignty of a State, it is nevertheless subject to any valid exercise of authority under the Federal Constitution. *New York ex rel. Kennedy* v. *Becker*, 241 U. S. 556, 562 (1916). Among the powers of Congress is the control of the navigable waters of the United States. Although the authority of a State to regulate fishing in navigable waters of the United States within its territory was recognized at an early date, in *Manchester* v. *Massachusetts*, 139 U. S. 240 (1891), the Court declared that such regulation would be valid only "in the absence of any regulation by the United States." (P. 265.) The provision of the act of June 29, 1940, obviously constitutes such regulation. Congress, in carrying out its plan for the improvement of navigation on the Columbia River, could validly proceed upon the assumption that the control of hunting and fishing on the reservoir required Federal regulation in whole or in part, either because such a measure was desirable in itself, or because it was deemed a desirable factor in providing compensation to the Indians. It was once argued that the constitutional power of the United States over its waters was limited to control for navigation. But this narrow view was emphatically rejected in *United States* v. *Appalachian Electric Power Co.*, 311 U. S. 377, 423 *et seq.* (1940), in which the Court recognized that "the authority of the United States is the regulation of commerce on its waters," and also declared, "It is no objection to the terms and to the exertion of the power that 'its exercise is attended by the same incidents which attend the exercise of the police power of the states.'"

Finally, there is the plenary power of Congress over Indians and Indian affairs, which has been recognized by a long line of decisions since *United States* v. *Kagama*, 118 U. S. 375 (1886).[58] Indeed, in *United States* v. *McGowan*, 302 U. S. 535, 538 (1938), the Supreme Court declared: "Congress alone has the right to determine the manner in which this country's guardianship over the Indians shall be carried out."[59] While the Federal regulation of Indian hunting and fishing in the reservoir may extend to areas as to which the Indian title has

[58] See Board of Comm'rs v. Seber, 318 U. S. 705, 716 (1943), footnote 18, in which the earlier cases are collected.

[59] Compare the early declaration in Lone Wolf v. Hitchcock, 187 U. S. 553, 565 (1903): "Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government."

been extinguished,[60] the plenary power of Congress over Indians does not necessarily depend upon title. *United States* v. *Thomas*, 151 U. S. 577 (1894). The power of Congress to regulate the liquor traffic with Indians on lands ceded by them has been uniformly upheld, despite the fact that the Indian title has been extinguished. While in *United States* v. *Forty-three Gallons of Whiskey*, 93 U. S. 188 (1876), and in *Dick* v. *United States*, 208 U. S. 340 (1908), the power to regulate such traffic was based upon the authority of Congress to regulate commerce with the Indian tribes, in *Perrin* v. *United States*, 232 U. S. 478, 482 (1914), the Court declared that the power was also derived "in part from the recognized relation of tribal Indians to the Federal Government." Similarly, the jurisdiction of the Federal courts under section 548 of Title 18, United States Code, to punish the so-called major crimes when committed by Indians on fee-patented lands has been upheld.[61] In *United States* v. *Ramsey*, 271 U. S. 467, 471 (1926), the Court declared in general terms that "Congress possesses the broad power of legislating for the protection of the Indians wherever they may be within the territory of the United States."

There is implicit in the doubts expressed concerning the constitutionality of the act the idea that the question ought to be avoided by conforming the regulations issued under the authority of the act to the provisions of State law. Upon the question whether such a course ought to be adopted on independent grounds of policy as the best practical measure, I need express no opinion. It is plain, however, that such a course need not be adopted because of the supposed desirability of avoiding constitutional doubts, which have no substantial basis. I see no reason to doubt the amplitude of the constitutional power of Congress in providing for Federal regulation of the Indian reservoir areas.

WARNER W. GARDNER,
Solicitor.

---

[60] Even if it were assumed that the Indian titles to the shorelands and the river bed have both been extinguished, it would not necessarily follow that the effect was to redefine the reservation boundaries and thus to exclude the acquired lands. In United States v. Celestine, 215 U. S. 278 (1909), the Court declared in general terms that when land is fee patented it still remains within the limits of the reservation. If this is so, it is difficult to see why acquisition of title by the United States should *ipso facto* terminate the reservation, especially since the Indians still have a limited number of special rights in the areas in question. A reservation is not a grant and has nothing to do with title. Alaska Pacific Fisheries v. United States, 248 U. S. 78, 86 (1918).

[61] See Eugene Sol Louie v. United States, 274 Fed. 47 (C. C. A. 9th, 1921); State v. Johnson, 249 N. W. 284 (Wis., 1933). There are dicta pro and con in United States v. Ellis, 126 Fed. 879 (D. C. N. Dak., 1903); Ex parte Tilden, 218 Fed. 920 (D. C. Idaho, 1914); State v. Big Sheep, 243 Pac. 1067 (Mont., 1926); State v. Columbia George, 63 Pac. 604 (Ore., 1901); United States v. Gardner, 189 Fed. 690 (D. C. E. D. Wis., 1911); People v. Pratt, 80 P. (2d) 87 (D. C. A. Calif., 1938); Quagon v. Biddle, 5 F. (2d) 608 (C. C. A. 8th, 1925). The disagreement in the authorities is based upon the language of the statute rather than upon constitutional considerations.

be modified so as to apply to service performed by employees in positions covered by the Wisconsin retirement fund.

"(2) All employees in positions covered by the Wisconsin retirement fund at any time on or after January 1, 1951, shall, for the purposes of subsection (c) only, be deemed to be a separate coverage group; except that there shall be excluded from such separate coverage group all employees in positions to which the agreement applies without regard to this subsection.

"(3) The modification pursuant to this subsection shall exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) service performed by any individual during any period before he is included under the Wisconsin retirement fund.

"(4) The modification pursuant to this subsection shall, if the State of Wisconsin requests it, exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) all service performed in policemen's positions, all service performed in firemen's positions, or both."

Effective date.

SEC. 2. For the purposes of section 218 (f) of the Social Security Act (relating to effective dates of agreements), the amendment made by the first section of this Act shall take effect as of January 1, 1951.

Approved August 15, 1953.

Public Law 280 CHAPTER 505

AN ACT

August 15, 1953
[H. R. 1063]

To confer jurisdiction on the States of California, Minnesota, Nebraska, Oregon, and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such States, and for other purposes.

Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 53 of title 18, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1151 of such title the following new item:

State jurisdiction over criminal offenses.

"1162. State jurisdiction over offenses committed by or against Indians in the Indian country."

SEC. 2. Title 18, United States Code, is hereby amended by inserting in chapter 53 thereof immediately after section 1161 a new section, to be designated as section 1162, as follows:

"§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

"(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	Indian country affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof. Taxation of property, etc.

"(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section."

SEC. 3. Chapter 85 of title 28, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1331 of such title the following new item: State jurisdiction over civil causes.

"1360. State civil jurisdiction in actions to which Indians are parties."

SEC. 4. Title 28, United States Code, is hereby amended by inserting in chapter 85 thereof immediately after section 1359 a new section, to be designated as section 1360, as follows:

"§ 1360. State civil jurisdiction in actions to which Indians are parties

"(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	Indian country affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein. Taxation of property, etc.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section."

27000 O - 53 - 40

Repeal.

SEC. 5. Section 1 of the Act of October 5, 1949 (63 Stat. 705, ch. 604), is hereby repealed, but such repeal shall not affect any proceedings heretofore instituted under that section.

Removal of legal impediment.

SEC. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

Consent of U. S. to other States.

SEC. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.

Approved August 15, 1953.

Public Law 281 — CHAPTER 506

August 15, 1953
[H. R. 3409]

AN ACT

To terminate certain Federal restrictions upon Indians.

Repeals.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 467 and 2136 of the Revised Statutes (25 U. S. C., sec. 266) and section 2135 of the Revised Statutes (25 U. S. C., sec. 265), all of the said laws being laws which forbid the sale, purchase, or possession by Indians of personal property which may be sold, purchased, or possessed by non-Indians, are hereby repealed.

Livestock.
62 Stat. 759.

SEC. 2. (a) Section 1157 of title 18 of the United States Code, as amended, is further amended by striking the period at the end thereof and adding the following: ": *Provided*, That this section shall apply only to livestock purchased by or for Indians with funds provided from the revolving loan fund established pursuant to the Acts of June 18, 1934 (48 Stat. 984), and June 26, 1936 (49 Stat. 1967), as amended and supplemented, or from tribal loan funds used under regulations of the Secretary of the Interior, and to livestock issued to Indians as loans repayable 'in kind', and to the increase of all such livestock, and only until such time as such loans are repaid: *Provided further*, That it shall be the duty of any purchaser of Indian livestock to use reasonable diligence to ascertain that such livestock are not subject to such loans."

25 USC 461-509 passim.

Repeal.

(b) Section 1 of the Act of July 4, 1884 (23 Stat. 94, 25 U. S. C., sec. 195), is repealed.

Approved August 15, 1953.

Public Law 282 — CHAPTER 507

August 15, 1953
[H. R. 4508]

AN ACT

To authorize the sale of certain lands to the State of Oklahoma.

Oklahoma.
Conveyance.

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

Public Law 85-419

AN ACT

May 19, 1958
[H. R. 3504]

To amend section 831 of title 5 of the Canal Zone Code to make it a felony to injure or destroy works, property, or material of communication, power, lighting, control, or signal lines, stations, or systems, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 831 of title 5 of the Canal Zone Code is hereby amended to read as follows:

Canal Zone.
Destruction of property; penalty.

"§ 831. Communication, power, lighting, control, or signal lines, stations, or systems

"Whoever (a) willfully or maliciously injures or destroys any of the works, property, or material of any radio, telegraph, telephone, cable, or television line, station, or system, or other means of communication, or of any power or lighting line, station, or system, or other means of power or lighting transmission or distribution, or of any control or signal line, station, or system, whether any such line, station, or system be constructed or in process of construction, or (b), willfully or maliciously interferes in any way with the working or use of any such line, station, or system, or (c), willfully or maliciously obstructs, hinders, or delays the transmission of any communication or signal, or the transmission or distribution of power or lighting by means of any such line, station, or system, is guilty of a felony."

Approved May 19, 1958.

Public Law 85-420

AN ACT

May 19, 1958
[H. R. 8544]

To provide for the restoration to tribal ownership of all vacant and undisposed-of ceded lands on certain Indian reservations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all lands now or hereafter classified as vacant and undisposed-of ceded lands (including townsite lots) on the following named Indian reservations are hereby restored to tribal ownership, subject to valid existing rights:

Indian lands.
Restoration.

Reservation and State	Approximate Acreage
Klamath River, California	159.57
Coeur d'Alene, Idaho	12,877.65
Crow, Montana	10,269.95
Fort Peck, Montana	41,450.13
Spokane, Washington	5,451.00

Provided, That such restoration shall not apply to any lands while they are within reclamation projects heretofore authorized.

SEC. 2. Title to the lands restored to tribal ownership by this Act shall be held by the United States in trust for the respective tribe or tribes, and such lands are hereby added to and made a part of the existing reservations for such tribe or tribes.

SEC. 3. The lands restored to tribal ownership by this Act may be sold or exchanged by the tribe, with the approval of the Secretary of the Interior.

Sale or exchange of lands.

Approved May 19, 1958.

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 CERTAIN LANDS WITHIN THE COLVILLE 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.

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 reservation. Executive Order of Jan. 18, 1881.[1]

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."[2] The following is the full text

[1] 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.

[2] 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 Klaxia 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 Klaxia 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.[3]

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,"[4] and water area inside the original boundaries of the reservations (ex-

[3] 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.

[4] "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 line.

cept immediately around the dam).[5] 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.[6] 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.

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

[5] 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."

[6] 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.

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).[7] 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 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,[8] 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

[7] 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.)

[8] 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.

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 Mattz* 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.[9] This holding is in accord with the position taken in the 1945 Solicitor's Opinion. *See* 59 I.D. at 175 n. 60.

2. THE INDIANS' INTEREST IN THE ORIGINAL RIVERBED AND THE INDIAN ZONE[10]

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

[9] 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 250 (10th Cir. 1965); and *Tooisgah* v. *United States*, 186 F.2d 93 (10th Cir. 1950). *Oklahoma Gas* and *Tooisgah*, 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 *Mattz* 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 perceived from its legislative history and other surrounding circumstances. (*DeMarrias* v. *South Dakota*, 319 F.2d 845 (9th Cir. 1963), a case similar to *Tooisgah*, 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 *Mattz*.) And in any event, all three cases—*Oklahoma Gas*, *Ellis*, and *Tooisgah*—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.

[10] 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.[21] Such title, having vested in the tribes, cannot be taken except as clearly and specifically authorized by Congress.[22] 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.[23]

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

[21] 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.

[22] *Mattz* v. *Arnett*, at 504 (1973); *Seymour* v. *Superintendent*, *supra*; *United States* v. *Celestine*, *supra*.

[23] *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 argument 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.

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. Scupelt*, *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 *Scupelt*, 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,[14] 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

[14] See 59 I.D. at 153.

doubly clear that the lands reserved for the use of the Indians included the riverbed.[15]

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.[16]

[15] 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 disclaim[ed] 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 Wash. Vol. 1, pp. 332, 333; 25 Stat. 676, 677, sec. 4, par. 2).

[16] 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

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). 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-

---

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.

board" pattern—extending, in fact, upriver beyond the boundaries of the reservations." 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 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.[18] 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.[19]

[17] 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.

[18] 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.

[19] 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

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."[20] The implication thus is that those rights are not "subject" to any concurrent rights of other persons in the Indian zone.[21]

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-

---

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).

[20] The existence of these two limitations on the Indians' rights may well explain why the term "paramount" rather than "exclusive" was used in the Act, and may also perhaps underlie the comment in the Department's report quoted on page 15, *supra*.

[21] 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." [22] *Quechan* held that section 1165 "confirmed" the right of tribes to "control, regulate and license hunting and fishing" within their reservations.[23] *See also United*

[22] 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."

[23] 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.

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.[24] *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.

[24] 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.) [25]

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.[26] 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 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.[27]

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

---

[24] 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.

[25] 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.)

[26] 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.

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*.[28]

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 Management, 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

---

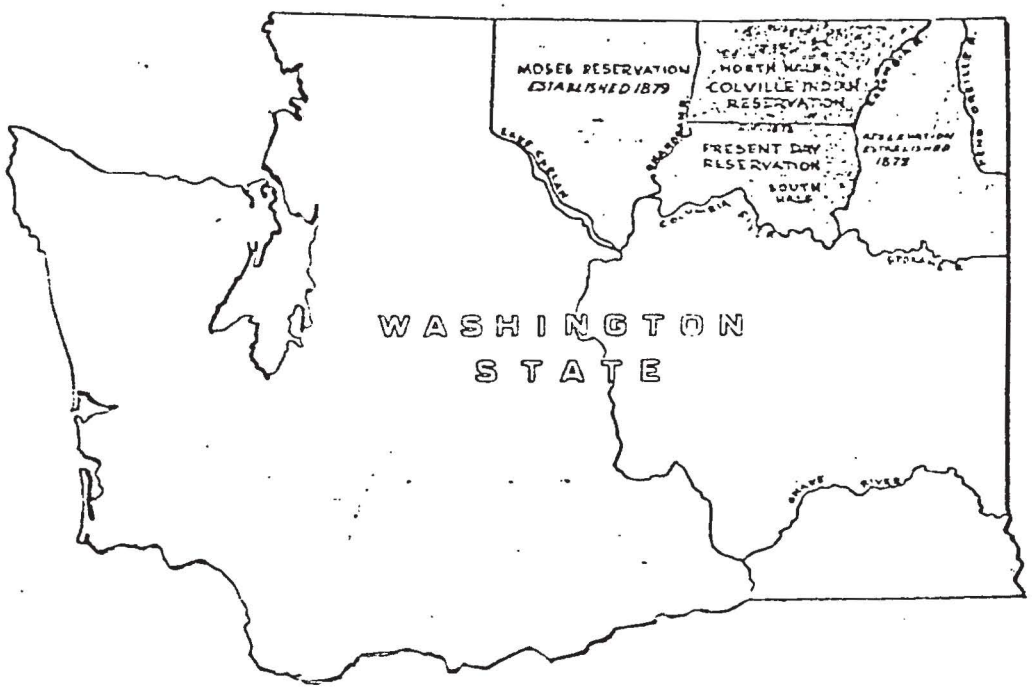
[28] As noted above, there are in reality two Indian zones—a Colville zone and a Spokane zone—rather than one. Consistent with this fact and with the 1945 *Solicitor's Opinion*, 59 I.D. at 159–60, each tribe in effect has jurisdiction as described above over its portion of the zone.

APPENDIX IV

BRIEF LAND HISTORY OF THE COLVILLE INDIAN RESERVATION

What is for our purposes considered to be the legal history of the Colville Reservation (author and title not shown), may be considered wholly adequate and complete up to the year 1956. From that year up to the present, only two additional items of significance have occurred that modify the history. Both items are included within the legal history of the Spokane Reservation, wherein they are also referenced to the Colville. The first item is a land claim entered in the Indian Court of Claims (see: Agreement With Spokane Indians of March 18, 1887). The second item is the 1974 Solicitor's Opinion (84 I.D. 72), which has equal effect on both Colville and Spokane. An ethnography for the Colville, not included in the following legal history, is subsumed under the Spokane document. Planning needs should be met fully through both documents used together.

BRIEF LAND HISTORY OF THE COLVILLE INDIAN RESERVATION



The original Colville Indian Reservation was established by Executive Order of April 9, 1872, for the use and occupancy of the Methow, Okanogan, San Poil, Lake, Colville, Calispel, Spokane, Coeur d'Alene and such other Indians as the Department saw fit to locate thereon. Other tribes located on the reservation were the Snake River Palouse branch of the Yakima, the Joseph band of the Nez Perce, the Moses Columbia, and the Wenatchee band of Indians.

The original Colville Reservation was in existence for less than three months when it was exchanged for the present reservation under Executive Order of July 2, 1872. The present reservation of approximately 2,900,000 acres was divided into the North and South halves by the Act of July 1, 1892, which restored the North Half, consisting of approximately 1,500,000 acres, to the public domain.

There was a group of tribes under the leadership of Chief Moses which resided during the early 1880's on the Columbia Reservation in the State of Washington. This group of tribes included (1) the Columbia, (2) Chelan, (3) Entiat and (4) Wenatchee. The Columbia Reservation was established by Executive Order of April 19, 1879, as amended by Executive Orders of March 6, 1880, and February 23, 1883, "for the permanent use and occupancy of Chief Moses and his people, and such other friendly Indians as may elect to settle thereon with his consent and that of the Secretary of the Interior."

On July 7, 1883, an Agreement was made in Washington, D. C., signed by the Secretary of the Interior and the Commissioner of Indian Affairs, which contained a provision that, if the Chief Moses group of tribes and other Indians who were then residing on the Columbia Reservation would move to the Colville Reservation, the United States "will secure to Chief Moses and his people as well as to all other Indians who may go on the Colville Reservation**." This Agreement was ratified by the Act of Congress of July 4, 1884 (23 Stat. 76, 79-80). Subsequently, starting in or about 1886, members of the Chief Moses tribal groups were moved to the Colville Reservation. Also, during the year 1885 and later years, the Government moved to the Col-

ville Reservation, members of the Joseph Band of Nez Perce Indians and members of the Palus Tribe.

Except for certain allotted tracts, the Columbia Reservation was restored to the public domain by Executive Order of May 1, 1886.

The South Half consisted of approximately 1,400,000 acres. The Act of March 22, 1906, after providing for 80 acre allotments, authorized and directed the classification appraisal and sale of the balance of the lands (that is, the surplus lands after the allotments), with the net proceeds of the sales to be deposited in the Treasury for the benefit of the Indians. Subsequently, by Presidential Proclamation of May 3, 1916, the lands in the South Half which were classified as irrigable and grazing were opened to entry, and the lands classified as mineral were made subject to location and disposal under the mineral land laws. The lands classified as timberlands were, however, not opened to entry. The lands were thereafter opened to entry and disposed of pursuant to the Presidential Proclamation of May 3, 1916.

Subsequently, by Departmental Orders of September 19, 1934 and November 19, 1939, the undisposed lands (including the timberlands which had not been open to entry) were withdrawn from any further disposition until the matter of their return to tribal ownership was settled. Then, by the Act of July 24, 1956, the remaining undisposed lands in the South Half comprising approximately 818,000 acres were restored to tribal ownership.

The land status of the Colville Reservation on June 30, 1970, is as follows:

Tribal Trust	935,440	
Individual Trust	67,998	
Non Trust	410,695	
Total	1,414,133	acres

Important Acts and Executive Orders affecting the land status of the Colville Reservation.

1. COLVILLE RESERVATION ESTABLISHED

Executive Order Dated April 9, 1872

Department of the Interior
Office of Indian Affairs

Washington, D.C., April 8, 1872

Sir: I have the honor to invite your attention to the necessity for the setting apart by Executive order of a tract of country hereinafter described, as a reservation for the following bands of Indians in Washington Territory, not parties to any treaty, viz:

The Methow Indians, numbering	316
The Okanogan Indians, numbering	340
The San Poil Indians, numbering	538
The Lake Indians, numbering	230
The Colville Indians, numbering	631
The Calispel Indians, numbering	420
The Spokane Indians, numbering	725
The Coeur d'Alene Indians, numbering	700
And scattering bands	300
Total	4,200

* * * Excluding that portion of the tract of country referred to, found to be in the British possessions, the following are the natural boundaries of the proposed reservation, which I have the honor to recommend be set apart by the President for the Indians in question, and such others as the department may see fit to settle thereon, viz: Commencing at a point on the Columbia where the Spokane River empties in the same; thence up the Columbia River to where it crosses the forty-ninth parallel north latitude: thence east, with said forty-ninth parallel, to where the Pend d'Oreille or Clark River crosses the same; thence up the Pend d'Oreille or Clark River to where it crosses the western boundary of Idaho Territory, the one hundred and seventeenth meridian west longitude; thence south, along said one hundred and seventeenth meridian, to where the Little Spokane River crosses the same; thence southwesterly, with said river, to its junction with the Big Spokane River; thence down the Big Spokane River to the place of beginning.

The papers hereinbefore referred to are respectfully submitted herewith.

Very respectfully, your obedient servant,

F. A. Walker, Commissioner

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, D.C., April 9, 1872

Sir: I have the honor to submit herewith a communication, dated the 8th instant, from the Commissioner of Indian Affairs, and accompanying papers, representing the necessity for the setting apart, by Executive order, of a tract of country therein described for certain bands of Indians in Washington Territory not parties to any treaty.

The recommendation of the commissioner in the premises is approved, and I respectfully request that the President direct that the tract of country designated upon the enclosed map be set apart for the Indians referred to and such others as this department may see fit to settle thereon.

I am, sir, very respectfully, your obedient servant,

B. R. Cowen, Acting Secretary.

THE PRESIDENT.

EXECUTIVE MANSION,
Washington, April 9, 1872

It is hereby ordered that the tract of country referred to in the within letter of the Acting Secretary of the Interior, and designated upon the accompanying map, be set apart for the bands of Indians in Washington Territory named in communication of the Commissioner of Indian Affairs dated the 8th instant, and for such other Indians as the Department of the Interior may see fit to locate thereon.

U. S. GRANT

---

2. COLVILLE RESERVATION EXCHANGED FOR PRESENT RESERVATION

Executive Order Dated July 2, 1872
EXECUTIVE MANSION
Washington, July 2, 1872

It is hereby ordered that the tract of country referred to in the within letter of the Commissioner of Indian Affairs as having been set apart for the Indians therein named by Executive order of April 9, 1872, be restored to the public domain, and that in lieu thereof the country bounded on the east and south by the Columbia River on the west by the Okanogan River, and on the north by the British possessions, be, and the same is hereby, set apart as a reservation for said Indians, and for such other Indians as the Department of the Interior may see fit to locate thereon.

U. S. GRANT

3. COLUMBIA OR MOSES RESERVATION ESTABLISHED

Executive Order of April 19, 1879
EXECUTIVE MANSION, April 19, 1879

It is hereby ordered that the tract of country in Washington Territory lying within the following described boundaries, viz: Commencing at the intersection of the forty-mile limits of the branch line of the Northern Pacific Railroad with the Okinakane River; thence up said river to the boundary line between the United States and British Columbia; thence west on said boundary line to the forty-fourth degree of longitude west from Washington; thence south on said degree of longitude to its intersection with the forty-mile limits of the branch line of the Northern Pacific Railroad, and thence with the line of said forty-mile limits to the place of beginning, be, and the same is hereby, withdrawn from sale and set apart as a reservation for the permanent use and occupancy of Chief Moses and his people, and such other friendly Indians as may elect to settle thereon with his consent and that of the Secretary of the Interior.

R. B. HAYES

Executive Order of March 6, 1880
EXECUTIVE MANSION, March 6, 1880

It is hereby ordered that the tract of country in Washington Territory lying within the following-described boundaries, viz: Commencing at a point where the south boundary line of the reservation created for Chief Moses and his people by Execu-

tive order dated April 19, 1879, intersects the Okinakane River; thence down said river to its confluence with the Columbia River; thence across and down the east bank of said Columbia River to a point opposite the river forming the outlet to Lake Chelan; thence across said Columbia River and along the south shore of said outlet to Lake Chelan; thence following the meanderings of the south bank of said lake to the mouth of Shehekin Creek; to its source; thence due west to the forty-fourth degree of longitude west from Washington; thence north along said degree to the south boundary of the reservation created by Executive order of April 19, 1879; thence along the south boundary of said reservation to the place of beginning, be, and the same is hereby, withdrawn from sale and settlement and set apart for the permanent use and occupancy of Chief Moses and his people, and such other friendly Indians as may elect to settle thereon with his consent and that of the Secretary of the Interior, as an addition to the reservation set apart for said Chief Moses and his people by Executive order dated April 19, 1879.

R. B. HAYES

4. COLUMBIA OR MOSES RESERVATION CANCELLED

Executive Order of February 23, 1883
EXECUTIVE MANSION, February 23, 1883

It is hereby ordered that the tract of country in Washington Territory lying within the following-described boundaries, viz, commencing at the intersection of the forty-fourth degree of longitude west from Washington, with the boundary line between the United States and British Columbia; thence due south 15 miles; thence due east to the Okinakane River; thence up said river to the boundary line between the United States and British Columbia; thence west along said boundary line to the place of beginning, being a portion of the country set apart for the use of Chief Moses and his people by Executive orders of April 19, 1879, and March 6, 1880, be, and the same is hereby, restored to the public domain.

CHESTER A. ARTHUR

Executive Order of May 1, 1886
EXECUTIVE MANSION, May 1, 1886

It is hereby ordered that all that portion of country in Washington Territory withdrawn from sale and settlement and set apart for the permanent use and occupation of Chief Moses and his people, and such other friendly Indians as might elect to settle thereon with his consent and that of the Secretary of the Interior, by the Executive orders dated April 19, 1879, and March 6, 1880, respectively, and not restored to the public domain by the Executive order dated February 23, 1883, be, and the same is hereby, restored to the public domain, subject to the limitations as to disposition imposed by the act of Congress, approved July 4, 1884 (23Stats.,pp. 79-80), ratifying and confirming the agreement entered into July 7, 1883, between the Secretary of the Interior and the Commissioner of Indian Affairs and Chief Moses and other Indians of the Columbia and Colville Reservations in Washington Territory.

And it is hereby further ordered that the tracts of land in Washington Territory surveyed for and allotted to Sar-sarp-kin and other Indians in accordance with the provisions of said act of July 4, 1884, which allotments were approved by the Acting Secretary of the Interior April 12, 1886, be, and the same are hereby, set apart for the exclusive use and occupation of said Indians, the field notes of the survey of said allotments being as follows: (description of 37 allotments).

5. AGREEMENTS WITH THE COLUMBIA AND COLVILLE

A. July 7, 1883, Ratified July 4, 1884, 23 Stat., 79.

In the conference with Chief Moses and Sar-sarp-kin, of the Columbia Reservation, and Tonasket and Lot, of the Colville Reservation, had this day, the following was substantially what was asked for by the Indians:

Tonasket asked for a saw and grist mill, a boarding school to be established at Bonaparte Creek to accommodate one hundred pupils (100), and a physician to reside with them, and $100. (one hundred) to himself each year.

Sar-sarp-kin asked to be allowed to remain on the Columbia reservation with his people, where they now live, and to be protected in their rights as settlers, and in addition to the ground they now have under cultivation within the limit of the fifteen mile strip cut off from the northern portion of the Columbia Reservation, to be allowed to select enough more unoccupied land in Severalty to make a total to Sar-sarp-kin of four square miles, being 2,560 acres of land, and each head of a family or male adult one square mile; or to move on to the Colville Reservation, if they so desire, and in case they so remove, and relinquish all their claims to the Columbia Reservation, he is to receive one hundred (100) head of cows for himself and people, and such farming implements as may be necessary.

All of which the Secretary agrees they should have, and that he will ask Congress to make an appropriation to enable him to perform.

The Secretary also agrees to ask Congress to make an appropriation to enable him to purchase for Chief Moses a sufficient number of cows to furnish each one of his band with two cows; also to give Moses one thousand dollars ($1,000) for the purpose of erecting a dwelling-house for himself; also to construct a saw mill and grist-mill as soon as the same shall be required for use; also that each head of a family or each male adult person shall be furnished with one wagon, one double set of harness, one grain cradle, one plow, one harrow, one scythe, one hoe, and such other agricultural implements as may be necessary.

And on condition that Chief Moses and his people keep this agreement faithfully, he is to be paid in cash, in addition to all of the above, one thousand dollars ($1,000) per annum during his life.

All this on condition that Chief Moses shall remove to the Colville Reservation and relinquish all claim upon the Government for any land situate elsewhere.

Further, that the Government will secure to Chief Moses and his people, as well as to all other Indians who may go on to the Colville Reservation, and engage in farming, equal rights and protection alike with all other Indians now on the Colville Reservation, and will afford him any assistance necessary to enable him to carry out the terms of this agreement on the part of himself and his people. That until he and his people are located permanently on the Colville Reservation, his status shall remain as now, and the police over his people shall be vested in the military, and all money or articles to be furnished him and his people shall be sent to some point in the locality of his people, there to be distributed as provided. All other Indians now living on the Columbia Reservation shall be entitled to 640 acres, or one square mile of land, to each head of family or male adult, in the possession and ownership of which they shall be guaranteed and protected. Or should they move on to the Colville Reservation within two years, they will be provided with such farming implements as may be required, provided they surrender all rights to the Columbia Reservation.

All of the foregoing is upon the condition that Congress will make an appropriation of funds necessary to accomplish the foregoing, and confirm this agreement; and also, with the understanding that Chief Moses or any of the Indians heretofore mentioned shall not be required to remove to the Colville Reservation until Congress does make such appropriation, etc.

H. M. Teller, Secretary of Interior.
H. Price, Commissioner of Indian Affairs.
Moses (his x mark),
Tonasket (his x mark),
Sar-sarp-kin (his x mark).

B. July 4, 1884, 23 Stat., 79

For the purpose of carrying into effect the agreement as entered into at the city of Washington on the seventh day of July, eighteen hundred and eighty-three, between the Secretary of the Interior and the Commissioner of Indian Affairs and Chief Moses and other Indians of the Columbia and Colville reservations, in Washington Territory, which agreement is hereby accepted, ratified, and confirmed, including all expenses incidental thereto, eighty-five thousand dollars, or so much thereof as may be required therefor, to be immediately available; Provided, That Sarsopkin and the Indians

now residing on said Columbia reservation shall elect within one year from the passage of this act whether they will remain upon said reservation on the terms therein stipulated or remove to the Colville reservation: And provided further, That in case said Indians so elect to remain on said Columbia reservation the Secretary of the Interior shall cause the quantity of land therein stipulated to be allowed them to be selected in as compact form as possible, the same when so selected to be held for the exclusive use and occupation of said Indians, and the remainder of said reservation to be thereupon restored to the public domain, and shall be disposed of to actual settlers under the homestead laws only, except such portion thereof as may properly be subject to sale under the laws relating to the entry of timber lands and of mineral lands, the entry of which shall be governed by the laws in force concerning the entry of such lands.

---

6. NORTH HALF OF COLVILLE RESERVATION CEDED

July 1, 1892, 27 Stat., 62

An act to provide for the opening of a part of the Colville Reservation, in the State of Washington, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congresss assembled, That subject to the reservations and allotment of lands in severalty to the individual members of the Indians of the Colville Reservation in the State of Washington herein provided for, all the following described tract or portion of said Colville Reservation, namely: Beginning at a point on the eastern boundary line of the Colville Indian Reservation where the township line between townships thirty-four and thirty-five north, of range thirty-seven east, of the Willamette meridian, if extended west, would intersect the same, said point being in the middle of the channel of the Columbia River, and running thence west parallel with the forty-ninth parallel of latitude to the western boundary line of the said Colville Indian Reservation in the Okanagon River, thence north following the said western boundary line to the said forty-ninth parallel of latitude, thence east along the said forty-ninth parallel of latitude to the northeast corner of the said Colville Indian Reservation, thence south following the eastern boundary of said reservation to the place of beginning, containing by estimation one million five huinored thousand acres, the same being a portion of the Colville Indian Reservation created by executive order dated July second, eighteen hundred and seventy-two, be, and is hereby, vacated and restored to the public domain notwithstanding any executive order or other proceeding whereby the same was set apart as a reservation for any Indians or bands of Indians, and the same shall be open to settlement and entry by proclamation of the President of the United States and shall be disposed of under the general laws applicable to the disposition of public lands in the State of Washington.

Sec. 2. That the net proceeds arising from the sale and disposition of the lands to be so opened to entry and settlement shall be set apart in the Treasury of the United States for the time being, but subject to such future appropriation for public use as Congress may make, and that until so otherwise appropriated may be subject to expenditure by the Secretary of the Interior from time to time, in such amounts as he shall deem best, in the building of schoolhouses, the maintenance of schools for such Indians, for the payment of such part of the local taxation as may be properly applied to the lands allotted to such Indians, as he shall think fit, so long as such allotted lands shall be held in trust and exempt from taxation, and in such other ways as he may deem proper for the promotion of education, civilization, and self-support among said Indians.

Sec. 3. That each entryman under the homestead laws shall, within five years from the date of his original entry and before receiving a final certificate for the land covered by his entry, pay to the United States for the land so taken by him, in addition to fees provided by law, the sum of one dollar and fifty cents per acre, one third of which shall be paid within two years after the date of the

original entry; but the rights of honorably discharged Union soldiers and sailors, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statues of the United States, shall not be abridged, except as to the sum to be paid as aforesaid.

Sec. 4. That each and every Indian now residing upon the portion of the Colville Indian Reservation hereby vacated and restored to the public domain, and who is so entitled to reside thereon, shall be entitled to select from said vacated portion eighty acres of land, which shall be allotted to each Indian in severalty. No restrictions as to locality shall be placed upon such selections other than that they shall be so located as to conform to the Congressional survey or subdivisions of said tract or country, and any Indian having improvements may have the preference over any other person in and to the tract of land containing such improvements, so far as they are within a legal subdivision not exceeding in area the quantity of land that he or she may be entitled to select and locate. All such allotments shall be made at the cost of the United States, under such rules and regulations as the Secretary of the Interior may from time to time prescribe. Such selections shall be made within six months after the date of the President's proclamation opening the lands hereby vacated to settlement and entry, and after the same have been surveyed, and when such allotments have been selected as aforesaid and approved by the Secretary of the Interior, the titles thereto shall be held in trust for the benefit of the allottees, respectively, and afterwards conveyed in fee simple to the allottees or their heirs, as provided in the act of Congress entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and Territories over the Indian, and for other purposes," approved February eighth, eighteen hundred and eighty-seven, and an act in amendment and extension thereof, approved February twenty-eighth, eighteen hundred and ninety-one, entitled "An act to amend and further extend the benefits of the act approved February eighth, eighteen hundred and eighty-seven, entitled 'An act to provide for the allotment of land in severalty to Indians on the various reservations and to extend the protection of the laws of the United States over the Indians, and for other purposes:'" Provided, That such allotted lands shall be subject to the laws of eminent domain of the State of Washington, and shall, when conveyed in fee simple to the allottees or their heirs, be subject to taxation as other property in said State.

Sec. 5. That all Indians residing in the lands hereby vacated and restored, shall have the right, if they so prefer, under the direction of the Indian agent, to occupy and reside upon such portions of the Colville Indian Reservation not hereby vacated as are not occupied by or in the possession of any other Indian or Indians.

Sec. 6. That the land used and occupied for school purposes at what is known as Tonasket school, on Bonaparte Creek, and the site of the sawmill, gristmill, and other mill property on said reservation, is hereby reserved from the operation of this act, unless other lands are selected in lieu thereof: Provided, That such reserved lands shall not exceed in the aggregate two sections, and must be selected in legal subdivisions conformably to the public surveys, such selection to be made by the Indian agent of the Colville Agency, under the direction of the Secretary of the Interior and subject to his approval: Provided, however, That said Indians may, in lieu of said sites or either of them, select other lands of equal quantity, for such purposes, either on the vacated or unvacated portions of said reservation, the same to be designated in legal subdivisions by said Indian agent, under the direction of and subject to the approval of the Secretary of the Interior, in which case said first-designated tracts shall not be exempt from the operation of this act; such selection to be made and approved within six months after the survey of said lands and the proclamation of the President.

Sec. 7. That for the purpose of making the allotments and selections in this act provided, including surveys of the lands provided to be vacated and restored to the public domain, thirty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury of the United States not otherwise appropriated, which said sum shall be reimburs-

able from the proceeds of the lands when sold as hereinbefore provided.

Sec. 8. That nothing herein contained shall be construed as recognizing title or ownership of said Indians to any part of the said Colville Reservation, whether that hereby restored to the public domain or that still reserved by the Government for their use and occupancy.

Received by the President June 20, 1892.

(Note by the Department of State—The foregoing act having been presented to the President of the United States for his approval, and not having been returned by him to the house of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.)

7. CEDED LANDS IN NORTH HALF OPENED FOR SETTLEMENT

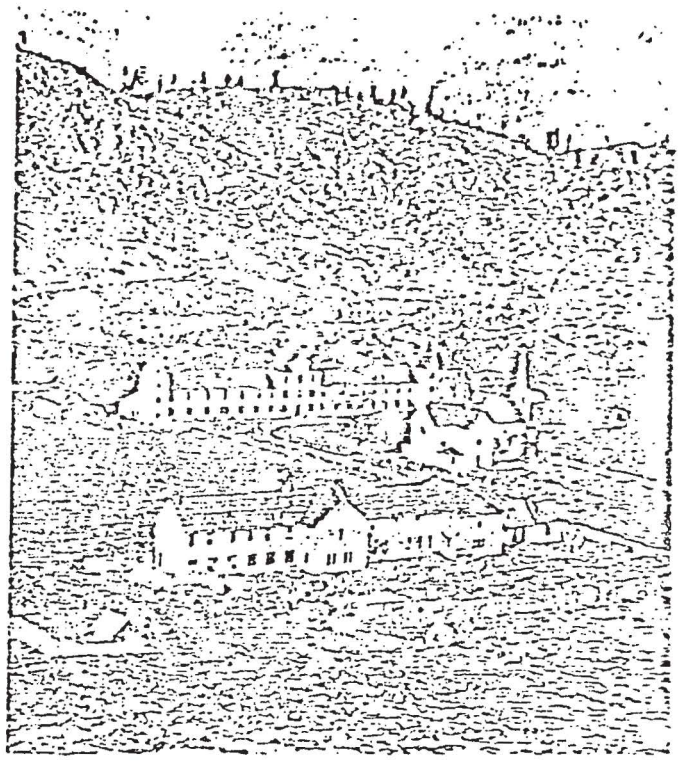
Proclamation of April 10, 1900, 31 Stat., 1963

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

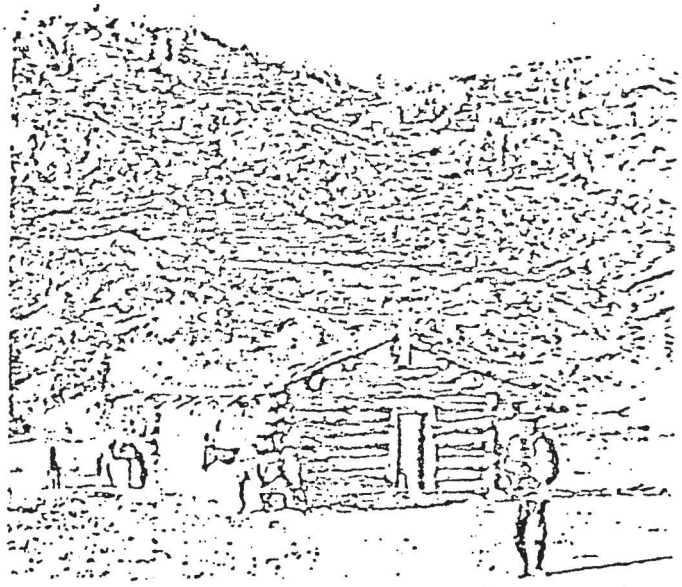
A PROCLAMATION

Whereas, by section one of the act of July 1, 1892 (27 Stat., 62), entitled "An Act to provide for the opening of a part of the Colville Reservation, in the State of Washington, and for other purposes" it is provided:

That subject to the reservations and allotment of lands in severalty to the individual members of the Indians of the Colville Reservation in the State of Washington herein provided for, all the following described tract or portion of said Colville Reservation, namely: Beginning at a point on the eastern boundary line of the Colville Indian Reservation where the township line between townships thirty-four and thirty-five north, of range thirty-seven east, of the Willamette Meridian, if extended west, would intersect the same, said point being in the middle of the channel of the Columbia River, and running thence east along the said forty-ninth parallel of



St. Mary's Mission about 1910.



Original St. Mary's Mission building, Omak, Wash., in 1887 – Indian in forefront is unidentified.

latitude to the western boundary line of the said Colville Indian Reservation in the Okanagon River, thence north following the said western boundary line to the said forty-ninth parallel of latitude, thence east along the said forty-ninth parallel of latitude, thence east along the said forty-ninth parallel of latitude to the northeast corner of the said Colville Indian Reservation, thence south following the eastern boundary of said reservation to the place of beginning, containing by estimation one million five hundred thousand acres, the same being a portion of the Colville Indian Reservation, created by executive order dated July second, eighteen hundred and seventy-two, be, and is hereby, vacated and restored to the public domain, notwithstanding any executive order or other proceeding whereby the same was set apart as a reservation for any Indians or bands of Indians, and the same shall be open to settlement and entry by the proclamation of the President of the United States and shall be disposed of under the general laws applicable to the disposition of public lands in the State of Washington,

And

Whereas it is provided by section three of said act,

That each entryman under the homestead laws shall, within five years from the date of his original entry and before receiving a final certificate for the land covered by his entry, pay to the United States for the land so taken by him in addition to fees provided by law the sum of one dollar and fifty cents per acre, one third of which shall be paid within two years after the date of the original entry; but the rights of honorably discharged Union soldiers and sailors, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statues of the United States, shall not be abridged, except as to the sum to be paid as aforesaid,

and

Whereas by section six of said act it is provided:

That the land sued and occupied for school purposes at what is known as Tonasket school, on Bonaparte Creek, and the site of the sawmill, gristmill, and other mill property on said reservation, is hereby reserved from the operation of this act, unless other lands are selected in lieu thereof: Provided, That such reserve lands shall not exceed in the aggregate two sections, and must be selected in legal subdivisions conformably to the public surveys, such selection to be made by the Indian Agent of the Colville Agency, under the direction of the Secretary of the Interior and subject to his approval: Provided, however, That said Indians may, in lieu of said sites or either of them, select other lands of equal quantity, for such purposes, either on the vacated or unvacated portions of said reservation, the same to be designated in legal subdivisions by said Indian Agent, under the direction of and subject to the approval of the Secretary of the Interior, in which case said first-designated tracts shall not be exempt from the operation of this act; such selection to be made and approved within six months after the survey of said lands and the proclamation of the President.

and

Whereas, in a clause in the Indian Appropriation Act of July 1, 1898 (30 Stat., 571), it is provided:

That the mineral lands only in the Colville Indian Reservation, in the State of Washington, shall be subjected to entry under the laws of the United States in relation to the entry of mineral lands: Provided, That lands allotted to the Indians or used by the Government for any purpose or by any school shall not be subject to entry under this provision,

and in another clause that,

The Indian Allotments in severalty provided for in said act shall be selected and completed at the earliest practicable time and not later than six months after the proclamation of the President opening the vacated portion of said reservation to settlement and entry, which proclamation may be issued without awaiting the survey of the unsurveyed lands therein. Said allotments shall be made from lands which shall at the time of the selection thereof be surveyed, excepting that any Indian entitled to allotment under said act who has improvements upon unsurveyed land may select the same

for his allotment, whereupon the Secretary of the Interior shall cause the same to be surveyed and allotted to him. At the expiration of six months from the date of the proclamation by the President, and not before, the non-mineral lands within the vacated portion of said reservation which shall not have been allotted to Indians as aforesaid, shall be subject to settlement, entry and disposition under said act of July first, eighteen hundred and ninety-two: Provided, That the land used and occupied for school purposes at what is known as Tonasket School, on Bonaparte Creek, and the site of the sawmill, gristmill and other mill property on said reservation, are hereby reserved from the operation of this act, unless other lands are selected in lieu thereof as provided in section six of the aforesaid act of July first, eighteen hundred and ninety-two.

and

Whereas, all the terms, conditions and considerations required by said Acts of July 1, 1892, and July 1, 1898, precendent to the issuance of the Proclamation provided for therein, have been, as I hereby declare, complied with:

Now, therefore, I, William McKinley, President of the United States, by virtue of the power in me vested by the statutes hereinbefore mentioned, do hereby declare and make known that all of said lands hereinbefore described, restored by the said Act of July 1, 1892, will, at and after the hour of twelve o'clock noon (Pacific standard time) six months from the date hereof, to wit: The 10th day of October, nineteen hundred, and not before, be open to settlement and entry under the terms of and subject to all the conditions, limitations, reservations, and restrictions contained in the statutes above specified, and the laws of the United States, applicable thereto, saving and excepting such tracts as have been or may be allotted to or reserved or selected for, the Indians, or other purposes, under the laws herein referred to.

Sections sixteen and thirty-six in each township will be subject to such right of the State of Washington thereto as may be ascertained and determined by the land department in the administration of the grant of lands in place to that State for the support of common schools.

The lands which have been allotted to the Indians are for greater convenience particularly described in the accompanying schedule, entitled "Schedule of lands allotted to the Indians in restored portion of Colville Reservation, Washington, and withheld from settlement and entry by proclamation of the President, dated April 10, 1900," and which schedule is made a part hereof.

Notice, moreover, is hereby given that it is by law enacted that at the expiration of six months from the date of the proclamation by the President, and not before, the non-mineral lands within the vacated portion of said reservation which shall not have been allotted to or reserved or selected for the Indians, or for other purposes, shall be subject to settlement, entry and disposition under said Act of July 1, 1892; and all persons are hereby warned from attempting to make settlement on any of said lands prior to the date fixed for the opening thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this tenth day of April, in the year of our Lord nineteen hundred, and of the Independence of the United States the one hundred and twenty-fourth.

WILLIAM McKINLEY

By the President, JOHN HAY, Secretary of State.
(Seal.)

8. AUTHORITY FOR ALLOTTING ON COLVILLE RESERVATION

A. Allotments Authorized on Colville Reservation for Moses Agreement Indians

(March 8, 1906, 34 Stat., 55)

An act providing for the issuance of patents for lands allotted to Indians under the Moses agreement of July seventh, eighteen hundred and eighty-three.

Be it enacted by the Senate and House of Representatives of the United States of America in Con-

gress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed to issue patents to such Indians as have been allotted land under and by virtue of the agreement concluded July seventh, eighteen hundred and eighty-three, by and between the Secretary of the Interior and the Commissioner of Indian Affairs and Chief Moses and other Indians of the Columbia and Colville reservations, commonly known as the Moses agreement, accepted, ratified, and confirmed by the Act of Congress approved July fourth, eighteen hundred and eighty-four (Twenty-third Statutes, pages seventy-nine and eighty), which patents shall be of legal effect and declare that the United States does and will hold the lands thus allotted for the period of ten years from the date of the approval of this act in trust for the sole use and benefit of the Indian to whom such allotment was made, or in case of his decease, either prior or subsequent to the issuance of such patent, of his heirs, according to the laws of the State of Washington, and that at the expiration of said period the United States will convey the same by patent to the said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever. And if any conveyance shall be made of the lands so held in trust by any allottee or his heirs, or any contract made touching the same, except as hereinafter provided, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void.

Sec. 2. That any allottee to whom any trust patent shall be issued under the provisions of the foregoing section may sell and convey all the lands covered thereby, except eighty acres, under rules and regulations prescribed by the Secretary of the Interior. And the heirs of any deceased Indian to whom a patent shall be issued under said section may in like manner sell and convey all of such inherited allotment except eighty acres, but in case of minor heirs their interests shall be sold only by a guardian duly appointed by the proper court upon the order of such court, made upon petition filed by the guardian, but all such conveyances shall be subject to the approval of the Secretary of the Interior, and when so approved shall convey a full title to the purchaser the same as if a final patent without restrictions upon alienation had been issued to the allottee. All allotted land alienated under the provisions of this act shall thereupon be subject to taxation under the laws of the State of Washington.

Approved, March 8, 1906.

B. Allotments for Indians Within the Diminished Reservation Authorized and Lands Not Allotted Were Authorized for Sale and Disposition.
(March 22, 1906, 34 Stat., 80)

An act to authorize the sale and disposition of surplus or unallotted lands of the diminished Colville Indian Reservation, in the State of Washington, and for other purposes.

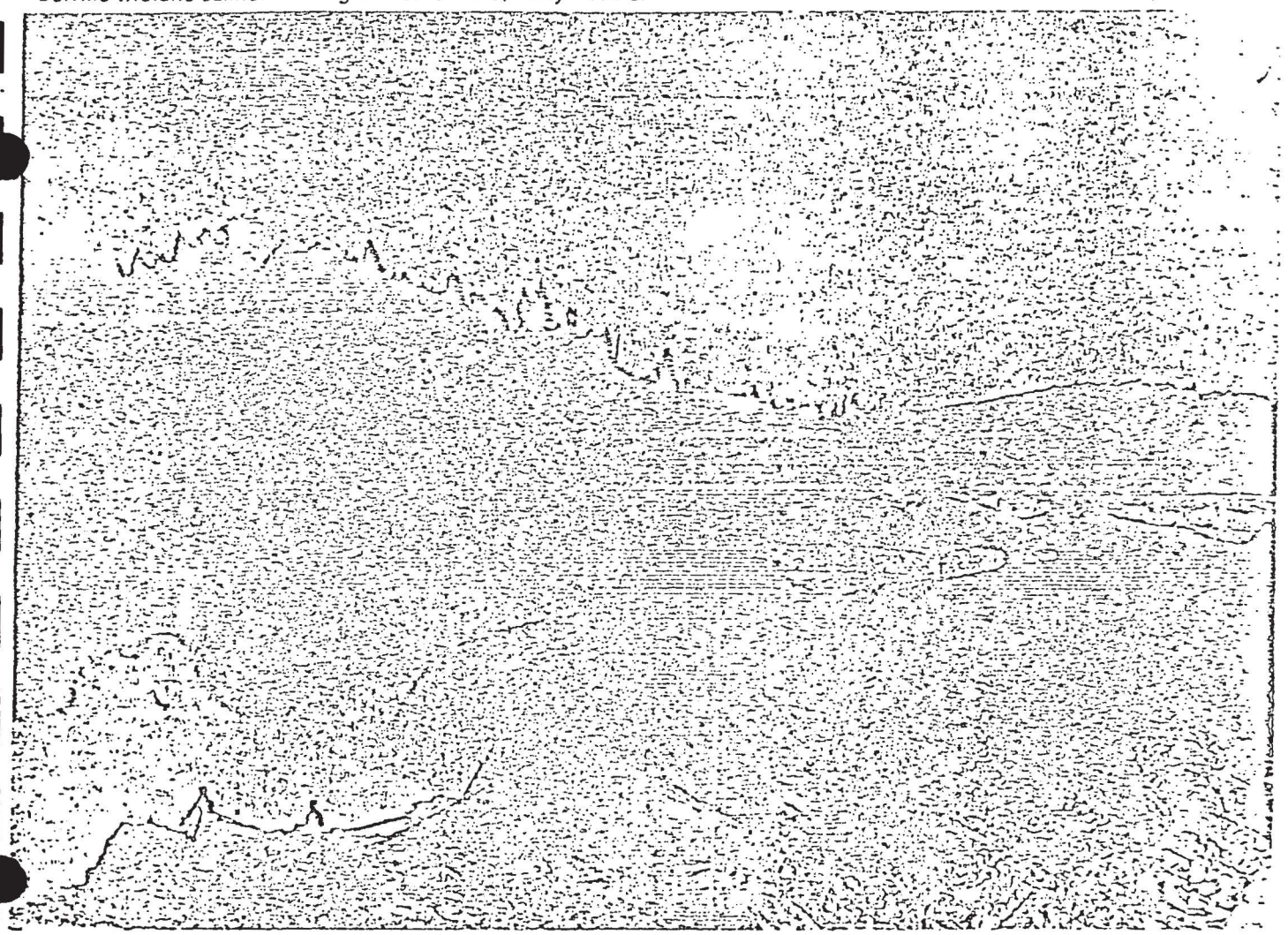
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of unallotted lands in the diminished Colville Indian Reservation, in the State of Washington.

Sec. 2. That as soon as the lands embraced within the diminished Colville Indian Reservation shall have been surveyed, the Secretary of the Interior shall cause allotments of the same to be made to all persons belonging to or having tribal relations on said Colville Indian Reservation, to each man, woman, and child eighty acres, and, upon the approval of such allotments by the Secretary of the Interior, he shall cause patents to issue therefor under the provisions of the general allotment law of the United States.

Sec. 3. That upon the completion of said allotments to said Indians the residue or surplus lands—that is, lands not allotted or reserved for Indian school, agency, or other purposes—of the said diminished Colville Indian Reservation shall be classified under the direction of the Secretary of the Interior as irrigable lands, grazing lands, timber lands, mineral lands, or arid lands, and shall be appraised under their appropriate classes by legal subdivisions, with the exception of the lands classed as mineral lands, which need not be appraised, and which shall be disposed of under

the general mining laws of the United States, and, upon completion of the classification and appraisement, such surplus lands shall be open to settlement and entry under the provisions of the homestead laws at not less than their appraised value in addition to the fees and commissions now prescribed by law for the disposition of lands of the value of one dollar and twenty-five cents per acre by proclamation of the President, which proclamation shall prescribe the manner in which these lands shall be settled upon, occupied, and entered by persons entitled to make entry thereof: Provided. That the price of said lands when entered shall be fixed by the appraisement, as herein provided for, which shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry and the balance in five equal annual installments to be paid in one, two, three, four, and five years, respectively, from and after the date of entry, and in case any entryman fails to make the annual payments, or any of them, promptly when due all rights in and to the

Colville Indians salmon fishing at Kettle Falls, early 1890's.



land covered by his or her entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry: Provided further, That the lands remaining undisposed of at the expiration of five years from the opening of the said lands to entry shall be sold to the highest bidder for cash, at not less than one dollar per acre, under rules and regulations to be prescribed by the Secretary of the Interior, and that any lands remaining unsold ten years after the said lands shall have been opened to entry may be sold to the highest bidder for cash without regard to the above minimum limit of price.

Sec. 4. That the said lands shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the time when and the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, and enter any of said lands except as prescribed in such proclamation: Provided, That the rights of honorably discharged Union soldiers and sailors of the late Civil and Spanish Wars, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the act of March first, nineteen hundred and one, shall not be abridged.

Sec. 5. That all of said lands returned and classified as timber lands shall be sold and disposed of by the Secretary of the Interior under sealed bids to the highest bidder for cash or at public auction, as the Secretary of the Interior may determine, and under such rules and regulations as he may prescribe.

Sec. 6. That the proceeds not including fees and commissions arising from the sale and disposition of the lands aforesaid, including the sums paid for mineral and town-site lands shall be after deducting the expenses incurred from time to time in connection with the allotment, appraisement, and sales, and surveys, herein provided, deposited in the Treasury of the United States to the credit of the Colville and confederated tribes of Indians belonging and having tribal rights on the Colville Indian Reservation, in the State of Washington, and shall be expended for their benefit, under the direction of the Secretary of the Interior, in the education and improvement of said Indians, and in the purchase of stock cattle, horse teams, harness, wagons, mowing machines, horserakes, thrashing machines, and other agricultural implements, for issue to said Indians, and also for the purchase of material for the construction of houses or other necessary buildings and a reasonable sum may also be expended by the Secretary, in his discretion, for the comfort, benefit, and improvement of said Indians: Provided, That a portion of the proceeds may be paid to the Indians in cash per capita, share and share alike, if, in the opinion of the Secretary of the Interior, such payments will further tend to improve the condition and advance the progress of said Indians, but not otherwise.

Sec. 7. That any of said lands necessary for agency, school, and religious purposes, and any lands now occupied by the agency buildings and the site of any sawmill, gristmill, or other mill property on said lands are hereby reserved from the operation of this act: Provided, That all such reserved lands shall not exceed in the aggregate three sections and must be selected in legal subdivisions conformable to the public surveys, such selection to be made by the Indian agent of the Colville Agency, under the direction of the Secretary of the Interior and subject to his approval.

Sec. 8. That the Secretary of the Interior is hereby vested with full power and authority to make all needful rules and regulations as to the manner of sale, notice of same, and other matters incident to the carrying out of the provisions of this act, and with authority to reappraise and reclassify said lands if deemed necessary from time to time, and to continue making sales of the same, in accordance with the provisions of this act, until all of the lands shall have been disposed of.

Sec. 9. That nothing in this act contained shall be construed to bind the United States to find purchasers for any of said lands, it being the purpose of this act merely to have the United States to act as trustee for said Indians in the disposition and sales of said lands and to expend or pay over to them the net proceed derived from the sales as herein provided.

Sec. 10. That to enable the Secretary of the Interior to survey, allot, classify, appraise, and conduct the sale and entry of said lands as in this act provided the sum of seventy-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated from any money in the Treasury not otherwise appropriated, the same to be reimbursed from the proceeds of the sales of the aforesaid lands: Provided, That when funds shall have been procured from the first sales of the land the Secretary of the Interior may use such portion thereof as may be actually necessary in conducting future sales and otherwise carrying out the provisions of this act.

Sec. 11. That nothing contained in this act shall prohibit the Secretary of the Interior from reserving from said lands, whether surveyed or unsurveyed, such tracts for town-site purposes, as in his opinion may be required for the future public interests, and he may cause any such reservations, or parts thereo be surveyed into blocks and lots of suitable size, and to be appraised and disposed of under such regulations as he may prescribe, and the net proceeds derived from the sale of such lands shall be paid to said Indians, as provided in section six of this act.

Sec. 12. That if any of the lands of said diminished Colville Indian Reservation can be included in any feasible irrigation project under the reclamation act of June seventeenth, nineteen hundred and two, the Secretary of the Interior is authorized to withhold said lands from disposition under this act and to dispose of them under the said reclamation act, and the charges provided for by said reclamation act shall be in addition to the appraised value of said lands fixed as hereinbefore provided and shall be paid in annual installments as required under the said reclamation act, and the amounts to be paid for the land, according to appraisement, shall be credited to the fund herein established for the benefit of the Colville Indians.

Approved, March 22, 1906.

C. Allotments Within the Diminished Reservation To Be Issued Under the Provisions of the General Allotment Laws and Sections 30 and 17 of the Act of June 25, 1910

(June 25, 1910, 36 Stat., 855-Sections 30 and 17)

Sec. 30. That section two of the act of March twenty-second, nineteen hundred and six, authorizing allotments on the Colville Indian Reservation, be, and the same hereby is, amended so as to authorize allotments to be made to Indians on the diminished Colville Reservation, in the State of Washington, entitled to allotments under existing laws in conformity with the general allotment laws as amended by section seventeen of this act.

Sec. 17. That so much of the Indian appropriation act for the fiscal year nineteen hundred and ten, approved March third, nineteen hundred and nine, as reads as follows, to wit: "That the Secretary of the Interior be, and he hereby is, authorized, under the direction of the President, to allot any Indian on the public domain who has not heretofore received an allotment, in such areas as he may deem proper, not to exceed, however, eighty acres of agricultural or one hundred and sixty acres of grazing land to any one Indian, such allotment to be made and patent therefor issued in accordance with the provisions of the act of February eighth, eighteen hundred and eighty-seven," be, and the same is hereby, repealed, and sections one and four of the act of February twenty-eighth, eighteen hundred and ninety-one (Twenty-sixth Statutes, page seven hundred ninety-four), be, and the same are hereby, amended to read as follows:

"Sec. 1. That in all cases where any tribe or band of Indians has been or shall hereafter be located upon any reservation created for their use by treaty stipulation, act of Congress, or Executive order, the President shall be authorized to cause the same or any part thereof to be surveyed or resurveyed whenever in his opinion such reservation or any part thereof may be advantageously utilized for agricultural or grazing purposes by such Indians, and to cause allotment to each Indian located thereon to be made in such areas as in his opinion may be for their best interest not to exceed eighty acres of agricultural or one hundred and sixty acres of grazing land to any one Indian. And whenever it shall appear to the President that lands on any

Indian reservation subject to allotment by authority of law have been or may be brought within any irrigation project, he may cause allotments of such irrigable lands to be made to the Indians entitled thereto in such areas as may be for their best interest not to exceed, however, forty acres to any one Indian, and such irrigable land shall be held to be equal in quantity to twice the number of acres of non-irrigable agricultural land and four times the number of acres of non-irrigable grazing land: Provided, That the remaining area to which any Indian may be entitled under existing law after he shall have received his proportion of irrigable land on the basis of equalization herein established may be allotted to him from non-irrigable agricultural or grazing lands: Provided further, That where a treaty or act of Congress setting apart such reservation provides for allotments in severalty in quantity greater or less than that herein authorized, the President shall cause allotments on such reservations to be made in quantity as specified in such treaty of act subject, however, to the basis of equalization between irrigable and non-irrigable lands established herein, but in such cases allotments may be made in quantity as specified in this act, with the consent of the Indians expressed in such manner as the President in his discretion may require."

"Sec. 4. That where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office, for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations, and such allotments to Indians on public domain as herein provided shall be made in such areas as the President may deem proper, not to exceed, however, forty acres of irrigable land or eighty acres of non-irrigable agricultural land or one hundred sixty acres of non-irrigable grazing land to any one Indian; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto, and patent shall be issued to them for such lands in the manner and with the restrictions provided in the act of which this is amendatory. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by by the Secretary of the Interior."

ALL NON-MINERAL, UNALLOTTED AND UNRESERVED LANDS WITHIN THE DIMINISHED COLVILLE RESERVATION, CLASSIFIED AS IRRIGABLE LANDS, GRAZING LANDS, OR ARID LANDS, SHALL BE DISPOSED OF AND SHALL BE OPENED FOR SETTLEMENT.

(Proclamation dated May 3, 1916, 39 Stat., 1778)

BY THE PRESIDENT OF THE UNITED STATES.
A PROCLAMATION

I, Woodrow Wilson, President of the United States of America, by virtue of the power and authority vested in me by the Act of Congress approved March 22, 1906 (34 Stat. L., 80) do hereby prescribe, proclaim, and make known, that all the non-mineral, unallotted and unreserved lands within the diminished Colville Indian Reservation, in the State of Washington, classified as irrigable lands, grazing lands, or arid lands, shall be disposed of under the general provisions of the homestead laws of the United States and of the said Act of Congress, and shall be opened to settlement and entry and settled upon, occupied, and entered only in the manner herein prescribed: Provided, That all lands classified as timber or mineral, all lands designated for irrigation by the Government, and all lands within the following townships and parts of townships shall not be disposed of under this proclamation:

Townships 31, 32, 33, and 34 north, range 35 east; township 30 north, range 31 east; township 31 north, range 30 east; north half of township 31 north, range 28 east; townships 32, 33, and 34

north, range 28 east; south half and south half of north half of township 33 north, range 27 east; and fractional part north and east of Lake Omache of township 32 north, range 27 east.

1. A registration for the lands will be conducted at the cities of Spokane, Wenatchee, Colville, Wilbur, Republic and Omak, Washington, beginning July 5, and ending July 22, 1916; Sunday excepted, under the supervision of John McPhaul, Superintendent of the opening. Any person qualified to make entry under the general provisions of the homestead law may register.

2. Any person who was honorably discharged after at least ninety days' service in the United States Army, Navy or Marine Corps, during the Civil War, the Spanish-American War or the Philippine Insurrection (or the widow or minor orphan children of such person) may register either in person or by agent. Other persons will not be permitted to register by agent. No person shall present more than one application in his own behalf and one as agent

Each application for registration must show the applicant's name, postoffice address, age, height and weight, and must be inclosed in an envelope bearing no distinctive marks or any paper other than the application. No envelope shall contain more than one application.

3. Each applicant must himself sign and swear to his application on or after July 5, and not later than July 22, 1916, at Spokane, Wenatchee, Colville, Wilbur, Republic or Omak, Washington, before a notary public designated by the Superintendent: Except a soldier's or sailor's application and power of attorney appointing an agent may be signed and sworn to by the applicant at any time after the date hereof and prior to the close of the registration, but the agent must sign and swear to the application during the time, at one of the places and in the manner herein prescribed for the execution of other applications. After applications have been properly executed they must be delivered to the Superintendent or to some person designated by him to receive them.

4. Beginning at 10 o'clock a.m. on July 27, 1916, at the said city of Spokane and continuing thereafter from day to day, Sundays excepted, as long as may be necessary, there shall be impartially taken and selected indiscriminately from the whole number of envelopes presented, such number thereof as may be necessary to carry the provisions of this proclamation into effect, and the applications for registration contained in the envelopes so selected, shall when correct in form and execution, be numbered serially in the order in which they were selected, beginning with number one, and the numbers thus assigned shall fix and control the order in which the persons named therein may make entry of the lands.

5. A list of the successful applications showing the number assigned to each will be conspicuously posted and furnished to the press for publication as a matter of news and a proper notice will be promptly mailed to each of these applicants.

6. Beginning at 9 o'clock a.m., on September 5, 1916, and continuing thereafter on such dates as may be fixed by the Secretary of the Interior, persons holding numbers assigned to them under this proclamation will be permitted to select and enter the tracts they desire as follows: A map room will be established at such place as shall be decided upon by the Secretary of the Interior, where numbers assigned will be called in their numerical order. When an applicant's number is called, he must at once select the tract he desires to enter and will be allowed ten days following the date of selection within which to complete entry at the proper land office. During such period he must file a homestead application at the land office, accompanying the same with the usual filing fees and commissions and in addition thereto one-fifth of the appraised value of the tract selected. If the lands are in the Spokane, Washington, land district, entry must be made at the Spokane land office; if in the Waterville, Washington, land district, entry must be made at the Waterville land office. To save the expense incident to a trip to the land and to return to the land office, he may, following his selection, execute his homestead application for the tract selected within the land district and file same in the land office, where it will be held awaiting the payment of the fees and commissions and one-fifth of the appraised value of the land. In that event, the payment must be made within ten days

following the date of selection. Payments can be made only in cash, by certified checks on national and state banks and trust companies, which can be cashed without cost to the Government, or by postoffice money orders made payable to the receiver of the land office. These payments may be made in person, through the mails or any other means or agency desired, but the applicant assumes all responsibility in the matter. He must see that the payments reach the land office within the ten days allowed, and where failure occurs in any instance where the application has been filed in the land office without payment, as herein provided for, the application will stand rejected without further action on the part of the local officers.

In case of declaratory statements, allowable under this opening, the same course may be pursued, except that the filing fees must be paid within the ten days following date of selection, the party having six months after filing within which to complete entry. Soldiers or sailors or their widows or minor orphan children making homestead entry of these lands must make payment of fees, commissions and purchase money as is required of other entrymen.

The purchase money not required at the time of entry may be paid in five equal installments. These payments will become due at the end of one, two, three, four and five years after the date of entry, unless commutation proof is made. If such proof is made, all the unpaid installments must be paid at that time. Where three-year proof is submitted, the entryman may make payment of the unpaid installments at that time or at any time before they become due and final certificate will issue, in the absence of objection, upon such payment being made. If any entryman fails to make any payment when it becomes due, all his former payments will be forfeited and his entry will be cancelled.

7. No person will be permitted to select more than one tract, present more than one application to enter, or file more than one declaratory statement in his own behalf.

8. If any person fails to select the tract he desires to enter on the date assigned to him for that purpose, or if, having made such selection he fails to perfect it by making entry or filing and payments as herein provided, or if he presents more than one application for registration or presents an application in any other than his true name, he will forfeit his right to make entry or filing under this Proclamation.

9. None of the lands opened to entry under this Proclamation will become subject to settlement or entry prior to 9 o'clock a.m. October 18, 1916, except in the manner prescribed herein; and all persons are admonished not to make any settlement before that time on lands not covered by entries or filings made by them under this Proclamation. All the said lands not then entered by persons assigned numbers hereunder, will, at that hour, become subject to settlement and entry under the general provisions of the homestead laws and the aforesaid Act of Congress.

10. The Secretary of the Interior shall make and prescribe such rules and regulations as may be necessary and proper to carry the provisions of this Proclamation and of the said Act of Congress into full force and effect and is hereby authorized to prescribe the time when and the manner in which lands in any or all the townships temporarily withheld from disposal, as herein provided, may be opened to settlement and entry.

In Witness Whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this third day of May in the year of our Lord one thousand nine hundred and sixteen, and of the Independence of the United States the one hundred and fortieth.

WOODROW WILSON

By the President: Robert Lansing, Secretary of State.

(Seal.)

---

10. THE LAST IMPORTANT LEGISLATION AFFECTING THE COLVILLE RESERVATION WAS THE ACT OF JULY 24, 1956, 70 STAT., 626 and 627 KNOWN AS PUBLIC LAW NO. 772. IT RESTORED TO TRIBAL OWNERSHIP APPROXIMATELY 818,277 ACRES OF UNDISPOSED OR SURPLUS LANDS WHICH WERE CREATED UNDER THE ACT OF MARCH 22, 1906.

(P.L. 772, 70 Stat., 626 & 627 dated July 24, 1956)

Restoring to tribal ownership certain lands upon the Colville Indian Reservation, Washington and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congresss assembled, That the undisposed-of lands of the Colville Indian Reservation, Washington, dealt with by the Act of March 22, 1906 (34 Stat. 80), are hereby restored to tribal ownership to be held in trust by the United States to the same extent as all other tribal lands on the existing reservation, subject to any existing valid rights.

Sec. 2. For the purpose of effecting land consolidations between the Colville Indians and non-Indians in Ferry and Okanogan Counties, the Secretary of the Interior is hereby authorized, with the consent of the tribal council as evidenced by a resolution adopted in accordance with the constitution and bylaws of the tribe, under such regulations as he may prescribe, to sell or exchange tribal lands in connection with the acquisition of lieu lands, and to acquire through purchase, exchange, or relinquishment, lands or any interest in lands, water rights, or surface rights. The acquisition of lands pursuant to this Act shall be limited to lands within the boundary of the reservation. Exchanges of lands, including improvements thereon, shall be made on the basis of approximate equal value. In carrying out the provisions of this Act, if non-Indian lands are involved the board of county commissioners of counties in which land is located shall by proper resolution consent before such non-Indian land is acquired for the tribe or an individual Indian. No lands or interests in lands owned by the Confederated Tribes of the Colville Reservation shall be subject to disposition hereafter without the consent of the duly authorized governing body of the tribes, and no lands or interests in lands shall be acquired for the tribes without the consent of the said governing body

Sec. 3. Title to lands or any interest therein acquired pursuant to this Act shall be taken in the name of the United States of America in trust for the tribe or individual Indian and shall be nontaxable as other tribal and allotted trust Indian lands of the Colville Reservation.

Sec. 4. The agreement entered into by the Confederated Tribes of the Colville Reservation and Okanogan and Ferry Counties of the State of Washington on April 21, 1954, is hereby ratified and approved.

Sec. 5. The Business Council of the Confederated Tribes of the Colville Reservation shall, in accordance with resolution numbered 1955-33, dated April 8, 1955, of the Colville Business Council, submit to the Secretary of the Interior within five years from the date of enactment of this Act proposed legislation providing for the termination of Federal supervision over the property and affairs of the Confederated Tribes and their members within a reasonable time after the submission of such proposed legislation.

Approved July 24, 1956.



Fish Trap Pole, Omak Falls, St. Mary's Mission, 1913

REFERENCES CITED

Bloodworth, Jessie A.
1959 Human Resources Survey of the Colville Confederated Tribes, Field Report of the Bureau of Indian Affairs, Portland Area Office, Colville Agency.

Chance, David H.
1973 Influences of the Hudson's Bay Company on the Native Cultures of the Colville District, Master's Thesis, Department of Anthropology, University of Idaho, Moscow.

Fortes, Meyer
1969 Kinship and the Social Order, Aldine, Chicago.

Fried, Morton H.
1967 The Evaluation of Political Society, Random House, New York.

Historical Research Associates
1978 Coulee Dam National Recreation Area, Historical Resources Study, Final Report, National Park Service, Denver Service Center, Denver.

Ray, Verne F.
1954 The Sanpoil and Nespelem, Human Relations Area Files, New Haven.

Ruby, Robert H. and John A. Brown
1970 The Spokane Indians, University of Oklahoma Press, Norman.

Schultz, John Lawrence
1971 Acculturation and Religion on the Colville Indian Reservation, Doctoral Thesis, Department of Anthropology, Washington State University, Pullman.

Spencer, Robert F. and Jesse D. Jennings, et al.
1965 The Native Americans, Harper and Row, New York.

Teit, James A.
1930 The Salishan Tribes of the Western Plateaus, Forty-Fifth Annual Report of the Bureau of American Ethnology, 1927-1928, Washington: United States Government Printing Office.

U.S. Department of Commerce
1974 Federal and State Indian Reservations and Indian Trust Areas, Washington, D.C.: U.S. Government Printing Office.

Walker, Deward E., Jr.
1977 Anthropological Guide for the Coulee Dam National Recreation Area, University of Idaho Anthropological Research Manuscript Series, No. 33, Moscow.