

Flooded by Progress:  
Law, Natural Resources, and Native Rights in the Postwar Pacific Northwest

By

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Abstract

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This dissertation examines the politics of federal Indian law and the changing economic and environmental landscape of the postwar Pacific Northwest. In particular, it contends that the changing legal status of Native lands and resources was instrumental in both the massive industrial expansion, and subsequent environmental transformation, of the postwar Pacific Northwest. It traces the relations between economic and environmental changes and their connections to the dramatic policy shift in Indian affairs from the early 1950s, when the federal government unilaterally terminated tribal status of 109 Native communities, most of them in the Pacific Northwest, to the Native sovereignty movement, which precipitated new national policies of self-determination in the 1970s. Not only does the dissertation illuminate how Native communities in the Pacific Northwest were inequitably burdened by the region's environmental and economic transformations in the second half of the 20<sup>th</sup> century, it also demonstrates how these transformations fueled the national economy in the postwar years as well as the emergence of Native activism, and how Native communities actively navigated and influenced seminal directions in federal Indian policy. Lastly, it illustrates how Native communities in the Pacific Northwest responded to the economic and environmental struggles of the early sovereignty era. This dissertation remaps the field of Native American history, by foregrounding its critical intersections with 20<sup>th</sup>-century environmental and economic histories. It relies heavily on materials from the National Archives & Records Administration Regional Office in Seattle, Washington, and agency archives from the Bonneville Power Administration, US Army Corps of Engineers, Bureau of Indian Affairs, and Columbia River Inter-Tribal Fish Commission, all in Portland, Oregon. In addition, the dissertation utilizes a variety of additional evidentiary support, and records from tribes in the Pacific Northwest.

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John J. Dougherty  
Berkeley, California  
May 1, 2014

For Kate

## INTRODUCTION

In 1949, the United States Department of the Interior released a promotional film for the Bonneville Power Administration (BPA), the Pacific Northwest's regional power agency, titled "The Columbia: America's Greatest Power Stream." The narrator opens the film with the following statement:

A century and a half ago, Thomas Jefferson envisioned an empire of freedom and opportunity in the Far Northwest. His bold determination sent Lewis & Clark westward through the wilderness, down the course of America's greatest power stream. To countless Americans the Columbia has been a river of hope, a shining symbol of plenty. And men have followed the Great River of the West, down to the Pacific, to sow their crops, and cut the timber, to build a colonial empire, to send out its boundless resources to the far corners of the Earth.<sup>1</sup>

The film sought to garner regional support for a new wave of intensive postwar development within the Columbia River Basin. To the federal government, hydroelectric dams on the Columbia River had proven their regional, and even national, necessity during World War II. Bonneville Dam on the lower Columbia opened in 1937 and Grand Coulee Dam on the upper Columbia, opened in 1942, had been instrumental in both the New Deal public works projects of the 1930s and wartime production of the early 1940s. So by the end of World War II, both dams had begun to revolutionize the region's demographic and economic status. In the following years, the federal government sought to continue the exponential growth of the region, and believed that the assumed endlessness of natural resources in the Pacific Northwest could make this happen.

The film begins on a tragic note: hopeless Depression-era families from the Dust Bowl seeking salvation, traveling to the Pacific Northwest only to find land that was "burnt and useless, like the dust-stricken acres they have left behind." However the story quickly turns, as the dams provide the families with an oasis, and the river supplies the "water needed for the lifeless acres." The film then references the critical role the dams had played in the United States emerging victorious in World War II. They refer to the thousands of miles of power lines stretching across the region as "lifelines of liberty." And they subtly mention the role of the Hanford Nuclear Facility, powered by Columbia River hydroelectricity, in creating the plutonium used in the atomic bomb attacks on Nagasaki and Hiroshima. They declare, "The power of the Columbia helped bring our boys home."

Woody Guthrie, the renowned folksinger, wrote the songs featured in the film. In the 1930s, Guthrie had gained a prominent following for his Depression-era, working-class folk songs, which became known as *The Dust Bowl Ballads*. So in 1941, the Department of Interior hired Guthrie to bring his populist message to the new era of dam building on the Columbia River. In total, Guthrie wrote twenty-eight songs about the Columbia River, most of which centered on the construction of federal dams. The songs, with names like "Pastures of Plenty," "Grand Coulee Dam," and "New Found Land," became known as the *Columbia River Songs*. In

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<sup>1</sup>Bonneville Power Administration, *The Columbia: America's Greatest Power Stream*, (United States Department of Energy, 1949), online film.

his most famous ballad about the Columbia River, “Roll on Columbia,” which plays throughout the film, Guthrie sang:

Tom Jefferson's vision would not let him rest  
An empire he saw in the Pacific Northwest  
Sent Lewis and Clark and they did the rest  
So roll on, Columbia, roll on.

These mighty men labored by day and by night  
Matching their strength 'gainst the river's wild flight  
Through rapids and falls, they won the hard fight  
So roll on, Columbia, roll on.

Roll on, Columbia, roll on  
Roll on, Columbia, roll on  
Your power is turning our darkness to dawn  
So roll on, Columbia, roll on.<sup>2</sup>

In addition to the hydroelectric dams, numerous modernizing postwar projects were underway in the Pacific Northwest. The region was becoming the primary national producer of timber, aluminum, and nuclear weapons, and this began to revolutionize the regional economy. It sparked an immense demographic growth in Oregon, Washington, and Idaho, among the fastest in the nation. The federal government was paying attention to the Pacific Northwest, and in the first few years following World War II, it began to invest heavily into making the region a major contributor to the growing national postwar economy. As noted by historian Gerald Nash, the region was “on the threshold of a new age.”<sup>3</sup>

However, by the 1970s the story had changed. As the boom of the postwar economy began to fade, so did the outlook for a sustainable natural resource economy in the Pacific Northwest. The postwar rhetoric of “Roll On, Columbia” was replaced by new popular messages of environmental “protection and preservation.” Over thirty years of extensive industrial development had exacted a significant price on the region’s once abundant natural resources. In 1976, Joe Frazier, a columnist for *The Associated Press*, commented that the region’s once abundant natural resources were sacrificed to the “god of cheap hydroelectric power.”<sup>4</sup>

However such an observation was not original. At nearly the same time the federal government sought public support for the intensive development of regional natural resources, state officials argued that these projects “haven’t been an unmixed blessing.”<sup>5</sup> Many believed natural resource abundance and rapid economic and demographic growth could coexist, but by

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<sup>2</sup> Woody Guthrie, *Columbia River Collection*, audio recording, Rounder Records, 1990, compact disc.

<sup>3</sup> Gerald Nash, *The American West Transformed: the Impact of the Second World War* (Indiana University Press, 1985), 203.

<sup>4</sup> “Salmon gives Yakima only meager harvest now,” *The Register Guard*, November 25, 1976, 1C.

<sup>5</sup> Strand, A.L., *Atlas of the Pacific Northwest: Resources and Development* (Oregon State College, 1953), iii.

the 1970s, it was obvious that one had to bend. From the 1940s to the 1970s, the Pacific Northwest entered a critical moment in its history: dramatic economic and demographic growth, and subsequently, even more dramatic environmental decline. Generations of exploiting the natural resources of the region's rural spaces had made possible the growth of the region's urban spaces. This dissertation asks one basic question about the too often overlooked inhabitants of the region's rural spaces: in the Pacific Northwest's expansive demographic, economic and environmental transformation in the postwar years, where were the region's Native peoples? This dissertation answers this question and argues for their undeniable role in shaping the region in the second half of the 20<sup>th</sup> century.

### *Postwar Native Rights and Environmental Change*

*Flooded by Progress* examines the politics of federal Indian law in the postwar years and the changing environmental landscape in the region. It argues that the changing legal status of Native lands and resources was instrumental in both the massive industrial expansion of the region in the postwar years and the environmental changes associated with the increased development of natural resources. It traces the complex relations between environmental and economic changes and their connections to the dramatic policy shift in Indian affairs from the early 1950s, when the federal government unilaterally terminated the tribal status of 109 Native communities, most of them in the Pacific Northwest, to the Native sovereignty movement, which precipitated new federal policies of self-determination in the 1970s. Not only does the dissertation illuminate how Native communities in the Pacific Northwest were inequitably burdened by the region's environmental and economic transformations in the second half of the 20<sup>th</sup> century, it also demonstrates how Native communities actively navigated and influenced significant directions in federal Indian policy.

A major contention in this dissertation is that economic and environmental transformation of the American West and the Pacific Northwest in the postwar years can be better understood by critically examining the history of Native American communities during this same period. In addition, this dissertation is concerned with the dramatic shifts in federal Indian law and policy during this time of economic and environmental transformation, and how this transformation may help explain the dramatic policy shifts from termination in the 1950s to the self-determination movement of the 1970s, and whether both seemingly opposing periods in federal Indian law may bear striking resemblances. This dissertation asserts that Native communities in the Pacific Northwest were inequitably burdened by the region's economic and environmental transformation in the years following World War II.

First and foremost, this dissertation seeks to use environmental history to narrate postwar federal Indian law and policy in the Pacific Northwest. Environmental history, which has been almost entirely absent in the current historiography of federal Indian law and policy, is central to understanding the legal and policy shifts that directly impacted Native communities in the 20<sup>th</sup> century Pacific Northwest. Thus, any study of the latter without the former remains incomplete as these shifts were too often attributed to changing perspectives on the environment and natural resources. In this dissertation, environmental history is more than mere context; it has direct causal implications that explain the legal and policy shifts. From the era of resource abundance by the late 1940s, to the era of resource scarcity by the 1970s, environmental history provides a

direct response to explaining shifts in federal Indian law and policy in the postwar Pacific Northwest.

In particular, natural resource availability can be used as a marker to trace these policy changes, or perhaps even continuities, between the eras of termination and self-determination. Tribally held natural resources appeared as central components of both policies but in very different ways. The policy of termination in the 1950s was born at the very time the Pacific Northwest was undergoing significant economic growth by harnessing seemingly endless natural resources. So termination became an official legal mechanism for non-Indians to gain access to natural resources under the ownership of Native communities, and for these communities to cash in. Similarly, the policy of self-determination in the 1970s was conceived at the very time the period of postwar economic growth in the Pacific Northwest was beginning to fade, largely due to natural resource scarcity. As a result of the tribal self-determination act, Native communities were encouraged to develop their own natural resource economies. However they were being asked to do this amidst increasingly dire environmental realities, and rapidly diminishing returns for natural resource industries. Native communities had resources in the 1940s, and rights by the 1970s, but they never both at the same time.

In this way, environmental history and natural resource availability suggest that national policymaking operated fundamentally as a legal bait-and-switch with regard to Indian affairs, in which the stated intentions of policies, as they were packaged to Native communities, did not match the political or environmental realities. This idea also suggests that in both seemingly opposite policy eras natural resource availability becomes a critical thread that binds the two together. In addition, it helps reconfigure the broader context and understanding of both periods, particularly, the transition from termination to self-determination. Scholars of 20<sup>th</sup> century Native American history typically attribute this transition to the rise of Native activism in the 1960s and the changing cultural and political landscape of the United States. While these forces certainly played a central role in the birth of the self-determination era, natural resources provide an even more dynamic and almost entirely overlooked, interpretation: the acknowledgement of natural resource scarcity by state and federal policymakers.

In the late 1940s and throughout the 1950s, as the postwar economic and demographic expansion of the Pacific Northwest was underway, federal Indian policies such as Indian Termination and Public Law 280 in 1953, and Indian Relocation in 1956, aimed at dramatically limiting, or even removing entirely, tribal claims to treaty rights and natural resources for federal Indian tribes. By complete unilateral decision-making, state and federal officials believed that such policies were in the “best interest” of Native peoples. A growing Cold War movement toward inclusion and collective national identity exacerbated a new call for a century-old ideology of Native assimilation. This ideology characterized reserved special rights for Native Americans, by way of treaties, as impediments that held them back economically and culturally, and that federal Indian tribes were now prepared for “withdrawal from supervision.” However the underside of these policies exposed a different motive: the relinquishing of tribally held land and natural resources that could be exploited for regional postwar growth. These policies had numerous effects on Native peoples of the Pacific Northwest, and in many cases, wrecked havoc on the political, economic, and cultural foundations of these communities. By the early 1960s, it was widely evident that these policies had accomplished the exact opposite of what they set out to resolve, except for their more understated objective: to appropriate tribally held natural

resources into regional growth. Charles F. Wilkinson characterized this period as “a time of hopelessness, confusion, and fear in Indian country.”<sup>6</sup>

However the situation for Native communities in the Pacific Northwest would soon change. By the late 1960s, Native activism had reemerged, and in the Pacific Northwest, Native fishermen were putting treaty rights on the national stage with “the fishing wars” of the Columbia River and Puget Sound. In 1970, President Nixon officially repudiated the termination era policies, and called for the new national platform of tribal self-determination, which was ultimately fulfilled with the 1975 Indian Self-Determination and Education Assistance Act. From the banks of rivers in the Pacific Northwest to federal courtrooms, Native communities were becoming active agents in shaping both regional and federal policies regarding treaty rights and tribal natural resources. The “golden era” of federal Indian policy, as it is often referred, was marked by a dramatic departure from the termination era ideologies. Journalist Mark Trahant describes the time as “the last great battle of the Indian wars” and noted that sovereignty movement marked “the beginning of Native America as a political force, a not-so-subtle shift that meant American Indians and Alaska Natives were no longer bound by the limits of being a conquered people.”<sup>7</sup> Native peoples of the Pacific Northwest made their own important contribution to this era. After over a decade of conflicts between state agencies and treaty tribes in the fishing wars, the Boldt Decision in 1974 upheld the contemporary relevance and significance of the fishing rights established in the treaties of 1855, which guaranteed tribes the right to fish in “usual and accustomed” places. The decade of litigation on the treaties of 1855, as remarked by *The Oregonian* journalists Bill Keller and Dick Johnston, became “a lawyer’s dream and a politician’s nightmare”<sup>8</sup> in the 1960s and early 1970s. However the Boldt Decision had proven that just because treaties were old, in the eyes of the law, they were by no means obsolete, and it became a landmark ruling that would reestablish both the legal grounding of Indian treaties, and the role of federal Indian tribes in the management of regional natural resources.

However by the late 1970s and early 1980s, Native communities in the Pacific Northwest were faced with an entirely new set of unforeseen challenges; principally, ensuring, despite legal and political opposition, that the policy victories of the 1970s came to fruition. Tribes of the Pacific Northwest struggled to establish economic stability and even became *more* dependent on the federal government, despite a federal policy of tribal self-determination. Regardless of a ruling that upheld treaty-fishing rights, tribes would be faced with a reinvigorated political effort to contest these rights. The so-called “golden era” of federal Indian policy was presenting a new, and much more complicated, set of challenges. This era showcases the sacrifices scholars make when attempting to periodize the history of federal Indian policy. Several scholars have articulated the ways in which federal Indian policy resembles an oscillating pendulum, shifting between policies of tribal assimilation versus autonomy. This pendulum has been useful in understanding dramatic policy shifts over time, and it has been particularly useful in explaining

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<sup>6</sup> Charles Wilkinson, *Blood Struggle: the Rise of Modern Indian Nations* (WW Norton, 2005), xiii.

<sup>7</sup> Mark N. Trahant, *The Last Great Battle of the Indian Wars: Henry M. Jackson, Forrest J. Gerard, and the Campaign for the Self-Determination of America’s Indian Tribes* (The Cedars Group, 2010), xv.

<sup>8</sup> “Indian fishing rights decision lands in Supreme Court, spawns new legislation,” *The Oregonian*, January 14, 1979, F1.

the change from the devastating termination era policies of the 1950s to the heralded policies victories in the sovereignty movement of the 1970s. However as Native scholar Donald Fixico warns, the pendulum's wide sweep "obscures as much as it reveals."<sup>9</sup>

However this dissertation pushes much further beyond Fixico's assertion. The pendulum analogy has been an effective way of historicizing the policy or legal shifts in federal Indian law. But the pendulum analogy offers only a rudimentary account of this broader policy or legal shift, upon closer examination of termination and self-determination, the limits of this analogy begin to emerge. This dissertation argues that the pendulum does not just obscure, to an extent, it becomes an insufficient analogy in explaining the practical and on-the-ground implementation of these policies. In addition, despite these policies occupying the opposing ends of the Indian law spectrum, each contain striking similarities that begin to erode the pendulum analogy. Maybe it is more effective to not think of federal Indian policy on a spectrum, rather, a consistent and continuous colonial system of control, that despite how different policy eras are framed and packaged, it always seeks to displace and dispossess Native communities in favor of non-Indian interests.

To support this, the dissertation suggests that despite an official policy change at the federal level, the day-to-day realities for Native communities, were much more dynamic and complex, and often did not conform to the broader policy era. Also, it argues that histories that operate at the policy level are rarely reflective of what is happening in practice. Despite the perceived policy "victory" of self-determination, Native peoples faced an entirely new set of economic, environmental and cultural obstacles that fundamentally *prevented* self-determination. Likewise, there is perhaps a parallel comparison to be argued about termination, in that despite efforts to liquidate tribal lands and resources, Native peoples most certainly found ways to circumvent these efforts in a way that benefited their communities. In either case, it highlights how Native communities actively responded to and navigated the day-to-day realities of much broader federal policies, and how these realities often run counter to traditional interpretations of these policies.

### *The Pacific Northwest*

The geographical context of this dissertation is the American West, particularly, the Pacific Northwest. It is a uniquely defined geographical, environmental, political, and cultural area of the United States, and each definition has important significant to the story told in this dissertation. Geographically, the region consists of the states of Oregon, Washington, and Idaho; bordered to the north by Canada, to the south by the states of California and Nevada, to the east by the states of Montana and Wyoming, and to the west by the Pacific Ocean. Environmentally, the region is organized around three major watersheds, the Columbia, Puget Sound, and Klamath, that flow from the western side of the Rocky Mountains to the Pacific Ocean. Politically, states of Oregon, Washington, and Idaho became the jurisdictional boundaries for all federal agencies, including the Portland regional office for the Bureau of Indian Affairs, which

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<sup>9</sup> Donald Fixico, "Federal and State Policies and American Indians" in Philip Deloria and Neal Salisbury, eds. *A Companion to American Indian History* (Blackwell Publishing, 2002), 379.

operated in the Pacific Northwest.<sup>10</sup> And culturally, the area is home to specific Native American cultural groupings, particularly those of the Columbia Plateau and the Northwest Coast.<sup>11</sup>

The region serves as both a focused case study of the broader American West, but also as a unique model of the intersections of postwar development, environmental decline, and Native rights. The uniqueness of the Pacific Northwest as the location of this study is twofold. First, the Pacific Northwest was instrumental in the postwar economic development of the American West, and the United States as a whole. The region was the primary producer of three significant postwar resources: hydroelectricity, timber, and nuclear weapons. Hydroelectric dams on the Columbia River generated one-third of the nation's hydropower; they paved the way for booming urban areas and industrial plants in the region. Timber from Oregon and Washington's national forests accounted for almost half of the nation's total timber harvest, and nearly all of it was being distributed outside of the region to assist in the nation's postwar development projects. The Hanford Nuclear Facility, on the banks of the Columbia River in Washington, became a primary nuclear weapons manufacturer and was a key player in the nation's Cold War arms race. The popular columnist, John Gunther, referred to the atomic bomb produced at Hanford as "a kind of apocalyptic, demonic child of the Columbia."<sup>12</sup> In 1963 report by the Department of the Interior, it was reported "the Pacific Northwest, which includes Oregon, Washington, Idaho, and western Montana, has been one of the most rapidly developing areas in the United States in recent years. Both industrial and population growth have been particularly pronounced during the last two decades."<sup>13</sup> The Pacific Northwest became home to the most powerful and efficient hydroelectric machines in the country. By 1976 in the Portland area, the average cost of 1000-kilowatt hours of electricity, enough to heat and light a home for two weeks, was \$12.10. By comparison, the same amount of electricity cost \$43.44 in Chicago and \$90.62 in New York the same year.<sup>14</sup>

The second reason the Pacific Northwest is unique, and the reason most commonly overlooked is that the Native peoples of the Pacific Northwest experienced dispossession and displacement more than their counterparts in any other region in the years following World War II. Native communities in the region disproportionately bore the brunt of both postwar federal Indian policy, and postwar development projects. The policies of Native dispossession and displacement by federal development projects, like the Native village at Celilo Falls, directly threatened the status of Native rights and sovereignty in the Pacific Northwest, and in the United

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<sup>10</sup> The Bureau of Indian Affairs' regional jurisdiction also included areas of western Montana.

<sup>11</sup> The identification of pre-contact North American cultural groups is based on archaeological and linguistic evidence, and often these categories are expansively broad. Although this dissertation will not refer to Native communities of the Pacific Northwest by their traditional cultural grouping, it is important to note the multiple ways in which the region and its inhabitants have been defined.

<sup>12</sup> Doug E. Ficken, "Grand Coulee and Hanford: the Atomic Bomb and the Development of the Columbia River" in Bruce Hevly and John M. Findlay, eds, *The Atomic West*, (University of Washington Press, 1998), 21-38.

<sup>13</sup> United States Department of the Interior, "Columbia River Fishery Program, 1963 - Circular 192," (Washington DC, 1964).

<sup>14</sup> "Salmon gives Yakima only meager harvest now," *The Register Guard*, November 25, 1976, 1C.

States as a whole. The painful irony of this time is that, at the same time, these “modernizing” postwar projects were forcing Native communities to forever change their way of life, these celebrated projects were being recognized in a national discourse as economic success stories and industrial hallmarks. So, to an extent, federal Indian law itself was seen as undergoing its own “modernizing” process. The history of Native peoples in the Pacific Northwest, and their relationship to postwar economic and demographic growth remains largely under recognized in the 20<sup>th</sup> century history of the American West.

*Native Peoples and the Dynamics of Change in the Postwar Pacific Northwest*

*Flooded by Progress* seeks to make critical interventions in two broad scholarly fields, particularly, American West and Native American histories. In addition, it addresses specific sub-fields within each of these broader historical categories. In terms of the American West historiographies, while the dissertation addresses the larger dynamics of 20<sup>th</sup> century economic growth, capitalist expansion, and environmental decline, it also has a regional focus on these dynamics in the Pacific Northwest. With regard to Native American history, it deals with a broader analysis of 20<sup>th</sup> century federal Indian law and policy and race relations, and a targeted focus on the unique experiences of Native communities in the 20<sup>th</sup> century Pacific Northwest.

The first major body of scholarship relevant to this project is on the history growth and development in the 20<sup>th</sup> century American West. In his seminal work on the growth of the American West, *Colony & Empire*, historian William G. Robbins identifies the study of the American West as “an inquiry into the dynamics of change for a particular place,” which addresses “the dramatic demographic decline in the Native American population and the equally significant resettlement by a variety of ethnic groups; the repeated introduction of new modes of production; stunning advances in the technology of production; great alterations to the natural landscape; the emergence of imposing new centers of power and influence; the construction and perpetual reconstruction of economic life and social associations; and the continued evolution of new sets of relationships between a relatively well-defined geographical region and the rest of the world.”<sup>15</sup> This dissertation operates with this multifaceted approach to understanding the American West. In particular, it seeks to showcase how Native peoples were principal agents in “dynamics of change” in the postwar Pacific Northwest.

Recent scholarship on the 20<sup>th</sup> century growth and development of the American West has attempted to cultivate a new understanding of the region as a national, and even global, political and economic force. In particular, Richard White’s *It’s Your Misfortune and None of My Own*, and Gerald Nash’s *The American West in the Twentieth Century* and *The American West Transformed*, showcase how the growth of the American West in the 20<sup>th</sup> century had both national and international implications.<sup>16</sup> Several scholars have adopted capitalism as an

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<sup>15</sup> William G. Robbins, *Colony & Empire: the Capitalist Transformation of the American West* (University of Kansas Press, 1994), ix.

<sup>16</sup>There is also an emerging field of scholarship the impact of the Cold War on the American West, particularly Kevin Fernlund’s *The Cold War American West* (University of New Mexico Press, 1998), Bruce Hevley and John Findlay’s *The Atomic West* (University of Washington Press, 1998), and Bob H. Reinhardt, “Drowned Towns in the Cold War West: Small

analytical framework to explain the region's 20<sup>th</sup> century growth and development and its subsequent environmental decline and natural resource scarcity. William G. Robbins posits the idea that "we can better understand the American West through an interpretive framework grounded in the theoretical and empirical world of modern capitalism," particularly, "landscapes turned into property, the commodifying of physical nature, and the federal influence in shaping the region's always temporary social and economic relations."<sup>17</sup> For David Harvey, in *The Conditions of Postmodernity*, capitalism operates as an endless search for "new spaces" as markets and sources of raw materials, and that the 20<sup>th</sup> century American West was a prime example of this practice in action.<sup>18</sup>

In addition, Harold Barnett and Chandler Morse's *Scarcity and Growth*, a 1963 report on natural resource availability in the United States, provides a timely snapshot of postwar economic policy and the central role of natural resource acquisition in national economic and industrial growth. Barnett and Morse argued that "new frontiers" in postwar America were essential for national growth, and these frontiers would be the platform of natural resource acquisition. Critical to their argument about "new frontiers" of resource acquisition is that accessibility to natural resources, rather than location or ownership of those resources, is what matters to a country's development.<sup>19</sup> This dissertation argues that these "new frontiers" of resource acquisition and economic development targeted tribally held land and natural resources in the postwar period. Although these scholars are not addressing federal Indian tribes specifically, the capitalist concept of "new spaces" or "new frontiers" outlines a postwar economic ideology that targeted tribally held land and resources for postwar growth and development.

In addition to the historiography of growth and development, environmental histories have begun to flourish in recent scholarship, and each showcase how the price of growth and development came at the expense of abundant natural resource industries. Several pioneering books in this field have been William Cronon's *Changes in the Land*, Elliot West's *The Contested Plains*, and Thomas Andrews' *Killing for Coal* have created a unique sub-field of environmental social histories, which articulate the ways in which the development of natural resource economies can help narrate political or economic dynamics. In the context of the American West, many of these environmental history works, including Nancy Langston's *Where Land and Water Meet* and *Forest Dreams, Forest Nightmares*, Valerie Kuletz's *The Tainted Desert*, and Scott Prudham's *Knock on Wood*, have focused on particular resource industries in the American West, and highlight the environmental impact of these industries. These scholars argue that to understand regional growth and natural resources, it's essential to consider the diverse history of human interaction with those resources in a larger context. A major sub-field of these environmental studies has focused specifically on the importance of water to the

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Communities and Federal Water Projects," (*Western Historical Quarterly*, Vol. 42, No. 2, Summer 2011).

<sup>17</sup> William G. Robbins, "In Pursuit of Historical Explanations: Capitalism as a Conceptual Tool for Knowing the American West" (*The Western Historical Quarterly*, Vol. 30, No. 3, Autumn 1999), 277-278.

<sup>18</sup> David Harvey, *The Condition of Postmodernity: an Enquiry into the Origins of Cultural Change* (Wiley-Blackwell, 1991), 106-109.

<sup>19</sup> Harold Barnett and Chandler Morse, *Scarcity and Growth: the Economics of Natural Resource Availability* (John Hopkins Press, 1963), 1-10.

region's 20<sup>th</sup> century growth, particularly Donald Worster's *Rivers of Empire* and Marc Reisner's *Cadillac Desert*. There have been many important studies of the creation of wilderness areas and state or national parks in the postwar American West and Pacific Northwest, and each demonstrates an increasing national effort to "manage" lands and natural resources in the second half of the 20<sup>th</sup> century. Of particular note is Kevin R. Marsh's *Drawing Lines in the Wilderness*, which chronicles the legal history of wilderness spaces and the passage of the Wilderness Act in 1964, and Thomas R. Cox's *The Park Builders*, which tells the story of state and national parks in the Pacific Northwest. Only Mark David Spence's *Dispossessing the Wilderness* addresses the experiences of Native peoples in the process of creating and maintaining wilderness areas and state or national parks.

However as the American West, as a whole, has garnered much scholarly attention, much less attention has been placed specifically on the Pacific Northwest. Its instrumental postwar growth and development has not been thoroughly explored in the existing scholarship. There are notable exceptions to this, particularly Richard White's *The Organic Machine* and Blaine Harden's *A River Lost* tell the story of the Columbia River in the 20<sup>th</sup> century and its significance to regional growth and development. William G. Robbins *Landscapes of Promise* and *Landscapes of Conflict*, while focused specifically on Oregon, shows how natural resources became instrumental in the growth of regional demographic and economic growth, and increased political power nationally.

The second major body of scholarship relevant to this dissertation is 20<sup>th</sup> Native American history, particularly, Native histories of the Pacific Northwest and histories of federal Indian law and policy. It goes without saying that in comparison to the American West, much less attention has been paid to this equally important historical narrative. So despite the recent innovations in the scholarship on the American West, Native peoples in the region still appear as only brief mentions, or minor agents, in a much larger history. The fundamental oversight in the existing scholarship on economic development and environmental decline is that it presents the dispossession and displacement of Native peoples as a 19<sup>th</sup> century phenomenon and that their continued presence in the area no longer plays a central role in debates over land, resources, and labor. This dissertation argues that any narration of 20<sup>th</sup> century environmental or economic history of the American West of the Pacific Northwest that doesn't take seriously the continued and ongoing dispossession and displacement of Native communities risks being dangerously narrow in their interpretation.

This omission is especially a problem for studies of the Pacific Northwest. Katrine Barber's *Death of Celilo Falls*, Andrew Fisher's *Shadow Tribe*, Roberta Ulrich's *Empty Nets* and Charles Wilkinson's *Messages from Frank's Landing*, are seminal works on the detrimental outcomes of 20<sup>th</sup> century regional development on the cultural and economic life of Pacific Northwest tribes. In addition, tribal termination and restoration has gained more recent scholarly attention, particularly in Laurie Arnold's *Bartering with the Bones of their Dead* and David R. Beck's *Seeking Recognition*. In a broader lens of 20<sup>th</sup> century Native American history in the Pacific Northwest, Alexandra Harmon's *Indians in the Making* and Lissa K. Wadewitz's *The Nature of Borders* discuss the development of historical and contemporary Native identities in the Pacific Northwest. Donald Fixico's *The Invasion of Indian Country in the Twentieth Century* chronicles the targeting of tribal natural resources by capitalist ventures but doesn't focus elaborately on the Native communities of the Pacific Northwest. None of these studies has sought to use environmental history, specifically natural resources, as a way to narrate the

experiences of Native communities in the second half of the 20<sup>th</sup> century. This linkage remains unexplored in existing scholarship.

In line with Robbins and others, this dissertation utilizes capitalism as an analytical framework to understand the development of natural resources in the postwar Pacific Northwest, and how it was used to gain access to tribal resources. This dissertation adopts a position taken by preeminent federal Indian law scholar Vine Deloria Jr. on the status of Native claims to land and resources in the 20<sup>th</sup> century. In both *Behind the Trail of Broken Treaties* and *The Nations Within*, he argues that federal Indian law has historically been used *against*, rather than *for*, Native communities, notwithstanding the centrality of the *trust* responsibility of the federal government at the core of federal Indian law. In short, he suggests it's more useful to always consider federal Indian law and policy as an inherently colonial institution. However Deloria has often extended this argument and applied it toward Native claims to land and resources. In particular, he suggests that a major concern for Native communities be that federal Indian policy is a mechanism for outsiders to gain access to Native lands and resources. In this case, federal Indian policy works against the interests of Native communities. In Deloria's framework, Native rights to land and resources are always threatened by outside political and economic interests, and federal Indian law is then often used to undermine the rights it is entrusted to protect. The postwar Pacific Northwest provides a clear example of Deloria's criticism of federal Indian law and policy, and this project seeks to use this framework to understand the status of Native communities in the postwar years. The basic theoretical apparatus of this dissertation is to question whether federal Indian policy becomes the legal mechanism to open "new frontiers" of capitalist growth in the postwar Pacific Northwest. Such a question appears to provide a seamless binding of Native history with histories of regional growth and development in the 20th century American West.

Lastly, a discussion of federal Indian law and policy invites an important comparison to postwar race relations in the American West. The postwar period is often marked as a contested but progressive time in racial policy for the United States, and this history is well established in previous scholarship. However, rarely have these histories of broader postwar racial policy made any comparison with the ongoing changes in federal Indian policy at the same historic moment. Despite the progress in racial policy during the postwar years under the banner of civil or equal rights, many Native communities perceived this agenda in racial policy as a threat to tribal self-determination and cultural autonomy, and tried to distance themselves from being consolidated into larger civil rights concerns. Deloria notes that Native communities "went to extravagant lengths to distinguish Indians from blacks during the late 1950s so as to keep issues clear."<sup>20</sup> The political success of the civil rights agenda overshadowed devastating developments in federal Indian law during the 1950s and early 1960s, and gave the perception that all racial communities were prospering, both politically and socially in the postwar years. This disjuncture between Native Americans and other racial communities represents a deeper issue about how race, rights, and social progress are understood. This dissertation presents a better understanding of the unique political and cultural challenges faced by Native communities in the postwar American West.

*Flooded by Progress* seeks to reconcile the omissions of previous scholarship on the American West, the Pacific Northwest, and Native American history, and to provide necessary

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<sup>20</sup> Vine Deloria Jr., *The Nations Within: the Past and Future of American Indian Sovereignty* (University of Texas Press, 1998), 206.

integration of economic, environmental and Native histories in the postwar Pacific Northwest. The synthesis of these histories brings a unique scholarly lens to the study of the American West and the Pacific Northwest, and it demonstrates how federal Indian law and policy, and its primary overseeing body in the Bureau of Indian Affairs was dramatically influenced by postwar social and economic policies. The postwar period posed long-standing questions about the legal “status” of Native peoples in the United States were answered by a soaring economic growth and the dramatic development of natural resources in the Pacific Northwest. This postwar period was a deeply important time for Native communities, as it presented dramatic shifts in how Native rights became reconsidered, outright terminated, later upheld, and constantly contested.

### *Chapter outline and methodology*

To make these arguments, this dissertation relies on multiple forms of evidentiary support, most prominently, archival materials from state and federal agencies operating in the Pacific Northwest during postwar years. These materials are mostly from the Portland area office of the Bureau of Indian Affairs, Bonneville Power Administration, US Army Corps of Engineers, Columbia Basin Inter-Agency Committee, and state fish and wildlife commissions. In addition, records from the Columbia River Inter-Tribal Fish Commission provided an integral perspective from Native communities in the Pacific Northwest. However this dissertation also relies on other forms of evidentiary support, including government reports, laws and policies, and newspaper articles from *The Oregonian* (Portland, Oregon) and *The Register Guard* (Seattle, Washington). The methodological approach of this dissertation was crafted to present the various parties who held influential stake in the political, economic, and environmental destiny of the postwar Pacific Northwest; particularly, Native communities, state and federal agencies, regional natural resource industries, and to an extent, the environment itself. All of these parties had competing visions and goals for the region and its resources that would ultimately become entangled in the postwar Pacific Northwest. This dissertation contains four substantive chapters. The title, *Flooded by Progress*, conveys two prevailing themes of the postwar Pacific Northwest. First, the region was at the beginning of a new and modernized era of economic and industrial progress, and second, this progress came at the expense of Native communities. The overarching thread in the dissertation is the interrelated narrative of postwar federal Indian policy, economic development, and environmental change, within the geographical context of the Pacific Northwest. Each chapter seeks to weave these narratives together, and demonstrate that each is not completely understood without the other. To capture the power of rhetoric in these histories, each chapter is in part titled using a direct quotation from an archival source.

Chapter 1, “Indians in the ‘World of Tomorrow:’ Federal Indian Law and Postwar Development in the Pacific Northwest, 1945-1960,” analyzes the development of natural resource industries in the Pacific Northwest and the emerging directions in federal Indian policy from 1945 to 1960. This chapter positions natural resource development and federal Indian policy as complimentary and mutually constitutive forces in the postwar dispossession of Native communities. Chapter 2, “A ‘Withdraw from Supervision:’ the Rhetoric of Native Dispossession and Displacement in the Postwar Pacific Northwest,” critiques the legal discourse of Indian affairs during the 1950s, particularly with regard to Termination and the contested ownership of tribally held natural resources. This chapter argues that the Bureau of Indian Affairs operated essentially as a natural resource management agency in the Pacific Northwest during the postwar

years, and was more concerned with tribally held natural resources than the “best interests” of Native communities. Chapter 3, “‘Talk the Language of the Larger World’: Fishing Wars, Natural Resources, and the Birth of the Sovereignty Movement,” chronicles the emergence of the fishing rights movement in the 1960s and the series of court cases regarding tribal self-determination by the early 1970s. This chapter demonstrates how the policy shift from termination to tribal self-determination was due to changing views on natural resource development. Chapter 4, “‘More Rhetoric than Action:’ Tribal Natural Resources, Economic Development, and the Challenges of the Early Sovereignty Era,” argues that despite the policy victories of the 1970s, Native communities were faced with an entirely new set of challenges by the late 1970s and early 1980s. In particular, this chapter showcases the continued efforts of Native communities to achieve tribal self-determination and gain more control over natural resources. Lastly, the Conclusion, “‘I want to go fishing whenever I feel like it. With no strings attached,’” addresses the contemporary significance of tribal sovereignty for Native communities in the region, particularly with regard to preserving and restoring natural resources.

This dissertation provides an analysis of environmental, economic, and Indian policies at the federal, state, local, and tribal level. The dissertation brings together various disciplines, including history, environmental studies, law, and economics, and numerous historical sub-fields, including Native American, Western American, Pacific Northwest, and 20<sup>th</sup> century politics and culture, to investigate a particular *time* (postwar America) and a particular *space* (Pacific Northwest). These particular debates are isolated from one another, and the dissertation demonstrates how these debates are fundamentally intertwined, and provide a multifaceted approach to Pacific Northwest history, environmental history, economic history, and Native American history. In addition, it illuminates the ways in which federal Indian law becomes influenced by postwar social and economic forces. It provides an important contribution to understanding the continued displacement of Native peoples in the 20<sup>th</sup> century. It seeks to remedy the absence of Native voice in the history of economic development and environmental decline in the Pacific Northwest. However most importantly, it provides an important discussion about the intersections of race, law, environment, and economy in the complexity of the postwar Pacific Northwest, and their contemporary legacies.

## CHAPTER 1

### **Indians in the “World of Tomorrow:” Federal Indian Law and Postwar Development in the Postwar Pacific Northwest**

“Since the days of Empire Builders, the Pacific Northwest has been looked upon as a land with a future. This belief is well founded, for the region comprising Washington, Oregon, Idaho and Western Montana has unusual possibilities for development and growth... The need for accelerated development of water and land resources is probably more pressing in the Pacific Northwest than in any other section of the country.”

-Columbia River Inter-Agency Committee, 1952<sup>21</sup>

In 1946, less than a year after the end of World War II, popular newspaper columnist Walter Lippman proclaimed America as the “world of tomorrow.”<sup>22</sup> Lippman was echoing the sentiments of many Americans, who believed that the United States victory in the war meant a new era of American prosperity and growth. As a journalist who covered American political life during World War I, the Great Depression, and World War II, Lippman viewed the end of the war as a global shift, and that the United States’ greatest days were yet ahead. To an extent, Lippman was right. The United States had emerged as a political, economic, and cultural super power, and by the mid-1950s, there would be little basis to disagree with his projection. Central to America’s postwar prosperity was the Pacific Northwest, a region that had been instrumental in the country’s wartime production, and would emerge as a major industrial power following the war. Massive hydroelectric production, intensive timber harvesting, and nuclear weapons manufacturing were critical factors in the unparalleled development of the Pacific Northwest, and the nation as a whole, in the second half of the twentieth century.

However the postwar years also introduced dramatic changes for Native peoples. At almost the same time Lippman was forecasting the “world of tomorrow,” Arthur Watkins, a Republican Senator from Utah, was adamantly convincing Congress to “get out of the Indian business” once and for all.<sup>23</sup> This stance on Indian affairs prompted a significant “reconsideration” of Native rights and sovereignty in the postwar years, and would introduce new forms of Native dispossession. Watkins’ remarks reflected a new version of a long-standing belief that federal Indian law should not strengthen autonomous tribal rights, but rather, assimilate Native communities into mainstream postwar America. And as the postwar period progressed, the goal of Native assimilation would ultimately take a more serious and threatening direction, as the policy shifted toward one of the outright release of federal Indians tribes from federal supervision, or Termination. This chapter moves forward with the position that

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<sup>21</sup> Plan for Development of Natural Resources of the Pacific Northwest. 1952. Box 16, Folder 1, CBIAC 1947 to 1948. PAO 2: Desk files of the Assistant Area Director for Administration, 1946-1952. Records for the Bureau of Indian Affairs, Portland Area Office, Record Group 75. NARA Pacific Alaska Region; Seattle, Washington. (hereafter referred to as BIA PAO, RG 75, NARA: Seattle).

<sup>22</sup> As quoted in William G. Robbins and Katrine Barber, *Nature’s Northwest: the North Pacific Slope in the Twentieth Century* (University of Arizona Press, 2011), 127.

<sup>23</sup> As quoted in Stephen Cornell, *The Return of the Native: American Indian Political Resurgence* (Oxford University Press, 1988), 131.

Lippman's forecast of American prosperity and Watkins's declaration to Congress are mutually informative, to the range, as I argue, that the "world of tomorrow" necessitated "getting out of the Indian business." In more detail, this chapter seeks to demonstrate that postwar development and federal Indian law are fundamentally connected. Understanding the ways in which economic development influenced federal Indian law leads to a more critical discussion of the both the Pacific Northwest, and the United States as a whole, in the second half of the twentieth century.

In the years following World War II, Native communities in the Pacific Northwest experienced dispossession in two distinct ways: *direct procedural dispossession* and *indirect circumstantial dispossession*. *Direct procedural dispossession* refers to the official legislating of Indian law and policy at the state and federal level, and the way in which Native communities experienced the dispossession of rights, land, resources or status through direct policy actions or legal processes. These actions and processes include, as will be explored later in the chapter, the postwar policies of Termination, Relocation, and Public Law 280. *Indirect circumstantial dispossession* refers to the detrimental impact of federal development projects on Native lands and resources, and the way in which Native communities experienced dispossession of rights, land, resources, or status through indirect circumstantial actions like regional development projects. In addition, *indirect circumstantial dispossession* often meant the "overlooking" or disregard of Native rights in the planning of these projects. The fundamental point being, that in either scenario, acquiring Native lands and resources was instrumental in the postwar development of the Pacific Northwest, and that non-Indians benefited in very material ways from the dispossession of Native communities.

There has been a significant amount of scholarly studies about direct procedural forms of dispossession in the postwar years, especially with regard to Termination and Relocation.<sup>24</sup> Most of the literature chronicles the legislative history of the policies and situates them in the larger historical chronology of federal Indian law. Likewise, there is also a growing literature about the indirect circumstantial forms of dispossession experienced by Native communities in the postwar years, particularly about the damming of Celilo Falls on the Columbia River and the impact of the Hanford Nuclear Site. This literature focuses on localized case studies of Native communities, and the impact of regional development projects. However, the existing scholarship has yet to consider these forms of dispossession in relation to the other, and as part of a larger social-political-economic structure that threatened Native rights in the postwar years. Rather than place direct procedural and indirect circumstantial forms of dispossession as separate situations, it's much more useful to view both of these forms as part of the same process. It is necessary to examine the multiple methods in which Native communities experienced dispossession and displacement in the postwar years, and understand how these methods reflected a systemic assault on Native rights, waged by numerous stakeholders, from local agitators, to state politicians, to federal agencies. Too often overlooked in the study of federal Indian law are those who materially benefitted from the dispossession of Native peoples. This chapter showcases how various stakeholders were in a position to benefit from withdrawing Indian tribes from federal supervision.

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<sup>24</sup> Donald Fixico's *Termination and Relocation: Federal Indian Policy, 1945-1960* (University of New Mexico Press, 1960) and *The Invasion of Indian Country in the Twentieth Century: American Capitalism and Tribal Natural Resources* (University of Colorado Press, 2008) are valuable contributions to understanding Native dispossession and displacement in the postwar years.

The story of the Pacific Northwest in the years after World War II, especially with regard to economic development and federal Indian law, is a story of *resources* and *space*, and the shifting ownership of both. Historian Katrine Barber, in her seminal study on Celilo Falls in *Death of Celilo Falls*, argues, “The history of The Dalles Dam illuminates the transformation of Indian-owned resources (salmon) and space (Celilo Falls) into primarily non-Native owned resources (hydroelectricity) and space (the dam).”<sup>25</sup> However this occurrence did not only happen at Celilo Falls, it occurred with numerous resources and spaces throughout the Pacific Northwest in the postwar years, as Native resources and space were dispossessed, and replaced by the markers of “modern” society. The Pacific Northwest, along with the United States, was becoming the “world of tomorrow”, but it was being created with reduced resources or space for Native peoples.

### *World War II and the Pacific Northwest*

The American West as a whole experienced tremendous growth beginning in the early 20<sup>th</sup> century, but it was not until World War II that the Pacific Northwest became a prominent contributor to national economic and resource interests; most notably in the form of energy production. Hydroelectricity in the Pacific Northwest flourished during World War II, especially on the Columbia River. Bonneville Dam, completed by the United States Army Corps of Engineers in 1937, generated 1050 megawatts (MW) at full capacity by 1939. The construction of Grand Coulee Dam in Washington, completed by the Bureau of Reclamation in 1942, contributed even more to the wartime development of hydroelectricity. By 1945, Bonneville and Grand Coulee were producing over 9000 megawatts.<sup>26</sup> Prior to the war, dams on the Columbia River were mostly concerned with irrigation, storage, and flood control. Their usage quickly changed as the harnessing of the river expanded for wartime production. During the war, hydroelectric power from the Columbia River made the Pacific Northwest a key player in massive wartime mobilization. One-third of the nation’s aluminum yield came from plants supported by Columbia River hydroelectricity. The Hanford Nuclear Facility built the first atomic bombs with Columbia River hydroelectricity. Two hundred warships used in the Pacific were built with Columbia River hydroelectricity. By 1945, military bases in Oregon and Washington had used over 85 million kWh of Columbia River hydroelectricity. In total, it is estimated that the war industry used over five billion-kilowatt hours of Columbia River hydroelectricity during World War II.<sup>27</sup>

In addition to hydroelectric production, the Columbia River also became an instrumental part of the United States’ increasing interest in nuclear energy and weapons production. In 1943, the United States Army Corps of Engineers (USACE) and the Du Pont Company, a large chemical corporation, identified the area around Hanford, Washington, on the banks of the Columbia River, as an ideal site for a new nuclear power facility. The planners had decided on eastern Washington because, they noted, the region was “remote from population centers and

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<sup>25</sup> Katrine Barber, *Death of Celilo Falls* (University of Washington Press, 2005), 7.

<sup>26</sup> United States Department of the Interior, Bonneville Power Administration. “Report on the Columbia River Power System, Fiscal Year 1945.” (Bonneville Power Administration: Portland OR, 1946), 10.

<sup>27</sup> *Ibid*, 18.

close to substantial quantities of electricity and fresh water.”<sup>28</sup> Hanford would be the second major nuclear weapons production facility built by the federal government, behind Los Alamos in 1942, and became a central component of the Manhattan Project. Hanford met USACE’s criteria for several key reasons. First, it was located in a relatively uninhabited area with no large towns, freeways, or railways within the immediate vicinity. The “remoteness” of Hanford was necessary for both safety and security reasons. Second, the site was located next to the abundant water supply of the Columbia River. Third, it was located in a region with an abundant electric power supply, in particular, the electric power produced by Columbia River dams. By August 1945, three nuclear reactors had been built at the Hanford site, and the facility had produced the plutonium used in the bombing of Nagasaki, Japan, in 1945. By 1947, the Hanford facility was a significant producer of nuclear weapons technology for the United States and would soon undergo a dramatic increase of production. The nuclear power produced at Hanford also went to support the region’s strategic metals production, specifically aluminum. By the end of World War II, the Pacific Northwest was producing almost half of the nation’s strategic metal supply.<sup>29</sup>

Before the end of World War II, changes were occurring in federal Indian law and policy. John Collier, Director of the Office of Indian Affairs since 1933, had implemented a series of progressive policies until his resignation in 1945. The “Collier Era” had been a transformative period for Indian policy, as there was a shift away from detribalization, allotment, and assimilation policies, and a movement toward strengthening tribal governments. Collier’s political momentum was attributed to the nation’s need for economic development following the Great Depression, and Collier believed that strengthening tribal rights was a way to encourage economic development of mostly rural Native communities. In 1934, Collier’s Indian Reorganization Act (IRA), or the “Indian New Deal,” passed and became the flagship policy of the period. The Act reversed the allotment of Indian lands via the Dawes Act of 1887, and promoted tribal self-governance, in addition to allowing tribes to manage their own assets in hopes of encouraging economic growth on reservations.<sup>30</sup> Despite the progressive nature of the Act, Collier’s policymaking was never immune from criticism. In particular, conservative forces in Washington DC still felt that federal Indian policy should focus on the assimilation of Native peoples. The strengthening of tribal governments seemed to run counter to policies of Native assimilation. By 1937, Congress was already trying to overturn the Act and attempts were made to remove Collier as Director of OIA. In response to these criticisms, Collier was called to Congress several times to defend his handling of the OIA, and the direction of federal Indian law.<sup>31</sup> Collier’s IRA would remain the dominant force in federal Indian law until the early 1950s. During World War II, the Office of Indian Affairs budget was cut due to wartime spending, and larger national agendas overshadowed the interests of Native communities.

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<sup>28</sup> Ficken, “Grand Coulee and Hanford: the Atomic Bomb and the Development of the Columbia River,” 21-38.

<sup>29</sup> See Michele Gerber, *Legend and Legacy: Fifty Years of Defense Production at the Hanford Site* (Westinghouse Hanford Company, 1992) for a historiography of the Hanford Nuclear Facility.

<sup>30</sup> David H. Getches, Charles F. Wilkinson and Robert A. Williams, *Cases and Materials on Federal Indian Law, Third Edition* (West Publishing, 1993), 215-229.

<sup>31</sup> *Ibid*, 215-229.

## *Postwar Development and Federal Indian Policy*

Despite the industrial growth of the Pacific Northwest during the war, there was a major concern about the postwar economy. The region had been critical for wartime production, but there was tremendous uncertainty as to how these industries would survive in peacetime. For instance, hydroelectric production on the Columbia River dropped dramatically after the war, from over 9 billion kilowatt hours in 1945 to 6.2 billion in 1946.<sup>32</sup> The United States military cancelled or significantly reduced orders. Boeing, who had been instrumental in building warplanes in Seattle, reduced employment by 75 percent by the end of 1945. Hanford Nuclear Site had halted all expansion. By March 1946, the unemployment level in the region was above the national average.<sup>33</sup> However, by mid-1946, the industries in the Pacific Northwest began to stabilize and rebuild. The Bonneville Power Administration (BPA), who had become the administrator of hydroelectricity in the Columbia River System, began to alter its focus in 1946. The BPA began to encourage the increased development of natural resources in the region by using hydroelectric power. As they stated in their 1946 annual report: “for the benefit of the region and its people, far greater development of natural resources through the use of low cost hydroelectric energy remains to be accomplished.”<sup>34</sup> (See Figure 1 and Figure 2 for population densities in the Pacific Northwest in 1942 and the corresponding extensive BPA Power Grid by 1948)

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<sup>32</sup> United States Department of the Interior, Bonneville Power Administration. “Report on the Columbia River Power System, Fiscal Year 1945.” (Bonneville Power Administration: Portland OR, 1946), 10

<sup>33</sup> Robbins and Barber, *Nature’s Northwest*, 129-132.

<sup>34</sup> United States Department of the Interior, Bonneville Power Administration. “Report on the Columbia River Power System. Fiscal Year 1946.” (Bonneville Power Administration: Portland OR, 1947), 24.

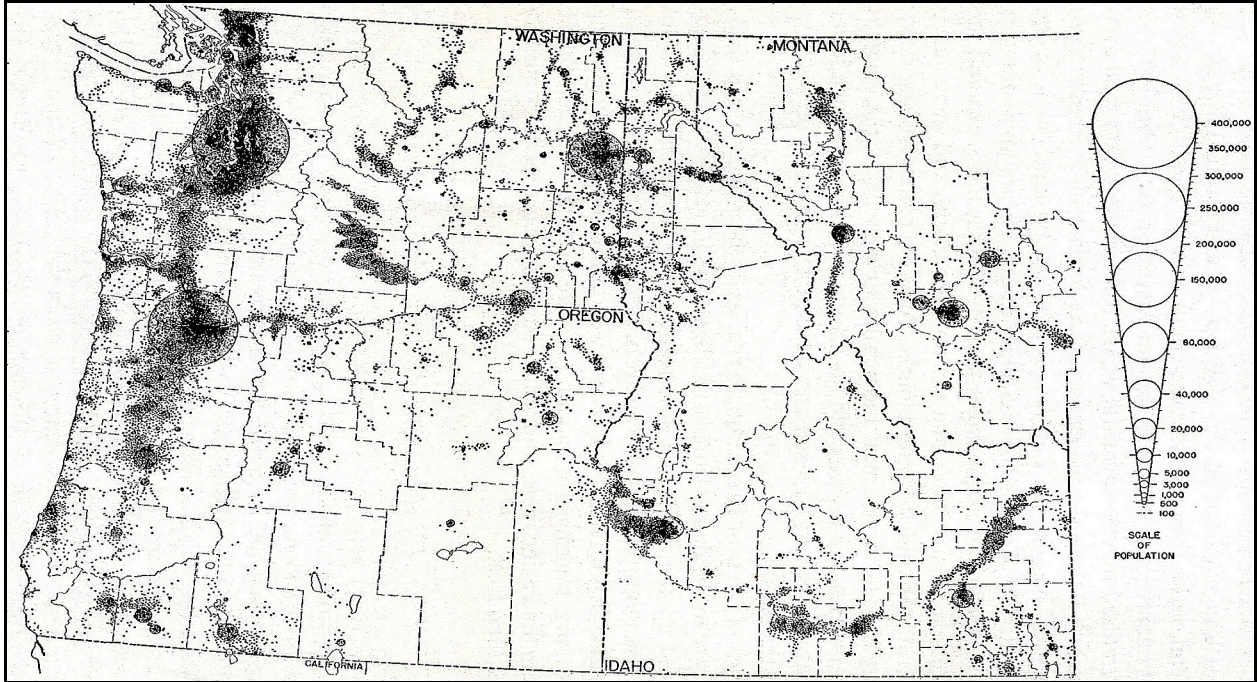


Figure 1: Population density in the Pacific Northwest circa 1942. (McKinley, Charles. *Uncle Sam in the Pacific Northwest: Federal Management of Natural Resources in the Columbia River Valley*. University of California Press, 1952, 8).

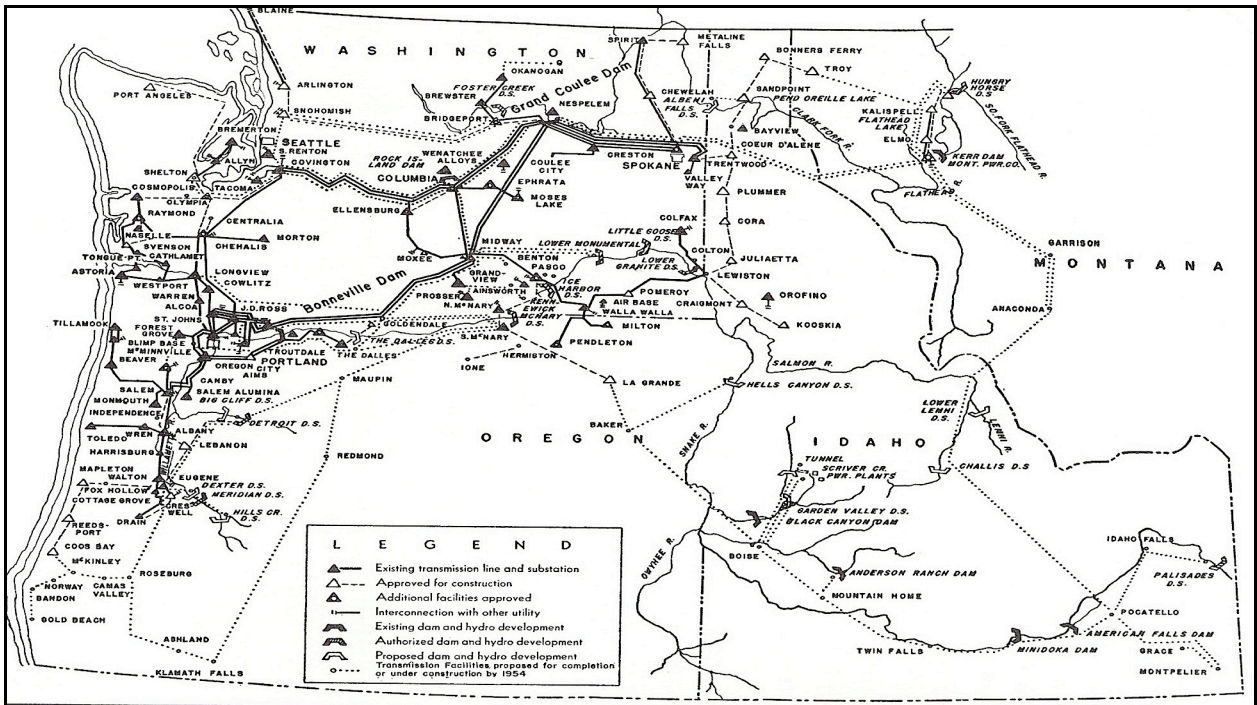


Figure 2: Hydroelectric power grid in the Pacific Northwest by 1948. (McKinley, Charles. *Uncle Sam in the Pacific Northwest: Federal Management of Natural Resources in the Columbia River Valley*. University of California Press, 1952, 16).

In the years following World War II, the Columbia River underwent major changes as federal involvement in the region's industries increased. New industries and population growth required more hydroelectricity. But immediately following the war, and in the face of an uncertain postwar economy, the federal government was reluctant to invest heavily in hydropower in the region. The Truman Administration was hesitant to introduce policies reminiscent of the New Deal, and they hoped private investors or companies would provide the financial investment needed in the region.<sup>35</sup> There was also an attempt to create the Columbia Valley Authority, which would serve as the administrator of hydroelectric projects on the Columbia River. The idea for this committee came from the model established by the Tennessee Valley Authority, which had overseen the development of the Tennessee Valley during the 1930s. But Columbia Valley Authority was not established, however, and the administration of hydroelectric dams on the Columbia River was given to the Bonneville Power Administration (BPA). Many viewed the BPA as an intermediary between private and federal administration of the Columbia River. In addition, the Columbia Basin Inter-Agency Committee (CBIAC) was formed to oversee the development of natural resources in the region. The CBIAC composed of representatives from the departments of War, Interior, Agriculture, and the Federal Power Commission. The BPA, and state representatives, became members of the CBIAC.

Both the BPA and CBIAC agreed that the hydroelectric potential of the Columbia River was undeniable, and several other federal agencies were supporting efforts to develop the Columbia River. These agencies included the Fish and Wildlife Service, Park Service, Reclamation Service, War Department, and the Bureau of Mines.<sup>36</sup> As noted by Theron Weaver, the Division Engineer for the USACE in the years following World War II, "the potentialities of the Columbia River and its tributaries are so vast, and the physical circumstances for their regulation are so favorable that it is possible to develop economically feasible programs not only to meet fully the needs of this generation, but also to allow an ample margin for many years to come."<sup>37</sup> In May 1948, major flooding on the lower Columbia River had inundated the Vanport neighborhood of Portland, Oregon. The "Vanport Flood" had also flooded sections of major highways and railways. Other sections of the lower Columbia had also been severely impacted. The floods prompted many politicians to lobby for the increased federal management of the Columbia River for flood control purposes. These efforts culminated in 1950, with the passing of the Flood Control Act, which proposed the construction of new dams as flood control devices.<sup>38</sup> Whether it is for flood control, transportation, irrigation, or hydropower, the Columbia River was receiving a considerable amount of attention by the federal government. All parties in the region hadn't been so supportive of the intensive production of multipurpose dams on the Columbia River. In particular, conservation groups, sport and commercial fishermen, and Columbia River tribes were the most opposed to the dams, as the federal government had yet to address the inevitable impact dams would have on the region's fish runs. Ed Avervill, a representative of a

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<sup>35</sup> United States Army Corps of Engineers, North Pacific Division. "History of the North Pacific Division," (United State Army Corps of Engineers: Portland, OR, 1969), 113.

<sup>36</sup> Questionnaire for Basic Information on Regionalization and Coordination Study. February 7, 1947. Box 1, Folder 1, Narrative Reports 1946-1952. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>37</sup> Ibid.

<sup>38</sup> United States Army Corps of Engineers, "History of the North Pacific Division," 113.

Portland sportsman's club, stated that Columbia River salmon "should not be sacrificed to provide employment for an army of engineers."<sup>39</sup>

In the late 1940s and early 1950s, there was an important change in the social, political, and economic landscape of the United States, and this led to a refocusing on national domestic issues. As a result, postwar directions in federal Indian law would undergo significant change. Federal Indian law in the postwar period provided a renewed focus on assimilation, and limiting the autonomy of tribal governments that occurred under the IRA. The postwar era marked a renewed concern with national conformity and consensus, and these concerns did not bode well for strengthening Native communities and tribal governments. Indian policy was aimed at limiting or ending the treaty-based relationships with tribes, and to detribalize and individualize Native peoples.<sup>40</sup>

The first significant event in postwar Indian affairs occurred when John Collier left the Office of Indian Affairs in January 1945. By the time of his departure, he had held the post longer than anyone, but growing criticism and opposition from Congress led him to resign his post. Collier's protection of tribal rights and resources under the IRA was particularly concerning, considering the emerging postwar economic interest in tribal resources. Mining and timber interests argued that Collier was halting development by preventing access to Indian land and resources. Even Native peoples were criticizing Collier. Native traditionalists voiced concern because the IRA had forced unfamiliar political regulations on tribes, while the Native "assimilationists" were critical of the IRA's reinforcement of tribal governments. By 1946, the Republicans gained control of Congress, and there was a conservative shift in Indian affairs. The goal of Congress was a rollback of New Deal policies in general, and the IRA was part of this. Congress hoped that tribes could operate without the assistance from the federal government, or even as independent industries.

The second significant event in postwar Indian affairs was the establishing of the Indian Claims Commission (ICC) in 1946. The ICC was designed as a judicial appeal board in which Native communities could file claims against the federal government for land or resources wrongfully lost, according to federal treaties. Many of the architects of the ICC envisioned the commission as a remedy for past wrongdoings of the federal government against Native communities. However, the ICC more accurately resembled a "clearing house" for any unresolved grievances by Native communities with regard to federal treaty rights. The ICC filed 850 claims from 1946 to 1952, and \$800 million was allocated to Native communities. In 1947, the first full year of the ICC's congressional activity, the Congressional Record shows 135 items related to Indian affairs. It is important to note that land or resources were never returned to the tribes as a result of their grievances. Land would remain in non-Indian ownership, and tribes only received monetary compensation. The ICC is identified as one the first efforts by the federal government to resolve any outstanding issues with Native communities to potentially end special relationships with Indian tribes. Congress believed that the ICC would end any outstanding federal obligations to Indian tribes and that once claims finalized and monetary compensation issued, the unique legal status of Indian tribes would not be necessary.

The political force behind Termination began immediately after World War II. Given the renewed focus on assimilation and limiting tribal rights in Indian affairs during the postwar

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<sup>39</sup> Robbins, *Landscapes of Conflict*, 59.

<sup>40</sup> Getches, Wilkinson, and Williams, *Cases and Materials on Federal Indian Law*, 311-315.

period, many felt that the final result of these new efforts would be the official end of the special relationship between the United States and tribes. Termination, as it was called, became the goal of Indian affairs. Termination would satisfy those who were critical of Collier's IRA, and provide a direct alternative in the business of Indian affairs. The initial groundwork for Termination policies was laid out prior to the end of the war. In 1943, the Senate Indian Committee conducted an investigation on the BIA, as a result of conservative concerns over Collier's handling of Indian affairs. The Committee recommended that all Indian land should be removed from federal trust protection, and to end a number of Indian programs.<sup>41</sup> But it was not until 1947 that Termination entered the official discourse of federal Indian law.

William Zimmerman, acting director of the newly renamed Bureau of Indian Affairs (BIA) and Collier's successor, was ordered by Congress to identify the tribes most prepared for termination. The criterion designed for their "preparation" relied on two factors: first, their level assimilation, and two, their financial independence. Zimmerman's final list included ten tribes who would be ready for "immediate freedom" and two-dozen who would be prepared by 1960. Of the list Zimmerman created, the Klamath of Oregon, Osage of Oklahoma, Menominee of Wisconsin and Flathead of Montana were targeted as the tribes most prepared for "immediate freedom."<sup>42</sup>

In 1948, other federal agencies became involved in determining the direction of Indian affairs. That year, President Harry Truman established the *Commission on Organization of the Executive Branch of Government*, better known as the Hoover Commission, because of Chairman Herbert Hoover. The goal of the commission was to review all federal programs for efficiency and restructuring, and this included the BIA. In particular, the 1948 Hoover Commission report recommended that Native peoples should be "released" from federal supervision, and that a special trust relationship was not necessary. The Commission also held the stance that the best strategy for Indian affairs is to "integrate Indian people into the rest of the population", and that tribal property be transferred to Indian-owned corporations.<sup>43</sup>

In addition to the Arthur Watkins, several outspoken proponents of Indian Termination were emerging, in particular, Dillon S. Myer. Harry Truman appointed Myer as Director of the BIA in 1950. Truman did not favor the IRA approach to Indian affairs, and instead, believed that Native peoples would be best served by integrating them into the emerging postwar economy.<sup>44</sup> As a result, Truman selected Myer to guide Indian affairs, but he already had an established political reputation. Truman had given Myer instructions to put Indian affairs "out of business as quickly as possible."<sup>45</sup> Myer served as Director of the War Relocation Authority from 1942 to 1945, in which he oversaw the Japanese internment camps during World War II. Myer's approach to Indian affairs was that Native Americans should be afforded the same rights as other Americans. He felt the "special status" of Indian rights was becoming more of a detriment to

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<sup>41</sup> Roberta Ulrich, *American Indians from Termination to Restoration, 1953-2006* (University of Nebraska Press, 2010), 8.

<sup>42</sup> For more on the background of the termination policy, see Wilkinson's *Blood Struggle* and Fixico's *Termination and Relocation*.

<sup>43</sup> Ulrich, *American Indians from Termination to Restoration, 1953-2006*, 7-8.

<sup>44</sup> Clayton R. Koppes, "From New Deal to Termination: Liberalism and Indian Policy, 1933-1953," *Pacific Historical Review*, 46 (November 1977), 544, 558, 564-65.

<sup>45</sup> As quoted in Kenneth Philp, "Dillon Myer and the Advent of Termination, 1950-1953," *Western Historical Quarterly*, 19:1 (January 1988), 37.

Native peoples, rather than a benefit, and special rights for Indians gave them a privileged status compared to other Americans.<sup>46</sup> But Myer's background strongly influenced his approach to Indian affairs and often drew parallels to Indian reservations and Japanese internment camps. In particular, he noted that reservations were "something akin to large detention camps."<sup>47</sup> Among Myer's challenges as Director of BIA, he was upset that Native peoples did not display the trust in the federal government to deal with Indian affairs. In 1953, he noted: "The wily, more competent Indians...are capable of making the Bureau of Indian Affairs appear as a group of paternalistic bureaucrats who will not allow them to handle their own affairs."<sup>48</sup>

In March 1951, the Department of the Interior and the BPA made a significant change in their portrayal of the importance of hydroelectricity on the Columbia River. Advocates of Termination were beginning to utilize The Cold War to garner support for dissolving federal Indian tribes. They renamed the BPA's annual report to "Advance Program for Defense", and in the first issue, they made a dramatic statement about the role of Columbia River hydroelectricity in the Cold War arms race. The report states:

The nation is faced with an emergency of almost unprecedented proportions. America's strength in this emergency lies in her industrial potential, the key to which is electric power. The president, in his January 1951 Economic Report to Congress, has cited the need for increase in the nation's basic industrial strength as one of the three parts of the national defense effort. He has recommended expansion of the electric power capacity of over 20 million kilowatts in the next three years... The Pacific Northwest can contribute its part to the national industrial expansion if development of its hydroelectric power resources moved forward rapidly.<sup>49</sup>

Following the inaugural issue in 1951, the "Advance Program" series continually called for increased power development on the Columbia River, always stating that the current hydroelectric production of the river was not enough to meet future economic or defense needs. The "Advance Program" series is an important moment in the postwar development of the Pacific Northwest, because it demonstrates how the resources of the region were of vital importance to larger national and international concerns. Columbia River hydroelectricity was influencing other industries as well. By 1951, aluminum plants on the Columbia River, powered by hydroelectricity, were producing 40 the nation's aluminum capacity.<sup>50</sup> This same year, irrigation began in the Columbia River Basin, and nearly 670 thousand acres were being irrigated. By 1952, the USACE began to construct another massive hydroelectric dam on the Columbia River at The Dalles, Oregon, which was in the direct vicinity to the Native fishing site at Celilo Falls. The Dalles Dam would emerge as perhaps the most prominent symbol of Native American rights getting in the way of regional development.

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<sup>46</sup> The political career of Dillon S. Myer is thoroughly documented in Richard Drinnon's *Keeper of the Concentration Camps* (University of California Press, 1977).

<sup>47</sup> Drinnon, *Keeper of the Concentration Camps*, 239.

<sup>48</sup> Ibid, 188.

<sup>49</sup> United States Department of the Interior, Bonneville Power Administration, "Advance Program for Defense," (Bonneville Power Administration, Portland OR, March 1951).

<sup>50</sup> Northwest Power and Conservation Council, "History of Aluminum," (<http://www.nwcouncil.org/history/aluminum.asp>). Accessed May 14, 2012.

## *Changes in Federal Indian Law and Policy*

In late 1951, George Malone, a Senator from Nevada, delivered a speech to the 82<sup>nd</sup> Congress in which he outlined a new direction for federal involvement in Native American communities. In a session titled “Abolish the Indian Bureau Now-Make the Indians People,”<sup>51</sup> Malone covers a wide-range of proposals aimed at releasing federal Indian tribes from federal supervision. Malone argued:

I believe that, with equal opportunity, the American citizens of Indian ancestry will take their place in American affairs and activities...it is time for the individual Indians, both men and women, to take their rightful places in the various communities without segregation, except as they themselves may elect to practice it, and to have full opportunity to increase their earning power and full opportunity to enjoy what they earn.<sup>52</sup>

Malone paired this new ideology with the nation’s Cold War opposition to communist influences, and said “we are fighting communism and Marxist socialism while at the same time we foster and protect Indian reservations, a natural socialist set-up.”<sup>53</sup> Malone was not alone in his belief that terminating federal Indian tribes could be a solution to many problems. In the eyes of the many policymakers, a withdrawal policy would serve several political, social and economic goals: it could integrate Native peoples into a growing urban population; it would satisfy the interest of assimilating Native peoples into American culture, it could alleviate rural poverty, and it would open vast amount of land for natural resource development. By 1953, Commissioner Myer was articulating his own stance on the policy of withdrawal:

While I have pointed out that many Indians do not wish this, I strongly feel that the trusteeship and other special forms of government services to the Indians are holding the Indians back politically, socially, and economically...For the benefit of the Indians a strong hand will have to be taken both by the Department and Congress.<sup>54</sup>

The first phase of Termination began in 1952 with House Congressional Resolution 698. Based on Zimmerman’s 1947 investigation, this resolution directed the BIA to report on the potential of tribes “prepared” for Termination. By early 1953, with the inauguration of President Dwight Eisenhower, and Republican control of both the House and Senate, Termination received its final push. The Hoover Commission had recommended in 1948 that tribes be transitioned into Termination, but Arthur Watkins and other supporters wanted the policy to be enacted as abruptly as possible. In August 1953, House Congressional Resolution 108 was passed, which

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<sup>51</sup> Abolish the Indian Bureau Now-Make Indians People. Box 5, Folder 4, Congressional Record – Abolish Indian Bureau. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> As quoted in Drinnon, *Keeper of the Concentration Camps*, 233.

gave Congress the power to officially terminate federally recognized tribes. HCR 108 had two goals: first, to give Native peoples the same rights as all US citizens without special treatment, and second, to end the trust relationships between the tribes and the federal government. For those tribes not threatened with termination, Public Law 280 posed a different threat to tribal rights. PL 280, passed in 1957, changed the jurisdictional status of Indian Territory in five Western states, including Oregon, and Washington. The law granted states jurisdiction over civil or criminal offenses committed by tribal members on reservation land. Therefore, the law effectively limited the rights of tribal governments.

One of the major proponents of Termination was former Oregon Governor Douglas McKay. He served as Governor from 1949 to 1952, and went on to serve as Eisenhower's Secretary of the Interior from 1953 to 1956, during which time he presided over the implementation of termination. McKay wanted his home state to serve as an example for this new direction in federal Indian policy, but he was also speaking on behalf of timber and water interests in the Pacific Northwest.<sup>55</sup> In the late 1940s, McKay had also been a major supporter of dams in the Willamette River Basin. The Termination of Oregon tribes would create an immediate opening of timber and water resources in the state. In Oregon alone, Termination would open upwards of 900,000 acres of timberland, the majority of which was on Klamath lands.

Native peoples in Oregon suffered greatly from Termination, and it was the state most impacted by Termination policies. The Klamath Tribes of southern Oregon were terminated under the *Klamath Termination Act*, on August 13, 1954. The *Western Oregon Termination Act* would effectively terminate a total of 61 additional tribes; among the largest were the Siletz, Cow Creek, Grand Ronde, Coos, Lower Umpqua and Siuslaw, and the Coquille.<sup>56</sup> In the fallout from Termination, it was obvious that the policy had two main accomplishments: first, it increased economic opportunities of non-Indians and second, it simultaneously disenfranchised Indians. Much of tribal lands removed from trust status as a result of Termination were immediately opened up for non-Indian entrepreneurs and industries, especially for the harvesting of natural resources. These former tribal lands became part of the broader economic growth of the region in the postwar years, and this was being done at the expense of Native peoples in the region. Dispossessing Native peoples meant vast material gains for non-Indians. Joseph Garry, head of the National Congress of American Indians in 1958, noted that real estate offices were emerging around reservations scheduled for termination. In retrospect, there is no secret about the agenda behind Termination, and how dispossessing Native peoples would directly benefit

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<sup>55</sup> Stephen Dow Beckham, *Oregon Indians: Voices from Two Centuries* (Oregon State University Press, 2006), 435.

<sup>56</sup> The following tribes were terminated by the *Western Oregon Termination Act*: Confederated Tribes of the Grand Ronde Community, Confederated Tribes of Siletz Indians, Alesa, Applegate Creek, Calapooya, Chaftan, Chempho, Chetco, Chetlessington, Chinook, Clackamas, Clatskanie, Clatsop, Clowwewalla, Coos, Cow Creek, Eucheas, Galic Creek, Grave, Joshua, Karok, Kathlamet, Kusotony, Kwatami or Sixes, Lakmiut, Long Tom Creek, Lower Coquille, Lower Umpqua, Maddy, Mackanotin, Mary's River, Multnomah, Munsel Creek, Naltunnetunne, Nehalem, Nestucca, Northern Molalla, Port Orford, Pudding River, Rogue River, Salmon River, Santiam, Scoton, Shasta, Shasta Costa, Siletz, Siuslaw, Skiloot, Southern Molalla, Takelma, Tillamook, Tolowa, Tualatin, Tututui, Upper Coquille, Upper Umpqua, Willamette Tumwater, Yamhill, Yaquina, and Yoncalla.

non-Indians. In 1977, long after the Termination had ended, the American Indian Policy Review Commission said that although it's "impossible to assign one reason" for Termination, "non-Indians desire to obtain tribal lands" was a critical factor.<sup>57</sup> The policy had dispossessed Native communities through a legal process of officially removing Native status and claims to treaty rights.

John Collier had identified this policy shift in the years following his departure from the BIA and became an outspoken critic of the conservative directions of federal Indian law. By late 1954, as the realities of Termination were settling in among several Native communities in the Pacific Northwest, Collier authored a pair of sharp critiques of the postwar era in federal Indian policy. Collier argued that Termination had entirely violated the trust responsibility of the federal government. In "Back to Dishonor", published in *The Christian Century* in May 1954, he wrote:

Implicitly or explicitly, these men now pursuing Indian ruin believe that cultural diversity – at least in terms of Indian culture – is anachronistic, even un-American... These men are blind, too, toward history, toward the shames, the sadness, and the depopulations, the vast legalized lootings which ensued in the past governmental actions with those which they are now pressing.<sup>58</sup>

He followed up "Back to Dishonor" with "Indian Takeaway", published in *The Nation* in October 1954. In which, Collier poignantly critiques the misguided direction of the BIA:

[The Bureau of Indian Affairs has attempted to] Atomize and suffocate the group life of the tribes –that group life which is their vitality, motivation, and hope – and to prevent the continuance and adaption of those Indian civilizations which produced great humans beings through hundreds of generations... A less result apparent result [of this direction] will be a looted Indian soul and looted national honor, a United States shamed before the forty million Indians of the hemisphere.<sup>59</sup>

Termination was not the only Indian affairs policy aimed at "getting out of the Indian business." Many in Indian affairs had also been considering legislation aimed at encouraging rural Native peoples to relocate to urban centers. Indian Relocation legislation would become part of the Termination discourse, and was seen as another stage in ending the special relationship of Native peoples with the federal government. In preparation for the Relocation legislation, Dillon Myer said that he would support Native peoples seeking employment away from reservations. Many in Indian affairs supported Relocation because it meant an end to policies of strengthening tribal communities, and also supported the social concern of Americanizing the public and ending rural poverty. Relocation legislation officially passed in August 1956. Between 1945 and 1958, more than 100,000 Native peoples left reservations, most without support of the federal government. Termination and Relocation had obvious political and economic ramifications for Native communities. It's even more important to understand the social and cultural challenges posed by these policies. Historian and columnist Roberta Ulrich,

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<sup>57</sup> Ulrich, *American Indians from Termination to Restoration*, 11-12, 18.

<sup>58</sup> John Collier, "Back to Dishonor?," *The Christian Century*, May 12, 1954, 578-579.

<sup>59</sup> John Collier, "Indian Takeaway: Betrayal of a Trust," *The Nation*, October 2, 1954, 290-291.

makes note of the challenges posed by these policies, as she writes, “Too often both Relocation and Termination of tribal status mean separation of Indian families and neighbors and a loss of shared culture, the destruction of a way of life with neither knowledge nor means to fully adapt to the larger society.”<sup>60</sup>

The Dalles Dam, one of the largest in the Columbia River System, was completed in early 1957. On March 10, the backflow from the dam flooded the ancient fishing site of Celilo Falls. Located on the Columbia River between Oregon and Washington, Celilo Falls had been the most continuously inhabited area of North America. The site had been a major center of fishing and trading for 15,000 years. Celilo had also served as a symbol of the persistence of Native culture in the Pacific Northwest. In the years prior to 1957, fishing ladders decorated the rocks around the falls, as Native peoples of the Columbia River fished for salmon. The Treaty of 1855<sup>61</sup> had reserved the rights of the Yakama Nation, Confederated Tribes of the Warm Springs, and the Walla Walla, Umatilla, and Cayuse, to take salmon at Celilo Falls.<sup>62</sup> But the construction of The Dalles Dam would ultimately end the ability of Native peoples of the Columbia to fish at Celilo Falls. In 1947, a congressional hearing had determined that the proposed hydroelectric dam at The Dalles would not threaten treaty-fishing rights. However, once the construction of the dam finished, the impacted tribes received a monetary compensation of \$26.8 million. A small group of Native peoples, composed of members of the Columbia River tribes, formed the community of Celilo Village after the submersion of Celilo Falls. Celilo Village overlooks The Dalles Dam. The importance of increased hydroelectric production overshadowed the rights of Native communities, and the dispossession of Native peoples along the Columbia River occurred through an indirect process. For the price of flooding Celilo Falls and violating century-old treaty rights, the federal government increased the hydroelectric capacity of the Columbia River by 1800 megawatts.

### *Assessing Growth in the Postwar Pacific Northwest*

The economic and demographic growth of the Pacific Northwest in the postwar years was significant, especially during the period of 1946 to 1958. By the early 1950s, an economic assessment by Oregon State University suggested that the area had a solid and growing natural resource economy but that natural resources had not yet been developed to their “optimum levels,”<sup>63</sup> and called for more intensive development of agricultural, timber, water, recreational, and mining industries. Further, demographic growth would be required for continued development, because it would provide a much needed labor supply. The assessment concludes by stating, “The future is bright. The base in land, water, and biotic resources is rich and potentials are great, making the Pacific Northwest truly a ‘Land of Promise.’”<sup>64</sup> By the late 1950s, it was difficult to dispute the assessment’s forecast of regional economic and

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<sup>60</sup> Ulrich, *American Indians from Termination to Restoration*, 20.

<sup>61</sup> William Dietrich, *Northwest Passage: the Great Columbia River* (Simon & Schuster, 1995), 376-378.

<sup>62</sup> Dietrich, *Northwest Passage*, 376-378.

<sup>63</sup> Richard A. Highsmith, *Atlas of the Pacific Northwest: Resources and Development* (Oregon State College, 1953), 2.

<sup>64</sup> *Ibid.*

demographic growth. By 1964, the Department of the Interior reported “the Pacific Northwest, which includes Oregon, Washington, Idaho, and western Montana, has been one of the most rapidly developing areas in the United States in recent years. Both industrial and population growth have been particularly pronounced during the last two decades.”<sup>65</sup>

The BPA, United States Army Corps of Engineers, and Bureau of Reclamation dramatically altered the Columbia River from 1946 to 1958, with the development of the Columbia River Power System.<sup>66</sup> Prior to the end of the war, the dams in the Columbia River Power System, most notably Bonneville and Grand Coulee, generated over six billion-kilowatt hours (KWH) of electricity (See Figure 3). By 1958, with the introduction of 17 more hydroelectric dams and projects,<sup>67</sup> the Columbia River Power System was generating over 28.4 billion KWH, which accounts for a 400 percent increase in production. For reference, the average American home in 1958 consumed 2500 KWH per year,<sup>68</sup> which means that the hydroelectricity produced by the Columbia River Power System could sustain 11 million American homes for an entire year.

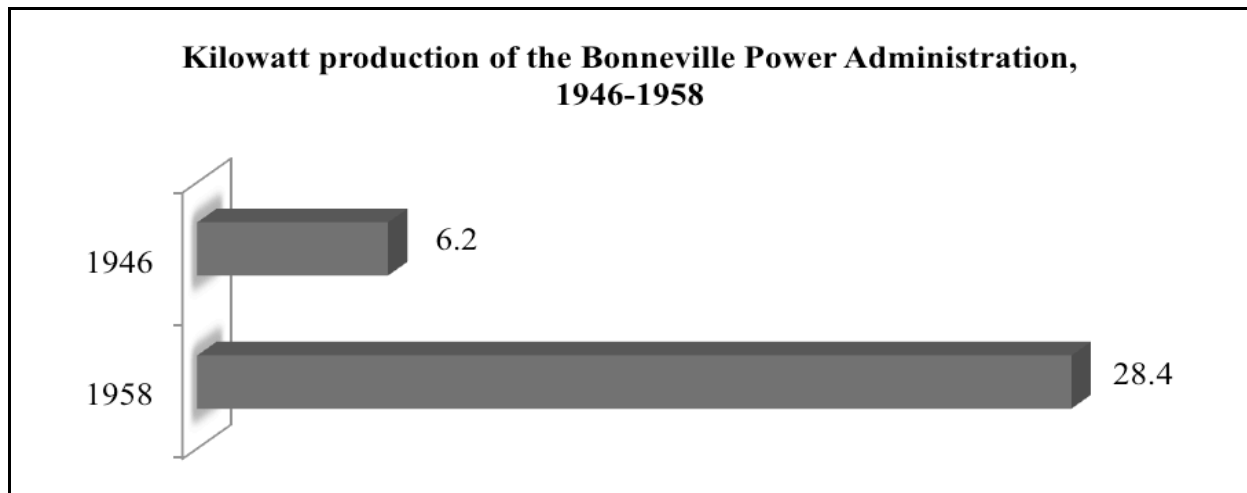


Figure 3: Bonneville Power Administration kilowatt-hour (KWH) production growth from 1946 to 1958. This total sum includes all hydroelectric dams in the Columbia River Basin (Source: United States Department of the Interior, Bonneville Power Administration. "Report on the Columbia River Power System, Fiscal Year 1958." United States Department of the Interior: Portland OR, 1959).

<sup>65</sup> United States Department of the Interior, “Columbia River Fishery Program, 1963 - Circular 192,” (United States Department of the Interior: Washington DC, 1964).

<sup>66</sup> The Columbia River Power System included hydroelectric dams on the Columbia River mainstem, Snake, Pend Oreille, Flathead, Clark Fork, and Kootenay Rivers.

<sup>67</sup> Among these hydroelectric projects, which were either planned or commissioned from 1946 to 1958, were: Kootenay Lake, Hungry Horse, Thompson Falls, Cabinet Gorge, Albeni Falls, Box Canyon, Coeur d’Alene, Noxon Rapids, Chief Joseph, Rocky Reach, Priest Rapids, Brownlee, Oxbow, Ice Harbor, McNary, John Day, and The Dalles.

<sup>68</sup> United States Energy Information Administration. “Residential Sector Energy Consumption Estimates.”

([http://www.eia.gov/state/seds/data.cfm?incfile=/state/seds/sep\\_use/res/use\\_res\\_US.html&sid=US](http://www.eia.gov/state/seds/data.cfm?incfile=/state/seds/sep_use/res/use_res_US.html&sid=US)). Accessed May 14, 2012.

The expansion of the hydroelectric production in the Columbia River Power System is also evident in the increase operating revenue. In 1946, the operating revenue was almost \$20 million and rose to \$67 million by 1958, an increase of 250 percent (See Figure 4). The Columbia River Power System was an instrumental force in the American war effort during World War II, and in the next 13 years, its hydroelectric growth had expanded dramatically. This expansion had made other industries possible. By 1958, there were 10 aluminum smelters along the Columbia River producing 40 percent of the nation's aluminum, and they employed nearly 11,000 people.<sup>69</sup>

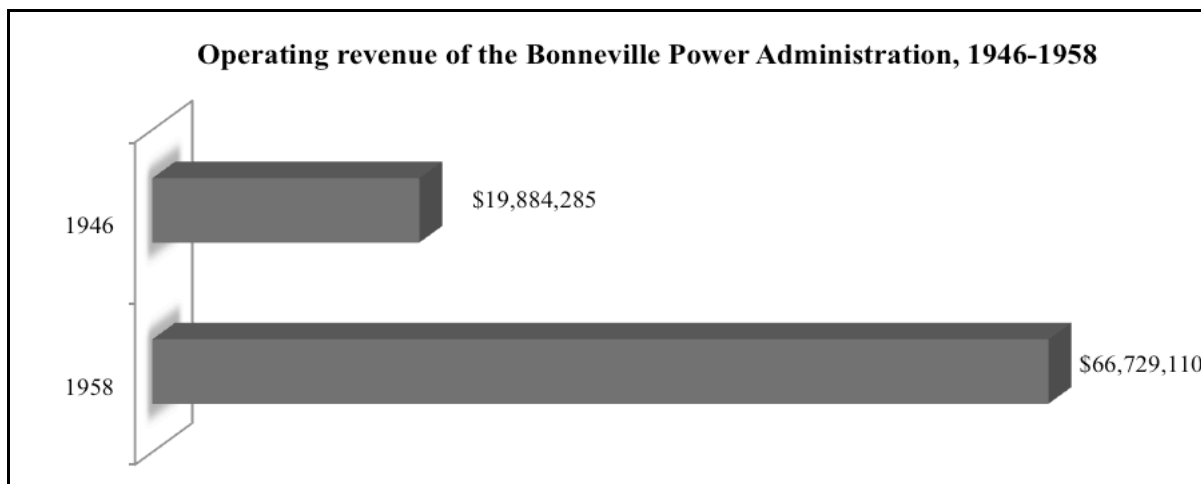


Figure 4: Columbia River Power System revenue growth from 1946 to 1958. This total sum includes all hydroelectric dams in the Columbia River Basin (Source: United States Department of the Interior, Bonneville Power Administration. "Report on the Columbia River Power System, Fiscal Year 1958." United States Department of the Interior: Portland OR, 1959).

In addition to hydroelectricity, the Pacific Northwest timber industry experienced significant growth in the postwar years. Timber harvesting in National Forests, in Oregon, Washington and Idaho, by both public and private enterprises, made the Pacific Northwest the primary timber producer in the country.<sup>70</sup> In 1950, the Pacific Northwest produced over 2 billion cubic feet of softwood and hardwood, and by 1958, it was generating nearly 3.5 billion (See Figure 5). As a result of the increased harvesting, the value of Pacific Northwest timber products also rose. In 1950, the value of the over \$28 million, by 1958, the value was almost \$60 million (See Figure 6). For reference, the average American home in 1950 could be constructed with an estimated 10,000 cubic feet. This calculation means that, in 1958, timber from the Pacific Northwest could build 320,000 average American homes. The Pacific Northwest timber industry became the primary producer of softwood and hardwood products in the United States. Timber from Pacific Northwest forests accounted for around 45 percent of the national timber harvest, and the vast majority of this timber was being consumed outside of the region (See Figure 7).

<sup>69</sup> Ibid.

<sup>70</sup> The United States Forest Service cataloged these statistics beginning in 1950. Therefore, no data is available for 1946 to 1949.

Pacific Northwest timber was assisting in massive postwar development projects across the country in the postwar years.

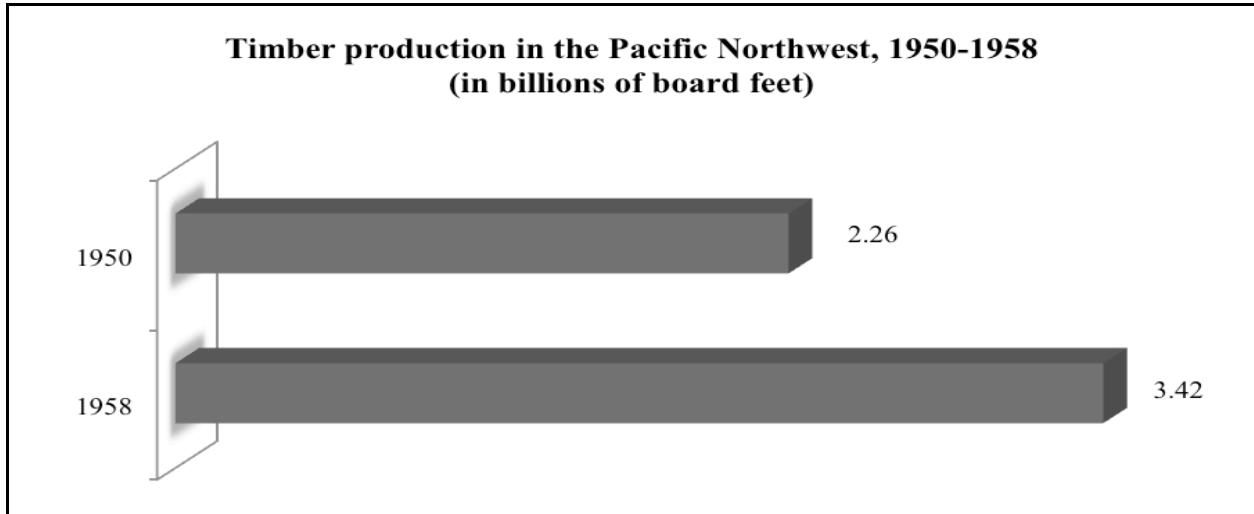


Figure 5: Hardwood and softwood timber products produced in the “Pacific Northwest Region” of Oregon and Washington. (Source: United States Forest Service, Pacific Northwest Research Station. “Production, Consumption, and Prices of Softwood Products in North America: Regional Time Series Data, 1950-1985.” Resource Bulletin PNW-RB-161. 7, 41, 42).

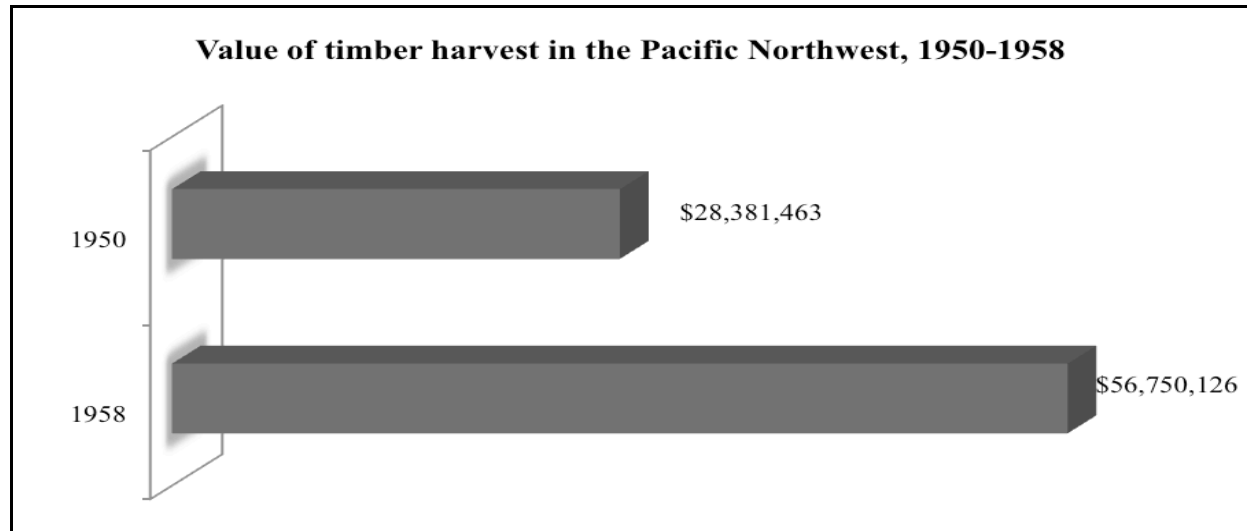


Figure 6: Hardwood and softwood timber products produced in the “Pacific Northwest Region” in Oregon and Washington. (Source: United States Forest Service, Pacific Northwest Research Station. “Production, Consumption, and Prices of Softwood Products in North America: Regional Time Series Data, 1950-1985.” Resource Bulletin PNW-RB-161. 7, 41, 42).

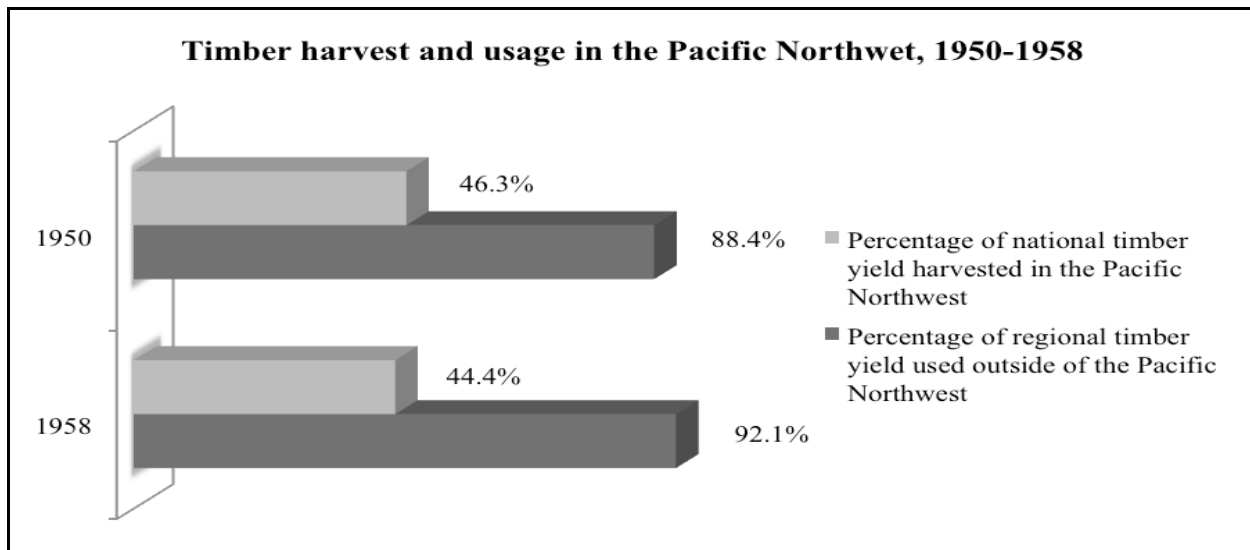


Figure 7: Hardwood and softwood timber products produced in the “Pacific Northwest Region” which is composed of Oregon and Washington. (Source: United States Forest Service, Pacific Northwest Research Station. “Production, Consumption, and Prices of Softwood Products in North America: Regional Time Series Data, 1950-1985.” Resource Bulletin PNW-RB-161. 7, 41, 42).

Nuclear power and weapons production at the Hanford facility also experienced significant growth in the years following World War II, and nation’s postwar nuclear buildup stimulated this growth. Hanford was a critical part of the country’s nuclear production during the war, and its growth from 1946 to 1958 continued its national importance as a weapon’s manufacturer. By the end of 1945, Hanford had three nuclear reactors on site that were producing an initial power output of 750 Mwt,<sup>71</sup> and by 1958, there were nine reactors producing an initial power output of 5,650 Mwt<sup>72</sup> (See Figure 8). This production accounts for an increase of 650 percent in Hanford’s nuclear capacity of the 12-year span. In 1963, a final reactor was added at the Hanford facility. The “N Reactor” was the largest reactor at Hanford and generated an additional 4,000 Mwt, which increased Hanford’s total production to almost 10,000 Mwt by the end of 1963.

<sup>71</sup> The acronym Mwt refers to *thermal megawatt*, the standard unit of measure for nuclear energy production.

<sup>72</sup> United States Department of Energy. “Plutonium: the first 50 years. United States plutonium production, acquisition, and utilization from 1944 through 1994,” (<http://www.fas.org/sgp/othergov/doe/pu50yc.html#ZZ16>). Accessed May 8, 2012.

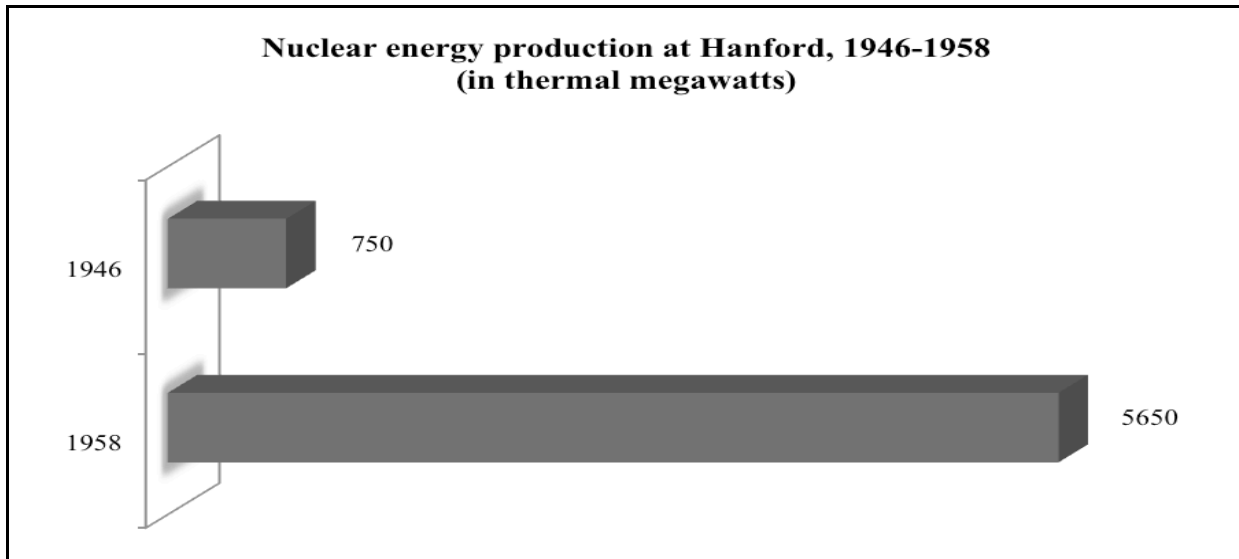


Figure 8: Nuclear energy production at the Hanford facility from 1946 to 1958, as measured by thermal megawatts. (Source: United States Department of Energy. “Plutonium: the first 50 years. United States plutonium production, acquisition, and utilization from 1944 through 1994.” (<http://www.fas.org/sgp/othergov/doe/pu50yc.html#ZZ16>). Accessed May 8, 2012).

The growth of Pacific Northwest is also clearly evident in the demographic changes of region from 1940 to 1960<sup>73</sup> (See Figure 9). In Oregon, the population increased from 1,089,684 in 1940, to 1,768,687 by 1960. From 1940 to 1960, the Oregon population increased by over 62 percent. In Washington, the increase was almost identical. The state’s population increased from 1,736,191 in 1940, to 2,853,214 by 1960. Strikingly similar to Oregon, Washington experienced over 64 percent population increase from 1940 to 1960. Idaho’s population growth during this period was less significant, having increased from 524,873 in 1940 to 667,191 by 1960, with an increase of over 27 percent. The American West as a demographic area experienced a dramatic population increase of 70 percent from 1940 to 1960.

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<sup>73</sup> No data is available for the specific years of 1946 and 1958. The data in this section is based on the United States Census reports from 1940 and 1960, because this is the only available data.

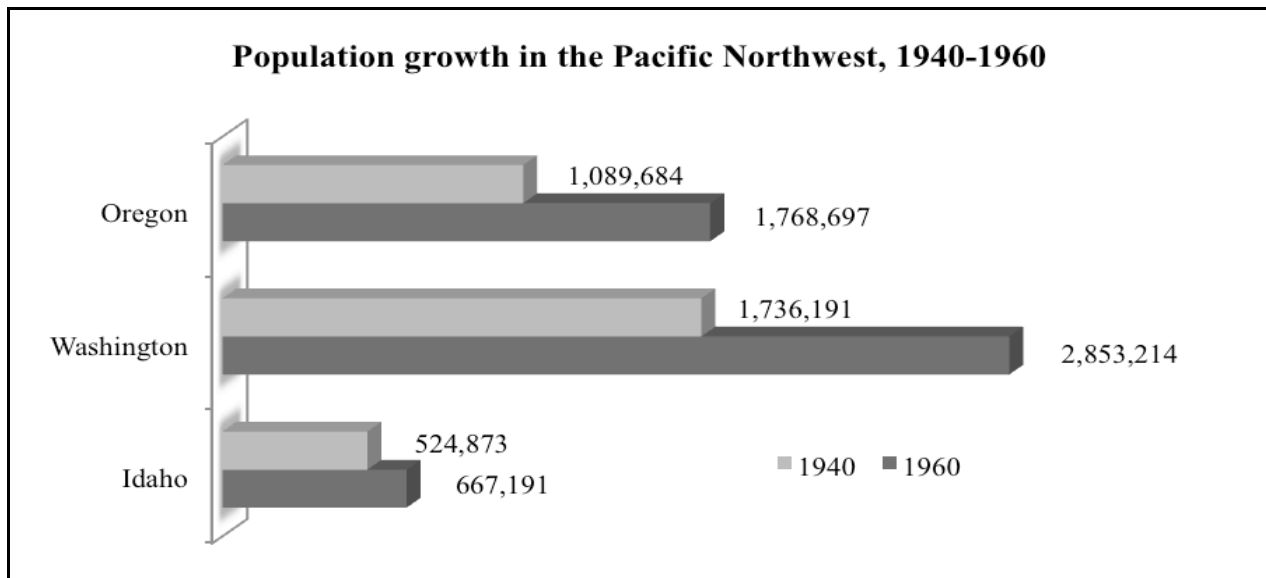


Figure 9: Population growth in the Pacific Northwest from 1940 to 1960 (Source: uscensus.gov).

In the demographic growth of the Pacific Northwest there is an important racial consideration. Despite the significant population growth in the region, the racial divide remains largely unchanged from 1940 to 1960. The region remains almost entirely “white” during this period, from 98.3 percent to 97.2 percent. This slight decrease is explained by an increase in the “Black, Asian and Pacific Islander” population, not the “American Indian, Eskimo, or Aleut” population. The Native population in the region only increased .1 percent over the 20-year span. The demographic marginalization of Native peoples in the Pacific Northwest, accounting for roughly .5 percent from 1940 to 1960, is a critical factor in understanding dispossession of Native peoples in the second half of the 20<sup>th</sup> century. The demographical marginalization of Native peoples had made them a largely invisible and voiceless consideration in the postwar years. Postwar development in the Pacific Northwest was aimed at modernizing the region, participating in a growing national economy, and benefiting the *general interest*. These goals directly benefit the non-Native population in the region, and comprise the *general interest* at over 99 percent of the population. This dramatic racial divide is an obvious reason for the marginalization and dispossession of Native peoples (See Figure 10).

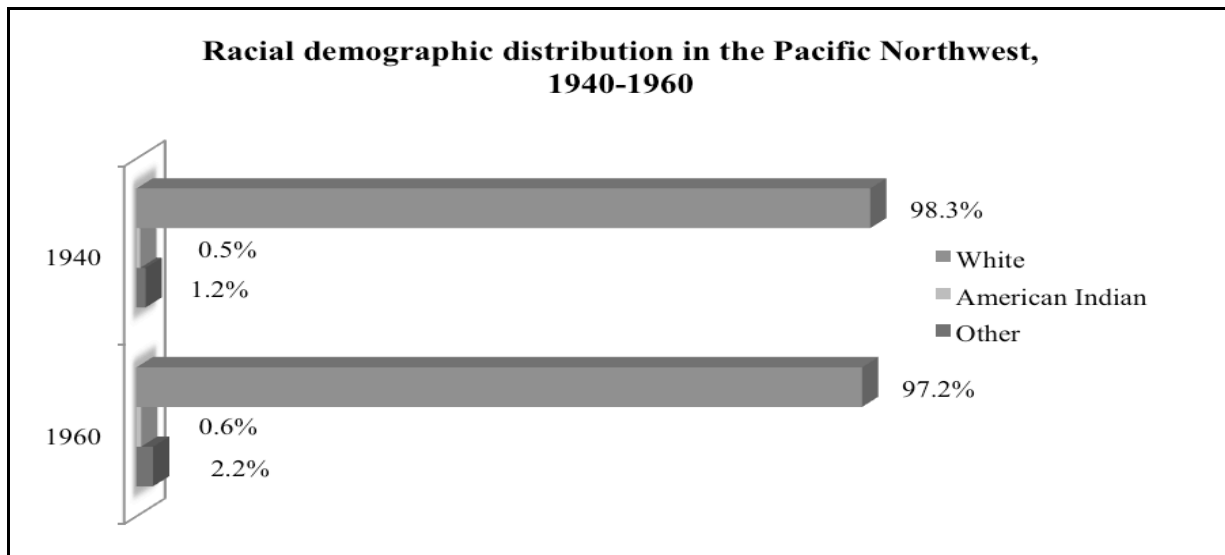


Figure 10: Racial demographics in the Pacific Northwest by percentage from 1940 to 1960 (Source: uscensus.gov).

### Conclusion

By 1958, the situation for Native peoples of the Pacific Northwest was looking grim. Congress had terminated the Klamath, along with 61 Western Oregon tribes, while the Columbia River was now home to 22 hydroelectric dams. Thousands of Native people had left reservations and relocated to large urban areas in hopes of finding employment. The ancient fishing site of Celilo Falls had disappeared under the backflow of The Dalles Dam. It appeared that the trend would continue. In October 1958, the CBIAC and Power Planning Committee released a report titled “Report on Ultimate Capacities for Planning Purposes of Power Plants in the Columbia River System.”<sup>74</sup> The purpose of the report was to analyze, and forecast, the maximum electric power (or MGW) yield of the Columbia River Basin. The report reviews existing hydroelectric stations in the basin and makes recommendations for their increased capacity. The report also recommends the construction of more power stations and increased energy production. It concludes that the river system is capable, at maximum yield, of containing 60 hydroelectric stations. This estimate includes increasing efficiency on 22 existing stations and constructing 38 new stations (See Figure 11), and proposes a massive, and ongoing, development of the region. As the report states:

The expectation that in the foreseeable future this hydroelectric system will be operated as a part of a much larger system containing large quantities of fuel-generated electric power further requires that both existing and potential hydro plants be so constructed as to take maximum advantage of the available hydro energy potential.<sup>75</sup>

<sup>74</sup> Columbia Basin Inter-Agency Committee, Power Planning Subcommittee, “Report on Ultimate Capacities for Planning Purposes of Power Plants in the Columbia River System.” (Columbia Basin Inter-Agency Committee: Portland OR, October 1958).

<sup>75</sup> Ibid.

The CBIAC had released a similar report in 1947, in which they suggested a similar expansion of the hydroelectric dams on the Columbia River. The report garnered criticism by several agencies for the potential dangers the expansion may pose on the health of the river, but the CBIAC concluded that the “facts did not justify a moratorium” on the development plans. There was an identical approach the 1958 report. Despite the fact the Committee is making recommendations for hydroelectric plants or power stations directly in the proximity to tribal lands in Oregon, Washington, and Idaho, the issue of Native rights is never mentioned in either report as a potential roadblock. The report reviews potential negative effects of increased development in the basin and cites only economic limitations, river navigation, flood control, fish and wildlife, recreation, and pollution as the possible issues effected.<sup>76</sup> Native representation are entirely absent from the report, as is evident by the absence of the BIA.

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<sup>76</sup> Ibid.

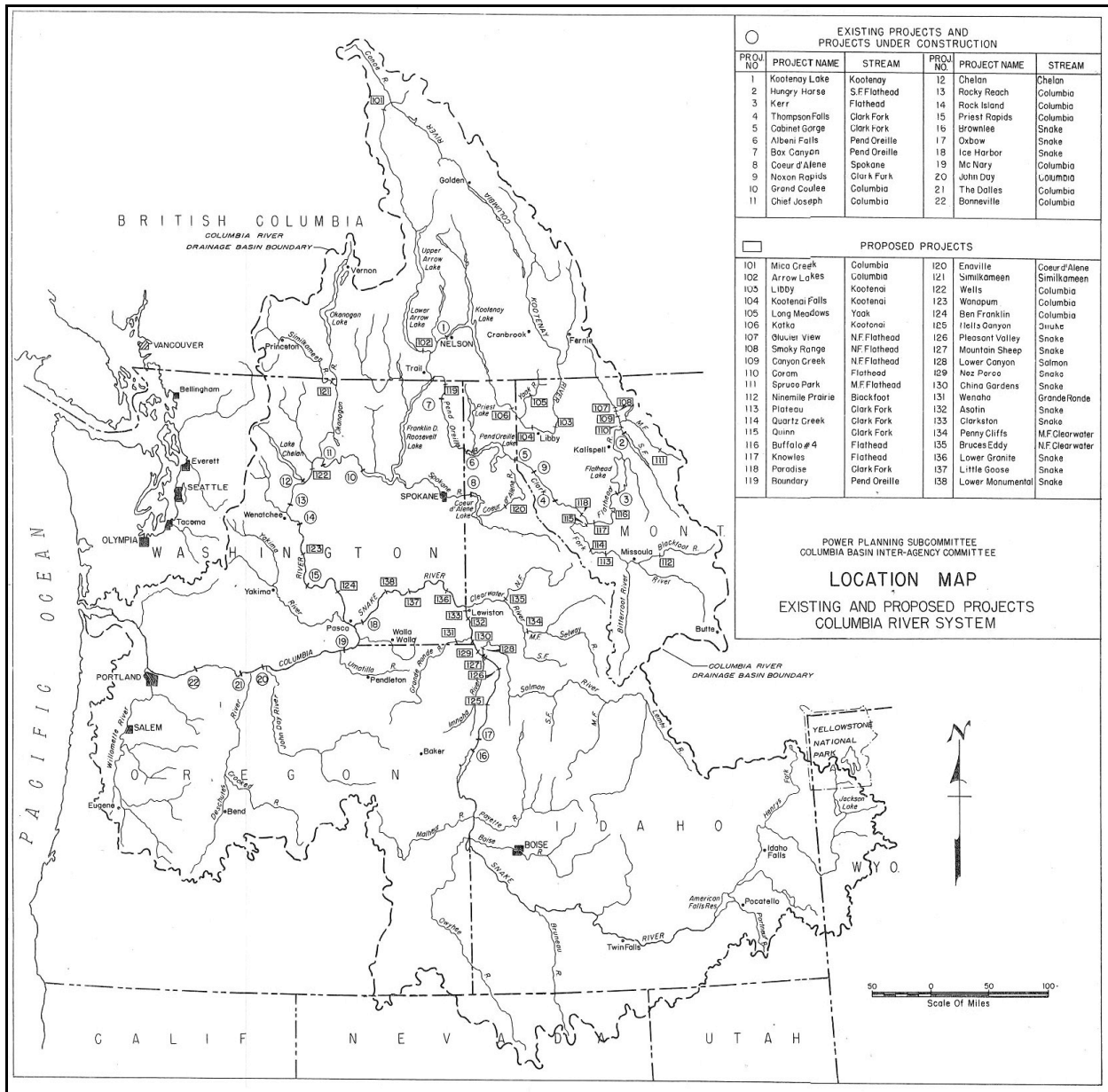


Figure 11: Map of the proposed hydroelectric sites by the Power Planning Committee and Columbia Basin Inter-Agency Committee (Source: Columbia Basin Inter-Agency Committee, Power Planning Subcommittee. "Report on Ultimate Capacities for Planning Purposes of Power Plants in the Columbia River System." Columbia Basin Inter-Agency Committee: Portland OR, October 1958).

The Columbia Basin Inter-Agency Committee and Power Planning Committee 1958 Report is evidence of a much larger trend in federal Indian law in the postwar year. When Native rights, land, resources, and status, were on the line, the Native voice is entirely absent. It also serves as evidence that Native peoples of the Pacific Northwest were inequitably burdened by the postwar transformation of the region and that development, no matter what the costs, takes precedent over the rights of Native communities. America was becoming the world of tomorrow,

and this world was being designed with no space for Native peoples. D'Arcy McNickle, Native author and activist, described the era as “a holocaust in the making.”<sup>77</sup>

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<sup>77</sup> D'Arcy McNickle. *Indian Man: A Life of Oliver La Farge* (Indiana University Press, 1971), 161.

## CHAPTER 2

### A “Withdrawal from Supervision:”

#### The Rhetoric of Native Dispossession and Displacement in the Postwar Pacific Northwest

“We only ask that any planning be done *with* us and not *against* us.”

-Representatives of the Spokane tribe to the Bureau of Indian Affairs Portland area office, January 21, 1955<sup>78</sup>

On March 7, 1952, the eight regional area offices of the Bureau of Indian Affairs (BIA) received a memorandum from Commissioner Dillon S. Myer in Washington DC, outlining a new direction in federal Indian policy: “The Bureau of Indian Affairs is moving to end Federal supervision over 41,000 Indians in the far western states.”<sup>79</sup> Among the tribes mentioned in the report are: in Oregon, “approximately 1,800 Indians of the Klamath reservation...and some 2,100 Indians in 43 bands...including 800 Indians in southwestern Oregon;” and in Washington, “approximately 7,400 Indians.”<sup>80</sup> According to the memo, federal supervision of these tribes would end as soon as agreements with tribes were reached. In the memo, Commissioner Myer offers a justification for this new direction with tribes of the Pacific Northwest:

Our main objective since I took office has been to decrease rather than increase the controls exercised by the Bureau...The whole problem is complicated by the fact that in some areas many of the Indians are competent to handle their own affairs, while others are in need of continued protection.<sup>81</sup>

Myer also gives insight into the criteria used to determine which tribes are “competent” or “in need of continued protection.” In the case of the Klamath, Myer notes, “of the 1800 persons, all can speak English, and only 8 cannot read or write the language.” For the other targeted tribes in Oregon, “Indians have largely been integrated into local society, through long association and inter-marriage with their non-Indian neighbors, education in public schools, employment in gainful occupations, and dependence upon public institutions for public services.”<sup>82</sup> However in addition to these social characteristics of the targeted tribes, the memo paid closer attention to another characteristic of these communities: tribally held land and resources. Tribally held land and natural resources, Myer notes, “total amount of restricted land at Klamath is about 1,000,000 acres,” and in Western Oregon, the “total area of Indian holdings

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<sup>78</sup> Statement to Commissioner of Indian Affairs. January 21, 1955. Box 6, Folder 1, Colville – Long Range & Withdrawal. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>79</sup> Indian Bureau Moving to End Federal Supervision. March 7, 1952. Box 3, Folder 1, Proposed Legislation 7/1/1951 to 6/30/1952. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

is about 261,000 acres...the combined total timberland in 1951 was 250,814 acres...with an estimated volume of about three billion board feet.”<sup>83</sup>

The “withdrawal from supervision” was seen as a new direction in federal Indian law, and once again, viewed as a potential solution to the “Indian problem.” Much of the rhetoric of federal Indian policy in the postwar years packaged Native dispossession and displacement as a reenergized effort to assimilate Native peoples into the American mainstream, as had been the main goal in previous episodes of federal Indian policy.<sup>84</sup> The rhetoric of *emancipation*, *imminent freedom* and *full citizenship* was used to describe the federal government’s effort to end federal protection of tribes, for, as the BIA believed the “best interest” of Native communities, a policy decision designed primarily without consultation with or the consent of Native communities themselves. The rhetoric of emancipation framed Native American culture, as a whole, as obsolete in postwar America, and Native peoples themselves characterized as “outsiders” in need of integration, in the new collective American identity. In a 1947 BIA report on the necessity for withdrawal programming, the BIA noted “pre-Columbian life provided peace and satisfaction – now the Indians must adopt themselves to a new mode.”<sup>85</sup> The rhetoric of freedom – a powerful discourse as American moved into the Cold War - elided one of the important motivations for ending the trust relationship between the federal government and tribes, one which certainly served the postwar public interest, but perhaps not the “best interest” of Native American communities: access to natural resources.<sup>86</sup>

The tremendous economic growth of the Pacific Northwest in the postwar years had been made possible by intensive federal investment in regional projects devoted to natural resource production. As noted by historian Richard White, “the West had found in the federal government the engine for development it had long sought; the growth it so cherished seemed to stretch endlessly before it.”<sup>87</sup> As a result, the BIA, along with several other federal and state land management agencies, was particularly interested in the resource potential of tribally held land and natural resources in the Pacific Northwest. The momentum of the postwar economy would become powerful enough to influence new directions in federal Indian policy, and even give tribes a way to financially benefit. A 1952 report by the Columbia Basin Inter-Agency Committee stated that the Columbia River was “a river destined for service” and “by harnessing its waters in their descent to the sea, they can be used again and again for navigation, power

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<sup>83</sup> Ibid.

<sup>84</sup> In particular, the era prior to the New Deal, which is commonly known as the Assimilation Era, was heavily invested in the assimilation of Native American communities. This period is begun in 1879, with the opening of the Carlisle Boarding School, and ends in 1934 with the Indian Reorganization Act.

<sup>85</sup> Basic Material for Pacific Northwest Coordinating Committee on Regionalization and Coordination Study. January 22, 1947. Box 1, Folder 1, Narrative Reports 1946-1952. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>86</sup> There have been several comprehensive studies of the Termination era. Particularly, Fixico’s *Termination and Relocation* and Kenneth Philp’s *Termination Revisited: American Indians on the Trail of Self-Determination, 1933-1953* (University of Nebraska Press, 1999).

<sup>87</sup> Richard White, “*It’s Your Misfortune and None of My Own*”: *A New History of the American West* (University of Oklahoma Press, 1991), 531.

production, irrigation, and other purposes.”<sup>88</sup> So in the 1953 proposal to withdrawal the Klamath Tribe from federal supervision and open the Klamath forest for development, it was noted that the “Klamath reservation is a great natural resource of lands, forest and range, and water and its assured perpetuation in its highest productivity is not only in the best interests of the present Indian owners, but of the public as well.”<sup>89</sup> This being in a time, as noted by historian William Robbins, “when sawmills without significant forest holdings were continually on the prowl for fresh timber.”<sup>90</sup> Natural resources, especially in the Pacific Northwest, were in high demand.

These statements foreground the argument of this chapter, that Native dispossession and displacement in the postwar years, in the form of policies like federal withdrawal and termination, were not motivated only by a renewed ideology of Native American assimilation. Rather, this chapter argues that central to postwar federal Indian policy was the targeted and calculated interest by the BIA, and other federal agencies, in tribally held lands and natural resources that would fuel the quickly expanding postwar economy in the Pacific Northwest. In addition, that central to understanding postwar federal policy is the near complete unilateral decision-making of the BIA, with a near nonexistent consultation with Native American communities. Treaty rights and tribal status fundamentally emerged as major obstacles to regional progress and development. This stance does not deny that the interest of assimilating Native peoples did not factor into the postwar federal Indian policies, because it certainly did, and this has been well documented thus far in scholarly analyses of the policy era.<sup>91</sup>

This chapter is seeking another explanation, one which is explicitly stated in the BIA’s own records. This chapter attempts to highlight the underside of the rhetoric of unilateral withdrawal and termination. By 1957, Secretary of the Interior, Fred Seaton, declared that implementing policies of dispossession and displacement without tribal consent was “unthinkable.”<sup>92</sup> This chapter demonstrates how these policies, in essence, became *thinkable* in postwar America, and demonstrates how Indian affairs are not always about Indian affairs, but can become reflective of broader national ideologies. Examining federal Indian policy in this particular way allows for the inclusion of Native American communities into larger postwar economic and environmental histories of the Pacific Northwest, a critical angle that is far too often omitted from the discussion. In their seminal 1963 study of postwar industrial development in the United States, *Scarcity and Growth*, Harold Barnett and Chandler Morse firmly state the importance of natural resource acquisition as a national project. Barnett and Morse were responding to declining natural resources in the United States, and the need for continued

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<sup>88</sup> Plan for Development of Natural Resources of the Pacific Northwest. 1952. Box 16, Folder 1, CBIAC 1947 to 1948. PAO 2: Desk files of the Assistant Area Director for Administration, 1946-1952. BIA PAO, RG 75, NARA: Seattle.

<sup>89</sup> Proposed Withdrawal of Federal Responsibilities Over the Property and Affairs of the Klamath Indians. December 1, 1953. Box 6, Folder 11, Klamath – Long Range & Withdrawal. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>90</sup> William Robbins, *Landscapes of Conflict: the Oregon Story, 1940-2000* (University of Washing Press, 2004), 228.

<sup>91</sup> In “The Evolution of the Termination Policy” (*American Indian Law Review*, Vol. 5, No. 1, 1977), Charles Wilkinson and Eric Biggs argue that the ideology of termination can be best understood as the continuation of policies of Indian assimilation that originally emerge in the late 1700s.

<sup>92</sup> As quoted in Wilkinson and Biggs, “The Evolution of the Termination Policy,” 163.

acquisition of natural resources for national growth. They state accessibility to natural resources, rather than location or ownership of those resources, is what matters to a country's development. This ideology is central to understanding Native dispossession and displacement in the postwar Pacific Northwest.

The topic of Native dispossession and displacement is rarely acknowledged in 20<sup>th</sup> century American, regional, postwar, or even Native American, histories. But it is the premise of the chapter that Native dispossession and displacement, particularly of rights, lands, and resources, was an active and explicit political motive in the 1940s and 1950s, if not throughout the entire 20<sup>th</sup> century.<sup>93</sup> By using the official legal rhetoric and unilateral decision-making of the BIA during the 1940s and 1950s, this chapter highlights how the policies of "withdrawal" were crafted, who was involved, and who sought to benefit from Native dispossession and displacement in the Pacific Northwest. There is no place better than to investigate these questions than in the records of the Portland area office of the BIA from 1946 to 1957, an Office that oversaw the largest dispossession and displacement of Native communities in 20<sup>th</sup> century American history. Whether it was for a genuine "best interest" of Native communities or a deeply invested effort to gain access to tribally held lands and resources, this chapter seeks to illuminate these varied interpretations of perhaps the darkest era in the history of federal Indian policy.

### *Bureau of Indian Affairs in the Postwar Pacific Northwest*

The intensive development of land and natural resources in the Pacific Northwest had been a significant contributor to American's wartime production during World War II, and immediately following the war, the federal government wanted to continue the industrial development of the region. In late 1946, the federal government established the Pacific Northwest Coordination Committee (PNCC), which meant to facilitate cooperation between all federal land management agencies in the states of Oregon, Washington, Idaho, and western Montana. Among the agencies included in this collective was the BIA (BIA).<sup>94</sup> With increasing national interest in lands and resources in the postwar Pacific Northwest, the PNCC was designed to provide a unified and streamlined approach to development in the region. Since the BIA oversaw tribally held trust lands in the region, they became a principal operating agency within the PNCC.<sup>95</sup> Essentially, the BIA was viewed as a land management and natural resource agency by the PNCC, as were all other agencies within the Department of the Interior.

The BIA established its area office in Portland, Oregon in 1946. This regional area office oversaw all tribal relationships in Oregon, Washington, Idaho, and western Montana, and the function of this office was to implement all federal programs established by the Commissioner of

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<sup>93</sup> One notable exception being Donald Fixico's *The Invasion of Indian Country in the Twentieth Century* which he traces the history of 20<sup>th</sup> century federal Indian policies aimed at acquiring tribally held lands and resources.

<sup>94</sup> The PNCC included the Bonneville Power Administration, Office of Indians Affairs, Bureau of Land Management, Bureau of Mines, Bureau of Reclamation, Fish and Wildlife Service, Geological Survey, and the National Park Service.

<sup>95</sup> Order No. 2257, September 26, 1946. Box 10, Folder 1, Long Range – General. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

Indian Affairs in Washington DC. The Portland area office of the BIA had a variety of activities and duties in their service of tribes of the region. They were responsible for tribal administration, direct legal counsel to tribes, construction, tribal education, extension programs, forestry and grazing programs, community health, irrigation systems, land management, road servicing, soil and moisture care, tribal relations, welfare, and tribal law & order.<sup>96</sup> Despite the many responsibilities of the regional area offices, there remained a few critical limitations to their powers, and the BIA in general. As was established by the Indian Reorganization Act in 1934, regional area offices could not alter or interfere with tribal constitutions or tribal treaty rights. The regional area offices could not authorize the sale of tribally held natural resources, particularly timber, without approval of the Secretary of the Interior.

The regional area offices had an extensive political network, and tremendous bureaucratic reach, with numerous lobbyists at the local, state, and federal levels. The regional area offices were required to collaborate with government agencies at the federal, state, and local levels; in total, the BIA was in constant contact with over 40 agencies regarding Indian affairs. The vast majority of these connections were with regard to tribal land holdings. The BIA was heavily invested in evaluating the Indian land holdings in the Pacific Northwest, and their economic potential. The Portland office, in particular, oversaw 41 reservations, and 16 jurisdictions in the region. In 1946, the BIA determined that the Indian land holdings in Oregon, Washington, Idaho and western Montana accounted for over 6.2 million acres, and these land holdings varied in size from 31 acres to 1,170,410 acres.<sup>97</sup> The largest land holding tribes were the Colville,<sup>98</sup> Yakima, and Klamath, each had land holdings of over 1 million total acres. Most notably, 51 percent of all tribal holdings in the region were forestlands, which accounted for 3,156, 429 acres. In addition to forest, 36 percent of all tribal land holdings were farming and grazing lands, totaling another 2,663,212 acres.<sup>99</sup> By BIA calculations, in 1946, 87 percent of all tribal land holding in the Pacific Northwest held significant potential for development.

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<sup>96</sup> Basic Material for Pacific Northwest Coordinating Committee on Regionalization and Coordination Study. January 22, 1947. Box 1, Folder 1, Narrative Reports 1946-1952. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>97</sup> Ibid.

<sup>98</sup> For a detailed history of the Colville, see Laurie Arnold's *Bartering with the Bones of their Dead: the Colville Confederated Tribes and Termination* (University of Washington Press, 2012).

<sup>99</sup> Basic Material for Pacific Northwest Coordinating Committee on Regionalization and Coordination Study. January 22, 1947. Box 1, Folder 1, Narrative Reports 1946-1952. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

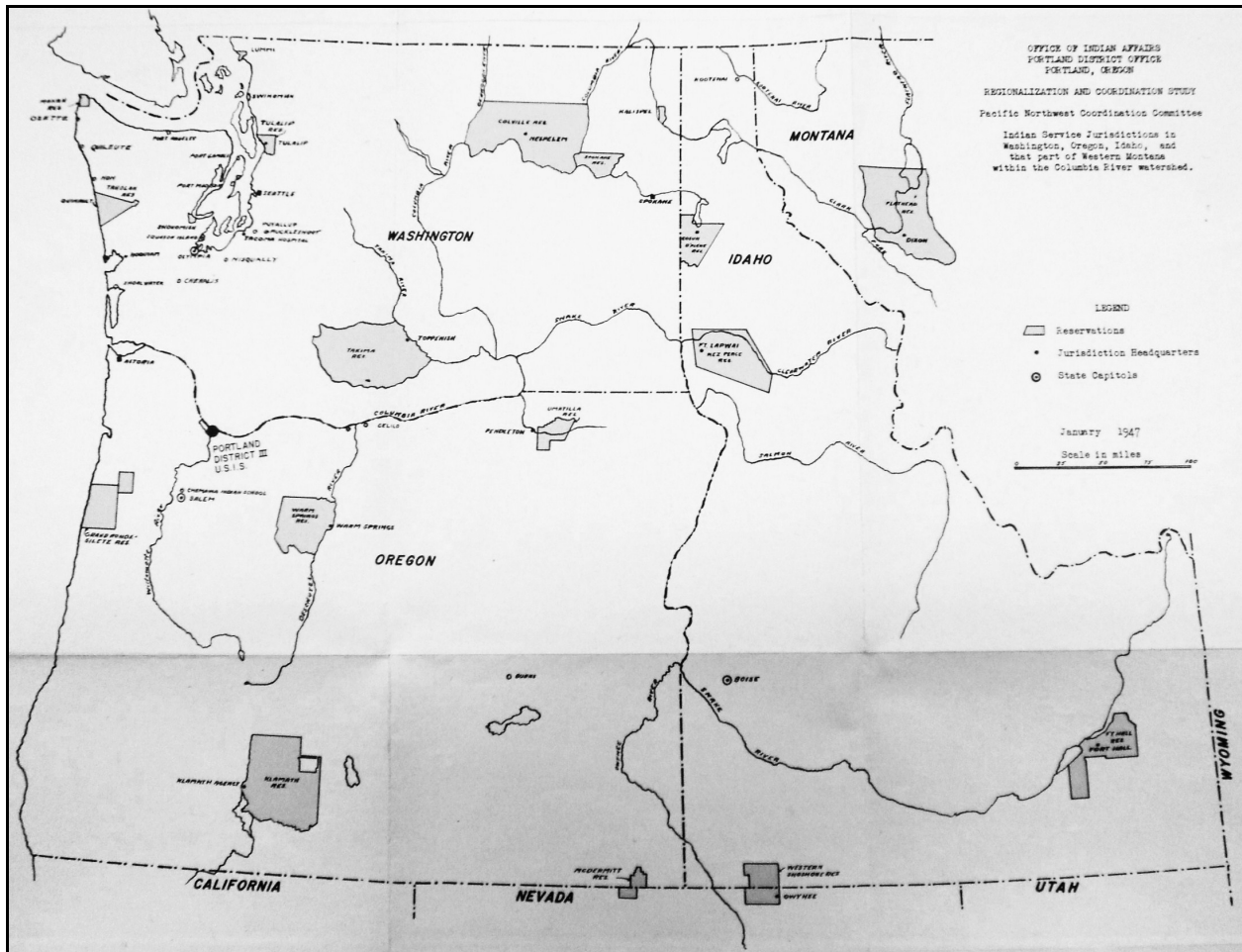


Figure 12: Map of reservation communities under the supervision of the Portland Area Office of the Bureau of Indian Affairs in 1946 (Supplemental Information: Questionnaire for Basic Information on Regionalization and Coordination Study. February 7, 1947. Box 1, Folder 1, Narrative Reports 1946-1952. PAO 1: Subject files of the Area Director, 1946-1957. Records for the Bureau of Indian Affairs, Portland Area Office, Record Group 75. NARA Pacific Alaska Region; Seattle, Washington0.

During the years immediately after World War II, federal Indian law was still very much influenced by the policies of the Indian Reorganization Act, even though John Collier had resigned in 1945. The BIA still concentrated on strengthening the social and economic infrastructure of reservations, and from 1945 to 1948, the continuation of these policies was apparent in the activities of the Portland area office. Part of the BIA's effort to strengthen tribal communities was through the use of Extension Programs. These programs aimed at "helping the Indian to help themselves,"<sup>100</sup> by evaluating the social or economic needs of the community, and offering local, state, or federal assistance. In addition to Extension Programs, the BIA also kept Long Range policies. The Long Range policy established social and economic goals for each tribe in the region for timeframes of six or 12 years. From the end of the war to 1948, the Portland area office had invested over \$23 million in Extension and Long Range Programs for

<sup>100</sup> Ibid.

tribes in the region. Despite an emerging opposition to IRA influenced policies, they remained in practice, in the Pacific Northwest for several years following the war.

While the BIA continued to practice New Deal inspired policies in the postwar years, there was an emerging regional and national discussion about natural resource development in the Pacific Northwest. As an agency member of the PNCC, the BIA became a central figure in discussions about the industrial expansion of the region. Beginning in 1947, the Portland area office began to hold public hearings about regional expansion, and in these hearings, two major issues emerge: the construction of hydroelectric dams in the Columbia River System; and the emerging national interest in ending federal supervision over tribes. The PNCC had addressed the issue of development on the Columbia River when the committee established in 1946. They had stated that the construction of dams would undoubtedly serve the best interests of the member agencies of the PNCC, in particular, the interests of the BPA, Fish and Wildlife Service, Park Service, Reclamation Service, War Department, Bureau of Mines, and the Bureau of Public Roads. However, the PNCC acknowledged “Indians have certain traditional and accustomed fishing places on the river...their rights to these fishing places were recognized in the treaties of 1855.”<sup>101</sup> The report concluded by stating that other federal agencies had “another interest in the river which is in conflict with the fishing rights.”<sup>102</sup> The industrial potential of the Columbia River was being limited by obligations to the tribes, and the BIA was looking for a solution.

Native American communities along the Columbia River were aware of this emerging discussion among the PNCC about development of the Columbia River, and beginning in early 1947, they began to voice their concerns about the continued development of the river system. Among their primary concerns was the potential displacement of Native communities along the River as a result of dam construction, and the inevitable decline in salmon runs as a result of the dams. A significant decline in salmon runs would threaten the Treaty of 1855, which guaranteed tribes of the Columbia River the right to fish at “usual and accustomed places.” In response to these initial concerns, the BIA supported an interagency effort to evaluate the potential effect of dam construction on salmon runs. Representatives of the Yakima, Warm Springs, Umatilla, Columbia River tribes, and Nez Perce met with State officials to discuss these impacts and potential solutions. However, the meeting ended with “no definitive conclusions or agreements reached.”<sup>103</sup> Policymakers remained convinced that salmon, dams, and treaty rights could coexist, yet they were unsure as to how. However, in a 1947 meeting with the Department of the Interior, the PNCC had determined “the overall benefits to the Pacific Northwest from a thorough going development of the Snake and Columbia are such that the present salmon run must, if necessary, be sacrificed.”<sup>104</sup>

### *Withdrawal from Supervision*

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<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Memorandum for the Commissioner of Indian Affairs. January 10, 1947. Box 1, Folder 3, Monthly Narrative Reports 1946-1947. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>104</sup> “Dams Versus Fish,” *BPA Currents*, July 25, 1947. Vol. II, No. 6.

Almost immediately after the end of World War II, the national conversation around federal Indian policy begins to change, characterized by a growing criticism of the IRA policies, and call for a reconsideration of the federal status of Indian tribes. The Portland area office was at the forefront of these national discussions, and to an extent, many of these criticisms were emerging in the resource-rich Pacific Northwest. In 1948, the Portland area office announced its new direction for federal Indian tribes: withdrawal from supervision. The BIA was seeking to end all relationships with federal Indian tribes.

The rhetoric used to package Native dispossession and displacement in the postwar years had multiple influences. The terms being commonly used in federal Indian policy ranged from *withdrawal* to *imminent freedom* to *emancipation* to *full citizenship*. Emerging from World War II, many politicians and policymakers argued that, in a new era of American global prestige, there was a need for a quintessential American identity. With a renewed focus on domestic issues, the legal status of Native American communities was ultimately targeted as a flaw in the fabric of the new American mainstream. Federal Indian policy was seen as the direct opposite to civil rights and policies of integration. Arthur Watkins, the Senator from Utah who famously urged Congress to “get out of the Indian business” in 1946, criticized the “communal culture” of reservations and did not believe that the federal government should sponsor internal nations within the United States. Watkins also remarked that, philosophically speaking, the Indian wardship problem brings up the questionable merit of treating the Indian of today as an Indian, rather than as a fellow citizen.”<sup>105</sup> The Cold War exacerbated these notions of the need for a collective American identity.<sup>106</sup> Many felt that Native peoples were social, political, and geographic, “outsiders” in need of incorporation into a unified national identity. Several policymakers were even concerned that reservations themselves, as communally owned properties and internal governments, posed a particular threat, and were even described on the floor on Congress as “a natural socialist set-up.”<sup>107</sup> The prominent writer and anthropologist of the time, Oliver La Farge, described the ideology of postwar assimilation as “the conviction that all Americans should be alike; that conformity to a somewhat imaginary American norm is the best thing for everyone; and that discrete communities having customs, legal rights, and restrictions not common to all Americans must be dissolved as rapidly as possible.”<sup>108</sup>

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<sup>105</sup> Arthur Watkins, “Termination of Federal Supervision: the Removal of Restrictions over Indian Property and Person,” *Annals of the American Academy of Political and Social Science*, Vol. 311, American Indians and American Life (May, 1957), 48.

<sup>106</sup> For a brief period of time in 1952, the Portland Area Office of the BIA attempted to collaborate with the United States Air Force in a Cold War project titled “Operation Skywatch”. Military officials at McCord Air Force Base in Washington were interested in having tribal members watch for enemy airplanes from reservations. For the BIA, this was an effort to get Native communities involved in the Cold War effort. It is unknown whether this project was ever implemented.

<sup>107</sup> Abolish the Indian Bureau Now-Make Indians People. October 28, 1952. Box 5, Folder 4, Congressional Record – Abolish Indian Bureau. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>108</sup> Oliver La Farge, “Termination of Federal Supervision: Disintegration and the American Indians,” *Annals of the American Academy of Political and Social Science*, Vol. 311, American Indians and American Life (May, 1957), 41.

By calling on the language of emancipation – most commonly associated with freedom from slavery – Watkins and others could argue for the termination of tribal rights as an act of political and moral heroism. Imagining himself as a latter-day Lincoln, Watkins argued that, “following in the footsteps of the Emancipation Proclamation on ninety-four years ago, I see the following words emblazoned in letters of fire above the heads of Indian – THESE PEOPLE SHALL BE FREE!”<sup>109</sup> Watkins proposes a flawed analogy that the situation of Native American peoples in the mid-20<sup>th</sup> century was similar to that of pre-Abolition slaves and that reservation communities imposed the restrictions on Native peoples as southern plantations. However, this type of parallel is ultimately flawed, as Watkins and other supported did not recognize the critical and egregious flaws in their rhetorical comparisons on Native Americans in the 1950s and African Americans in the 1860s. To the extent that Watson was referring to *wardship*, this argument carried weight. What was elided, however, was the fact that trust protections need not take the form of *wardship* and that these protections were necessary if Indian peoples were to survive as communities. Native American communities in the 1950s held both federal and tribal citizenship, which assured them rights to land, resources, and political autonomy, and, in most cases, Native Americans communities were not asking to have those rights officially and unilaterally removed.

In May 1948, the regional offices of the BIA began gathering data on each tribe in the region, and this data would be evaluated to decide each tribe’s ability to handle withdrawal. William Zimmerman, acting Commissioner of Indian Affairs in 1948, outlined the necessary criterion for the BIA to begin withdrawal programs:

What is desired in the assembly in concise form of existing factual data as to the social and economic status of each group or tribe and, after a careful analysis and evaluation of these data, the projection of a comprehensive long-range program. The objective of the program should be the eventual discharge of the federal government’s obligation, legal, moral or otherwise, and the discontinuance of federal supervision and control at the earliest date...the program should be logical and realistic.<sup>110</sup>

These reports were required to evaluate three dimensions of reservation life: economic development, social development, and potential for the termination of federal supervision. With regard to economic development, a “standard of living for Indians that is comparable to other citizens of the area”<sup>111</sup> was the BIA’s goal for each tribe in preparation for termination. This goal included, according to the BIA, the optimum development of available natural resources, whether it is land, water, timber, or minerals. With regard to social development, “the integration of the Indian citizens into the social, economic, and political life of the Nation”<sup>112</sup> was the goal for reservation communities. This goal included multiple requirements, ranging from adequate health and educational services to the potential transfer of tribal property and resources to tribal enterprises or corporations. Once the economic and social development of the tribes had been

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<sup>109</sup> La Farge, “Termination of Federal Supervision,” 55.

<sup>110</sup> Circular 3676. May 28, 1948. Box 10, Folder 1, Long Range – General. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>111</sup> Circular 3704. July 21, 1949. Box 10, Folder 1, Long Range – General. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>112</sup> Ibid.

determined by the BIA withdrawal requirements, it would be declared as to whether the tribe would be recommended for termination. The BIA had hoped to introduce between six to eight withdrawal proposals by January 1949.<sup>113</sup> Once the withdrawal programming was officially announced, the regional offices of the BIA were assigned to meet with all tribal councils in the region to discuss the details, and how withdrawal would impact individual tribes. The Portland area office would meet with twelve tribes in the region between September 1948 and February 1949.<sup>114</sup> The first tribe they would meet was the Klamath.

Many of politicians and reformers who supported withdrawal programs had been long-term opponents of the Indian Reorganization Act and the tenure of John Collier as Commissioner of Indian Affairs. The critiques emerged with more frequency beginning in 1945 with Collier's departure from the Office of Indian Affairs, in particular, the policies of "Indian rehabilitation and self-government,"<sup>115</sup> and withdrawal programs were meant to overturn these policies. As noted in the 1948 Department of the Interior memorandum to Morgan Pryse, IRA policies "have been under constant heavy attacks for the past three years and as a result of these attacks, the Commissioner has directed the production of special programs for the termination of Indian Service supervision."<sup>116</sup> By the end of 1948, the BIA was firmly committed to a policy of "withdrawal from supervision" for tribes in the Pacific Northwest.

In 1950 Dillon S. Myer, a fervent and politically powerful supporter of termination, was appointed Commissioner of Indian Affairs, and provided a "general tightening up"<sup>117</sup> of the BIA. Like many others, Myer likened reservations to isolated "camps" and believed Native peoples were in need of "liberation". Prior to his role as Commissioner, Myer had no formal experience working with Native American communities, but experience as Director of Japanese Internment camps during World War II shaped many of his policies. Beginning in 1952, Myer would make a final push toward officially implementing termination. *The Oregonian* newspaper from Portland, Oregon, began running headlines like "White Man's Guardianship of Indians to End After 100 Years," which outlined, for the general public, the withdrawal from supervision.<sup>118</sup> Much like Zimmerman's request for withdrawal information for each tribe, Myer asked regional offices to produce new reports regarding the preparedness of each tribe in the region. Each report would contain "basic facts bearing on withdrawal programming for each tribe; a report on the withdrawal programming accomplishment, present status and future plans; a delineation of tasks yet to be completed in order to effect complete withdrawal; and, a listing of tribes found to be

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<sup>113</sup> Circular 3676. May 28, 1948. Box 10, Folder 1, Long Range – General. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>114</sup> Field Memorandum No. 146. August 10, 1948. Box 10, Folder 1, Long Range – General. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>115</sup> Regional Director to Superintendent. September 17, 1948. Box 10, Folder 1, Long Range – General. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>116</sup> *Ibid.*

<sup>117</sup> William Zimmerman, "The Role of the Bureau of Indian Affairs Since 1933," *Annals of the American Academy of Political and Social Science*. Vol. 311, American Indians and American Life (May, 1957). 35.

<sup>118</sup> "Oregon Indians express views on impending emancipation; white man's guardianship of Indian to end after 100 years." *The Oregonian*. February 24, 1952. 21,22.

qualified for management of their own affairs.”<sup>119</sup> Myer envisioned the withdrawal programming to be a collaborative effort between tribes and the BIA, yet he was also aware of tribal opposition. In a 1952 memo, Myer writes, “I realize that it will not be possible always to obtain Indian cooperation. However, I want out efforts to obtain such cooperation to be unceasing.”<sup>120</sup> Myer did not consider cooperation with tribes as a necessary policy.

The withdrawal reports requested by Myer were quite comprehensive. In the reports, BIA officials were required to evaluate the status of nearly all avenues of reservation life and infrastructure. In particular, the reports addressed the following areas for each tribe: education; health; welfare; extension; training, relocation and replacement; law and order; roads; federal credit; handling of individual Indian money; land; soil and moisture conservation; forest and range management; irrigation; utilities; tribal enterprises; tribal activities of a nongovernmental nature; tribal activities of a governmental nature; and additional bureau functions within the community.<sup>121</sup> In addition, the reports included a section regarding any tribal claims pending with the Indian Claims Commission (ICC). The BIA wanted all tribal ICC claims settled before tribes were recommended for withdrawal. In many cases, these pending claims protected tribes from termination. In addition to these reports, Myer requested status updates from each branch of the BIA dealing with withdrawal programming. In these status reports, each branch would evaluate the progress made in the previous “five years” in removing federal supervision from internal tribal affairs. Typically, these status reports would cover the timeframe from when withdrawal programs were originally being implemented, the period of 1948 to 1953. Areas such as health, education, and resource management were evaluated to ensure that federal supervision was effectively withdrawn from these avenues of tribal life.

### *The Reports*

The Portland area office held withdrawal files for all tribes in the region, including Northern Idaho, Kootenai, Coeur D’Alene, Kalispell, Nez Perce, Tacoma, Wapato, Nez Perce, Colville, Umatilla, Warm Springs, Burns-Paiute, Western Washington, Spokane, as well as Western Oregon and Klamath. Like the Western Oregon and Klamath reports, the reports provided social and economic evaluations of the tribes, and determined their preparedness for withdrawal. As a result of these criteria, many tribes were not recommended for withdrawal because of their perceived social or economic deficiencies, which were decided by local BIA superintendents. The reports offered “appraisals of competency”. These “appraisals” provided a qualitative opinion of the superintendent on the social and economic “competency” of tribal members. These appraisals determined, in the eyes of the BIA, whether individuals in the tribe displayed the personal ability to “succeed” with the removal of federal supervision. The appraisals were based almost entirely on the status and Native men in the tribe, while Native

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<sup>119</sup> Memorandum to All Bureau Officials from Commissioner of Indian Affairs. August 5, 1952. Box 5, Folder 10, General Long Term & Withdrawal. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>120</sup> Ibid.

<sup>121</sup> Instructions for Withdrawal Reports from Commissioner of Indian Affairs. Box 5, Folder 10, General Long Term & Withdrawal. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

women, regardless of their social or economic roles in the community, were excluded from the assessments. These “appraisals of competency” complicate the withdrawal reports, because they demonstrate not just a quantitative assessment of a tribe’s infrastructural preparedness for withdrawal from federal supervision, but also a qualitative or subjective assessment of assimilation.

In a report on the Kootenai Tribe, the area office determined “this tribe is the most backward and piteous group with which this writer has had experience.”<sup>122</sup> He continues, “only one member of the older group can be claimed as an average citizen from a standpoint of progressivism, and he has only a fourth grade education...the resident members of the tribe reside in a group at the mission, where they live in a state of squalor, lawlessness, and impoverishment.” For the Coeur d’Alene, the BIA agent had a mixed review. “Determination of the competence of this tribe is an exceedingly difficult task,” he writes, “its membership ranges from a substantial segment of well educated, intelligent, and progressive individuals downward to a larger group of retarded, apathetic, and indifferent persons...the tribe is not going ahead and may in fact be slipping backward.”<sup>123</sup> In the Kalispell report, it was determined that “except for a few members of the tribe who reside elsewhere, the group is very back ward and unprogressive...only one family has made substantial progress in this tribe, and this was one which moved to the Coeur d’Alene Reservation many years ago.”<sup>124</sup> For the Warm Springs, the Superintendent determined that “as a whole the Warm Springs Indians are poorly qualified to handle their person and tribal affairs independently of the Bureau.”<sup>125</sup> Further, this determination was “based on the fact that the Warm Springs Indians do not include in their membership a single technical or professional man, nor have they produced a man of outstanding ability in any other field or endeavor.”<sup>126</sup> The language used in the “civilization” period was summoned back into bureaucratic operations. The irony of these qualitative “appraisals of competency” was that the tribes that were deemed ill prepared for withdrawal, because of their lack of assimilation into American mainstream culture, were indirectly given immunity to the threat of termination.

The tribes of Western Washington claimed that they were not even consulted about a bill that was being presented to Congress that would decide their termination. The Portland area office received the bill in September 1953, which asked for the outright “termination of Federal supervision over the property”<sup>127</sup> of 35 tribes west of the Cascade Mountains in Washington.

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<sup>122</sup> Withdrawal Report for Kootenai Tribe. Box 7, Folder 4, Northern Idaho – Withdrawal – Kootenai. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>123</sup> Withdrawal Report for Coeur d’Alene Tribe. Box 7, Folder 5, Northern Idaho – Withdrawal – Coeur D’Alene. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>124</sup> Withdrawal Report for Kalispell Tribe. Box 7, Folder 6, Northern Idaho – Withdrawal – Kalispell. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>125</sup> Withdrawal Report for Warm Springs. Box 7, Folder 11, Warm Springs – Withdrawal. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>126</sup> Ibid.

<sup>127</sup> Draft of Western Washington Withdrawal Bill. September 23, 1953. Box 7, Folder 14, Western Washington – Long Range & Withdrawal. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

Jack Westland, a Washington State Congressman, wrote a letter to BIA Commissioner Glenn Emmons in November 1953, on behalf of the Western Washington tribes about the termination bill presented to Congress. In the letter, Congressman Westland scrutinizes the BIA for their lack of transparency on the policies of the Bureau. Westland writes:

During a recent trip out of the district I was overwhelmed with dissatisfied comments regarding a copy of proposed legislation covering withdrawal of thirty-five Washington State Indian tribes...After calming down the Indian constituents who approached me about the matter, together with some of their legal representatives, I was able to assure them that, in my opinion, Congress does not contemplate forcing removal from wardship of any Indian tribes which is opposed to such action...I do feel that your representatives in Western Washington have indicated an extreme disregard of courtesy, to say the least, in distributing this material throughout the district. The material, as distributed, was not clear.<sup>128</sup>

As the conversation around federal withdrawal and Termination began to spread through Native communities in the region, the Portland BIA Office was flooded with questions and comments from communities all over the region. The Office was also being heavily criticized for not adequately explaining the new policy direction to the public. Many claimed that the BIA was too secretive about their intentions in Indian country. Vine Deloria also had an insight into the confusion over policies during this period, in which he commented, “many traditionalists boycotted the meetings called to explain the terminal legislation, on the grounds that the tribe was a sovereign nation and therefore could not be extinguished by an act of Congress.”<sup>129</sup> In other words, more traditional tribal members were more likely to put stock in the treaty-based legal status of tribes.

In a March 1952 letter from representatives of the Cayuse, Walla Walla, and Umatilla, the BIA was asked for details regarding the procedure for a “withdrawal from supervision.”<sup>130</sup> In the letter, the representatives criticized the agency for not providing tribes with adequate details about this new direction in federal Indian policy. They claimed “up to the present time, there has been no clear-cut attempt on the part of either the State or the Federal Government, to determine the attitude on the part of the Indians, toward the question of withdrawal.”<sup>131</sup> In addition to this criticism, they also suggested to the BIA that tribal members be allowed to vote in any decision about withdrawal or “emancipation,” and warned, “In our opinion...more than two thirds of Indians will vote against this question.”<sup>132</sup> The Cayuse, Walla Walla, and Umatilla representatives were requesting that any decision about a potential withdrawal of federal supervision not be made without the consent of the tribe.

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<sup>128</sup> Ibid.

<sup>129</sup> Vine Deloria Jr., *Behind the Trail of Broken Treaties: an Indian Declaration of Independence*, (University of Texas Press, 1985), 20.

<sup>130</sup> Letter from Umatilla Indian Reservation to Area Director of Bureau of Indian Affairs. Box 3, Folder 1, Proposed Legislation 7/1/1951 to 6/30/1952. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

The letter certainly had a significant impact at the Portland area office, because it yielded a response directly from Commissioner Myer. In his May 1952 response, Myer declined to provide details on the withdrawal process, and instead reassured the representatives that the BIA was continuing to act in the best interest of Native communities. In response to the suggestion that tribal members be allowed to vote on termination, Myer responded, “it is believed that any vote on such an important matter at this time would be premature.”<sup>133</sup> Myer also took the opportunity to reassure the Umatilla that “no action is being contemplated which would injure the Indian people in any way...it is believed, however, that it is time for the BIA and the Indian tribes must make a thoroughgoing analysis of the situation facing tribes and their members.”<sup>134</sup> In August 1952, Myer firmly stated in an internal BIA memo, “We must proceed, even though Indian cooperation may be lacking.”<sup>135</sup>

At the same time that Myer was advising his regional agents on policy direction, the 83<sup>rd</sup> United States Congress had officially passed House Concurrent Resolution 108. This bill declared termination as the official policy of the federal government, and was to be implemented “as rapidly as possible”. HCR 108 continues:

Whereas it is the policy of Congress, as rapidly as possible to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, and to grant them all the rights and prerogatives pertaining to American citizenship.<sup>136</sup>

### *Klamath and Western Oregon*

Of all the tribes evaluated for potential withdrawal of federal supervision, the Portland area office drafted only two official proposals. In early December of 1953, E. Morgan Pryse, area Director of the BIA, submitted proposals for the termination of the Western Oregon and Klamath Tribes. In both proposals, the destiny of tribally held timber lands was at the forefront. HC 108 had authorized the overall congressional policy of termination, but each tribe required an individual Congressional Act.

The Western Oregon tribes, which broadly referred to 61 Native communities west of the Cascade Mountains in Oregon, had been originally organized in the Treaty of 1855.<sup>137</sup> The BIA nominated Western Oregon tribes based of a variety of factors, mostly regarding their perceived

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<sup>133</sup> Ibid.

<sup>134</sup> Letter from Commissioner of Indian Affairs to Umatilla Reservation. Box 3, Folder 1, Proposed Legislation 7/1/1951 to 6/30/1952. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>135</sup> Memorandum to All Bureau Officials from Commissioner of Indian Affairs. August 5, 1952. Box 5, Folder 10, General Long Term & Withdrawal. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>136</sup> Francis Paul Prucha, *Documents of United States Indian Policy, Third Edition* (University of Nebraska Press, 1975), 234.

<sup>137</sup> For a more detailed history of the termination of Western Oregon tribes, see David Beck’s *Seeking Recognition: the Termination and Restoration of the Coos, Lower Umpqua, and Siuslaw Indians, 1855-1984* (University of Nebraska Press, 2009).

social and economic competency. With regard to social progress, the Superintendent noted, “the younger generation are mixed bloods and in most cases have the appearance of white people; they are literate, have practically all of the mannerisms of the average white person.”<sup>138</sup> They also noted “Indian culture has almost entirely disappeared among the Indians residing in Western Oregon, occasionally one of the older Indians sells a basket that he makes by hand.”<sup>139</sup> The Superintendent also believed that the termination of the Western Oregon tribes would resolve any lingering racial tensions between tribal members and non-Indians in the area. The Superintendent believed most of “these difficulties” were the result of non-Indians feeling that tribal members were unfairly privileged due to their trust status under the federal government. Termination, according to the BIA, could resolve these local disagreements.<sup>140</sup> In addition, since the tribes of Western Oregon had no outstanding claims with the ICC, they were especially suitable for the end of federal supervision.

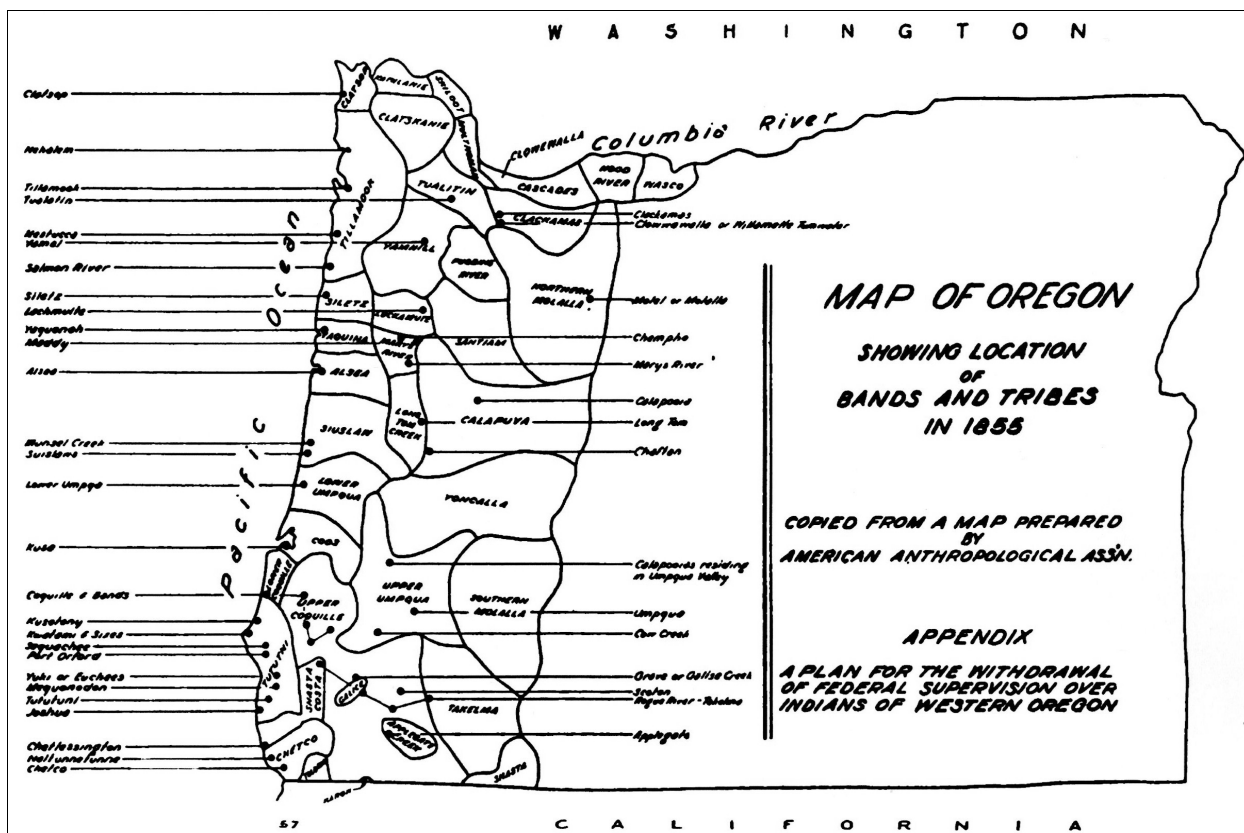


Figure 13: Map of Western Oregon tribes included in the Western Oregon Termination Act of 1954 (S. 2746, H.R. 7313, 83<sup>rd</sup> Congress, 2<sup>nd</sup> Session (1954), 168).

<sup>138</sup> Proposed Withdrawal of Federal Responsibilities Over the Property and Affairs of the Indians of Western Oregon. December 1953. Box 6, Folder 8, Prepared Withdrawal – Western Oregon. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

The proposal also dealt with the issue of land and natural resources that would be relinquished by the tribes of Western Oregon. Western Oregon tribes held nearly 3,000 acres of land, most of which was timber. The two major tribes in Western Oregon, the Siletz and Grande Ronde, had different requests for the way in which their “reimbursement” would be processed. The Siletz wanted all of their tribal land holdings sold immediately, and the proceeds would distribute per capita to tribal members. The Grande Ronde wanted their lands be fee patented to corporation that they were interested in forming. The Western Oregon Termination Act,<sup>141</sup> comprising of 61 Native communities, was passed in August 1954, would become effective in 1956. It was the largest termination bill passed by Congress.

The Klamath tribe, which had been one of the original tribes recommended nationally for termination by William Zimmerman in 1948, had a much more complicated withdrawal proposal than Western Oregon. Unlike Western Oregon, the proposal dealt almost entirely with the fate of the Klamath forest, which was particularly important to the BIA. The proposal does not address the “social progress” of the Klamath with regard to their preparedness for withdrawal. The Superintendent is entirely concerned with the Klamath resource base, as he notes immediately in the proposal:

It is the recommendation of the Superintendent and this office that any legislation adopted should provide definitely and unmistakably for the perpetuation of sustained yield management of the Klamath Indian Reservation resources, particularly the 900,000 acres of superb forest that has been so well managed by the Indian Service.<sup>142</sup>

The Klamath reservation was slightly over 1,000,000 acres in size, with a small fraction, around 137,000 acres, being allotments from the General Allotment Act of 1887. In total in 1953, the Klamath reservation held 985,483 acres of forest and range land, which, much like Western Oregon, accounted for 98.6 percent of total tribal land holding. Of the previously allotted tribal land, 90 percent was forest and rangeland.<sup>143</sup> The continued management of this vast timber resource was of vital importance to the BIA. The office estimated that, at a sustained yield capacity, the forest could have a continual output in excess of 60 million board feet per year. By 1953, timber from the Klamath had produced over 4.5 billion board feet and generated over \$30 million on profits.

However, the proposal was hesitant to support sudden and complete withdrawal, and stated that any proposal to terminate the Klamath would need to contain a sufficient plan to ensure that the tribe’s vital timber industry would not come to an immediate stop. Since the BIA had managed much of the Klamath timber resources, they wanted to ensure that the management of the Klamath forest could be transferred. The BIA offered several suggestions to resolve this concern. First, the Klamath forest could be converted into a private corporation managed by the tribe, much like what had been proposed for the Menominee in Wisconsin the same year. Second, it could be converted into a national forest administered by the Department of Agriculture, and tribal members would receive per capita payments for the land. Third, it could

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<sup>141</sup> S. 2746, H.R. 7313, 83<sup>rd</sup> Congress, 2<sup>nd</sup> Session. (1954).

<sup>142</sup> Proposed Withdrawal of Federal Responsibilities Over the Property and Affairs of the Klamath Indians. December 1, 1953. Box 6, Folder 11, Klamath – Long Range & Withdrawal. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>143</sup> Ibid.

be converted into a state forest administered by the State of Oregon, and again, tribal members would receive per capita payments. Lastly, it could be sold to the highest bidding corporation, and repayment would be negotiated with the tribes.<sup>144</sup>

After reviewing the regional proposal for Klamath termination, BIA Commissioner Glenn Emmons sent an official proposal to President Eisenhower. The bill would be submitted to the 83<sup>rd</sup> Congress later in 1954. Emmons states that the belief of the BIA is that “the Klamath Tribe and the individual members thereof have in general attained sufficient skill and ability to manage their own affairs without special federal assistance.”<sup>145</sup> But Emmons quickly calls attention to the Klamath forest, and its proposed management after termination, as he said, “For more than 40 years the Klamath forest has played a major role in the economy of both Indians and non-Indians... termination of the existing special Klamath relationships with the federal government may result in abandonment of sustained yield management practices presently enforced by the federal government.”<sup>146</sup> The bill even encouraged the development of a tribal corporation to manage the forest. Regardless, It was of vital concern to the federal government that the Klamath forest continues to produce at high rates, regardless of the ownership of the forest.

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<sup>144</sup> Ibid.

<sup>145</sup> Secretary of the Interior to the President, January 4, 1954. Box 6, Folder 12, Klamath Withdrawal. PAO 1: Subject files of the Area Director, 1946-1957. Records for the Bureau of Indian Affairs, Portland Area Office, Record Group 75. NARA Pacific Alaska Region; Seattle, Washington.

<sup>146</sup> Ibid.

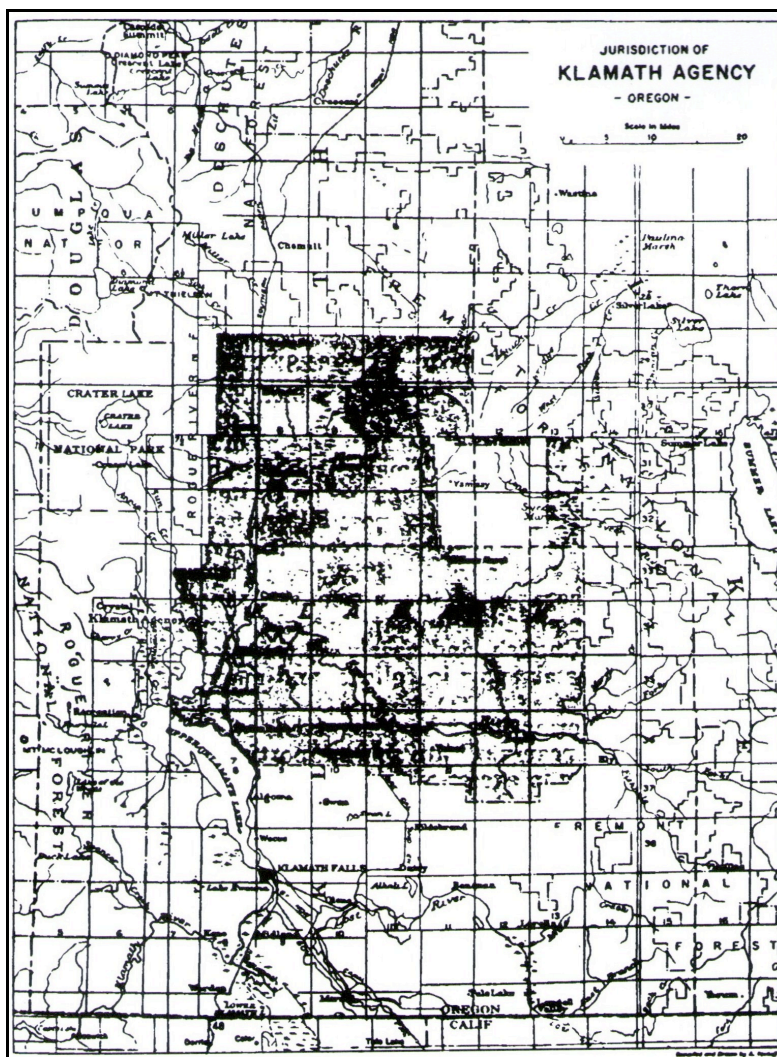


Figure 14: Map of Klamath Reservation and timber lands included in Klamath Termination Act of 1954 (S. 2745, HR 7320, 83<sup>rd</sup> Congress, 2<sup>nd</sup> Session (1954), 209).

The Klamath Termination Act, or Public Law 587, was passed August 13, 1954, and became effective in 1961.<sup>147</sup> The final bill proposed two choices for tribal members and their reimbursement for the loss of land holdings: the first, receive a one-time per capita payment of \$43,000, and the second, have their share placed in a private trust administered by tribal members through a national bank. At the time of termination, the Klamath tribal enrollment was 2133 members. Over three-quarters of tribal members chose the option of a one-time payment, and all other had their shares turned over to the private trust. By 1961, sections of the reservation timberland had been sold to private developers, and the rest was converted into the Fremont-Winema National Forest. In the same year, Klamath tribal members received their payments of \$43,000, and local newspapers documented their plans for spending the money.<sup>148</sup>

<sup>147</sup> S. 2745, HR 7320, 83<sup>rd</sup> Congress, 2<sup>nd</sup> Session. (1954).

<sup>148</sup> “Klamath Indian tribe prepares to swap land for \$43,000 each,” *The Oregonian*. March 27, 1961, II: 6.

The vast timber resource of the Klamath reservation, nearly 750,000 acres, was sold by individual allotments beginning in 1956. The allotments varied in size and value, and were open to the highest bidder. Among the interested parties was the Weyerhaeuser Timber Company, who was bidding heavily on the Klamath timber allotments. George Weyerhaeuser, in particular, became personally invested in the outcome of the reservation timberlands. There had been a few alternative proposals with regard to managing Klamath timberlands. Prior to Public Law 587, it had been proposed to develop a tribal corporation to manage forest resources, similar to what had occurred with the Menominee of Wisconsin, but the BIA had abandoned the idea in early 1954.<sup>149</sup> Then again in 1957, a bill was proposed to keep the Klamath timberlands under the management of the United States Forest Service. This bill would have effectively halted private ownership of the timberlands, but the bill was met with fierce opposition by private investors, and was later abandoned and revised to promote private ownership. Weyerhaeuser was an outspoken opponent of tribal or federal management of Klamath timberlands, and he stated this to Congress in 1957. "I think private management, if given a stake in the timber," Weyerhaeuser remarked, "is a highly desirable thing."<sup>150</sup>

Once Public Law 587 had passed, the questioning had begun. In September 1954, A.H. Wright, the Director of Indian Education, sent a letter to Secretary of the Interior, and former Oregon Governor, Douglas McKay. In the letter, Wright voiced concerns he had over the termination of the Klamath, and those involved in the designing of the bill. Wright writes:

May I suggest that the Indian Bureau did not present true statistical information in support of the bill, and the lobbyists that worked for the passage of the bill had an axe to grind... In my opinion, there will have to be several amendments to this bill... Mr. Secretary, it is going to cost a lot to get the federal government out of business at Klamath. In my opinion, this program is of such magnitude that you will have to give your personal attention to it.<sup>151</sup>

In response to Wright's letter, McKay stated, "I agree with you that there are many problems."<sup>152</sup>

In the immediate years following the Klamath termination, the Klamath General Council had a series of public meetings with the BIA to discuss the official procedure for their

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<sup>149</sup> This story had appeared publicly in a series of *The Oregonian* articles that ran in September 1953. ("Klamath's, About to Get Title to Reservation, Talk of Forming Corporation for Operation". *The Oregonian*. September 20, 1953. Portland, Oregon; "Reality Faces Klamath Tribe as Uncle Sam Prepares to Relinquish Control to Members". *The Oregonian*. September 21, 1953. Portland, Oregon; "Question of Education for Indians Presents Ticklish Problem for Everybody Concerned". *The Oregonian*. September 22, 1953. Portland, Oregon)

<sup>150</sup> Susan Hood, "Termination of the Klamath Tribe in Oregon," *Ethnohistory*, Vol. 19, No. 4 (Autumn 1972), 385.

<sup>151</sup> Director of Indian Education to Secretary of the Interior, August 30, 1954. Box 6, Folder 11, Klamath – Long Range & Withdrawal. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>152</sup> Secretary of the Interior to Director of Indian Education, September 16, 1954. Box 6, Folder 11, Klamath – Long Range & Withdrawal. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

termination. These meetings ultimately became a public indictment of the BIA's decision-making process for Public Law 587. In particular, members of the Klamath General Council argued they were not consulted, nor allowed a change to vote, on a termination bill.<sup>153</sup> Over the course of several meetings, Klamath tribal members stated to the BIA that the bill had been "put through more or less on the blindside of a lot of people"<sup>154</sup> and "it's not a healthy thing for the government to go along and do something and tell the Indians about it later."<sup>155</sup> At one of the meetings in January 1955, BIA Commissioner Glenn Emmons had agreed to attend and address the concerns of the Klamath, but abruptly left the meeting once tribal members accused the agency of making decision unilaterally. By 1956, Senator Wayne More of Oregon, who had been a strong advocate for Klamath termination, had publicly admitted "the problems involved in terminating Federal supervision over the Klamath are more complex, more difficult, and more time-consuming than the Indians, the Department of the Interior, or the Congress realized at the time."<sup>156</sup>

### *Settling with Columbia River Tribes*

While the threat of termination had become a reality for many Native communities in the Pacific Northwest, other Native communities were experiencing dispossession and displacement in different ways. At the same time the Portland area office was preparing its withdrawal reports, it was already firmly embedded in the controversy surrounding treaty-fishing rights and the proposed hydroelectric dam at The Dalles, Oregon.<sup>157</sup> In early 1952, at the same time Commissioner Myer was asking for recommendations of tribes prepared for withdrawal, the United States Army Corps of Engineers confirmed that construction would begin immediately on The Dalles Dam, the plan for which had been in the making for several years prior. At the time construction of The Dalles Dam was set to begin, over 2,000 Native peoples, from numerous Columbia River tribes, still fished at Celilo Falls.<sup>158</sup>

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<sup>153</sup> Klamath Tribal Executive Committee Meeting, December 21, 1954. Box 1558, Folder 6. Klamath General Council Tribal Minutes, 1954. PAO 58: Tribal Council Minutes and Resolutions, 1946-1965. BIA PAO, RG 75, NARA: Seattle.

<sup>154</sup> Special Meeting of Klamath General Council, January 18, 1955. Box 1559, Folder 1. Klamath Council Tribal Minutes, 1955. PAO 58: Tribal Council Minutes and Resolutions, 1946-1965. BIA PAO, RG 75, NARA: Seattle.

<sup>155</sup> Special Meeting of Klamath General Council, January 17, 1955. Box 1559, Folder 1. Klamath Council Tribal Minutes, 1955. PAO 58: Tribal Council Minutes and Resolutions, 1946-1965. BIA PAO, RG 75, NARA: Seattle.

<sup>156</sup> Statement by Senator Wayne Morse on Termination of Federal Supervision over the Klamath Indians, October 18, 1956. Box 72, Folder 5. Senate and Commissioner on Interior & Insular Affairs, October 18, 1956. PAO 15: Desk Files of the Assistant Area Director for Resources Relating to the Termination of the Klamath Tribe, 1951-1961. BIA PAO, RG 75, NARA: Seattle.

<sup>157</sup> For an in-depth and critical examination of the The Dalles Project and its impact on Columbia River tribes, see Barber's *Death of Celilo Falls*.

<sup>158</sup> Richard White, *The Organic Machine* (Hill and Wang: New York, 1996) 100.

The Dalles Dam project, as part of the larger hydroelectric expansion of the Pacific Northwest, had been in development for many years, but had gained increased attention when World War II had concluded. As early as 1946, *The Oregonian* began running headlines that read “Indian Town Will Go Soon: Celilo Village Slated for Doom.”<sup>159</sup> At the same time, the Portland area office had been receiving consistent questions and concerns from tribal members about the obvious threat The Dalles Dam would pose on treaty-fishing rights at Celilo Falls. Dillon S. Myer even continually acknowledged that the proposed construction of The Dalles Dam posed many logistical dilemmas regarding fishing rights and the legacy of the Treaty of 1855. Myer noted in April 1951 “treaty-fishing rights of the Indians at Celilo, Oregon, has presented several difficult legal and administrative problems.”<sup>160</sup> In particular, Myer noted “law and order presents a difficult problem, especially during the fishing season when many hundreds of Indians camp at or in the vicinity of Celilo.”<sup>161</sup> The situation at Celilo Falls certainly complicated by the overall policies of withdrawal and termination. The BIA and the federal government was conflicted about making long-term resolutions to Columbia River tribes, since these tribes could still potentially be impacted by withdrawal or termination.

By January 1952, the Portland area office had been officially notified that the United States Army Corps of Engineers would begin construction of The Dalles Dam, even though no definitive decision had been made about the legal obstacle of treaty-fishing rights at Celilo Falls. The Portland area office needed to move quickly on a settlement plan for the Native peoples at Celilo, and the Columbia River tribes impacted by the Treaty of 1855. Morgan Pryse, the area Director for the Portland area office in 1952, notified the Superintendents of the regional tribes of the imminent construction of The Dalles Dam. In his letter to the Superintendents, Pryse acknowledges “this brings to the fore the urgent problem of settlement by the Government through the Corps of Engineers for the loss of Indian fishing rights on the Columbia River.”<sup>162</sup> This issue was particularly urgent because unresolved legal claims could delay termination plans. Pryse cited that the biggest hurdle in finding a settlement with tribes was because no agency could efficiently estimate how the loss of fishing rights at Celilo Falls would translate into monetary compensation. There was, briefly, a proposal to compensate tribes by providing them with fish carcasses collected at The Dalles Dam.<sup>163</sup>

After The Dalles Dam project was officially announced, the Portland area office was flooded with a new wave of complaints from regional tribal members. The major point of contestation was that there was no legal explanation as to how the loss of Celilo Falls was not a direct and explicit violation of the Treaty of 1855, and this is central to the criticisms emerging in tribal communities. In particular, tribes focused heavily of the language of the Treaty, and its

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<sup>159</sup> “Indian Town Will Soon Go, Celilo Village Slated for Doom,” *The Oregonian*. April 14, 1949.

<sup>160</sup> Letter from Commissioner of Indian Affairs to House of Representatives. April 10, 1951. Box 1933, Folder 1, File of Edward G. Swindell, and Counsel relating to Celilo Reservation. PAO 6: Celilo, or Relocation Records, 1940-1964 [1956-1958]. BIA PAO, RG 75, NARA: Seattle.

<sup>161</sup> *Ibid.*

<sup>162</sup> Letter from Area Director to Regional Superintendents. January 23, 1952. Box 9, Folder 13, The Dalles Dam Project 7, /1/1952 to 6/30/1952. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>163</sup> *Ibid.*

provision that grants tribes “the right of taking fish at all usual and accustomed places.”<sup>164</sup> In a statement to the Portland area office following the official announcement of The Dalles Dam, representatives of the Yakima argued:

Since the rights of these fishing locations were sealed by treaty between the Yakima Indians and the United States, they are not subject to condemnation and destruction without the consent of the Yakima Nation and by renegotiation of the Treaty of 1855...the Congress of the United States without consent of the Yakima Indians or any attempt to renegotiate the Treaty of June 9, 1855, has authorized the construction of a dam in the Columbia River at The Dalles...Therefore the Yakima Indians have every legal and moral right to insist that their fishing locations at Celilo Falls be preserved for them in perpetuity...as long as the sun shines and the river flows.<sup>165</sup>

In addition to the Yakima’s statement that the federal government was unable to legally justify the loss of Celilo Falls with regard to the Treaty of 1855, they also offered a critique of the larger federal effort to development and industrialize the region. At the conclusion of their statement to the BIA, the Yakima state: “If the Army Engineers and the speculative interests of the Pacific Northwest must develop the whole Columbia River system for hydroelectric power, then let them do it in an efficient and logical manner.”<sup>166</sup>

Following the statement by the Yakima, Morgan Pryse offered a potential solution as to how Columbia River tribes would be compensated for the loss of Celilo Falls. The Yakima, in particular, had already been offered and declined, a payment of \$13,656,000. The Umatilla and Warm Springs had already accepted cash settlements by mid-1953. Pryse suggested that tribes receive annual compensation, determined by percentage of power revenues by hydroelectric production of The Dalles Dam, and this would be in lieu of a one-time “lump sum” payment. However, Myer quickly struck down the proposal. In a letter to Pryse, Myer states the Bureau’s policy of removing itself from continued supervision of Indian affairs, and writes, “as a matter of fact our policy is to avoid, if possible, continuing annual payments wherever outright settlements can reasonably be achieved with the tribes.”<sup>167</sup> Myer was very firm about maintaining the BIA policy of avoiding continued relationships with tribes, and reminds Pryse that “in the future when you are not entirely sure in matters of policy I should appreciate a call from you.”<sup>168</sup> Pryse echoed the sentiments of many other BIA officials who were opposed to ongoing compensation. As quoted in *The Oregonian* from 1953, one BIA official declared that such a policy would lead to “payments for eternity.”<sup>169</sup> As a final resolution for the tribes, despite the opposition from

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<sup>164</sup> Statement in Support of Preserving Celilo Falls. March 26, 1952. Box 9, Folder 13, The Dalles Dam Project, 7/1/1952 to 6/30/1952. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> Letter from Commissioner of Indian Affairs to Area Director. Box 11, Folder 12, The Dalles Dam 7/1/1952 to 6/30/1953. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>168</sup> Ibid.

<sup>169</sup> “Pryse Plan for Yakima Payment Gets Cold Washington Reception,” *The Oregonian*, Sunday, June 7, 1953.

tribes and even a few BIA officials, the United States Army Corps of Engineers evaluated the Celilo Falls fishery, and paid the Columbia River tribes a total of \$27.2 million for the loss of the “usual and accustomed” fishing sites. On March 10, 1957, The Dalles Dam flooded Celilo Falls. *The Wenatchee Daily World* from Wenatchee, Washington, reported on the story in early 1958. With regard to the loss of Celilo Falls, the newspaper commented: “Every westward leap seems to have been made on legs of lying, cheating, treaty-breaking, and even murder. The Indian appears to have been dealt with fairly at Celilo.”<sup>170</sup> Richard LaCourse, a Yakama historian, remarked about Celilo Falls, “the policy of termination was incarnated in the destruction.”<sup>171</sup>

### *Conclusion*

From 1946 to 1957, the Portland area office of the BIA had overseen the largest dispossession and displacement of Native American communities in 20<sup>th</sup> century American history. Sixty-two tribes terminated. 864,820 acres of tribally held land liquidated. 4,214 tribal members lost tribal status. On the Columbia River, the Treaty of 1855, perhaps the most significant treaty for Pacific Northwest tribes, had been essentially drowned by the backflow of The Dalles Dam, and the annual takes of salmon by Columbia River tribes would steadily decline through the 1950s and 1960s. Almost all of this had occurred without tribal consent. If the goal of postwar federal Indian policy had been to dispossess and displace Native communities, incorporate tribally held lands and natural resources into the modernized and rapidly expanding federal landscape of the American West, it had been accomplished with remarkable success.

Over twenty years later, and amidst a new era of the federal Indian policy, the American Indian Policy Review Commission released a 1977 report which attempted to provide explanations for the previous eras of federal Indian policy, in particular, withdrawal and termination. The report became a condemnation of the policies, and articulated that, once again, those entrusted with looking after the “best interests” of tribes are the same who institute some of the devastating policies. The Commission identified several potential explanations for withdrawal and termination, but stated, “It was impossible to assign one reason.”<sup>172</sup> However, along with general beliefs of tribal assimilation, the Commission did state, “non-Indians desire to obtain tribal lands” as a critical motivating factor. Among the other insights provided by the report were the devastating effects withdrawal and termination had on tribal communities. It noted that despite the payments made to the Klamath in compensation for the Klamath forest lands, within a few years the Klamath had nothing to show for it, with both poverty and unemployment rates increasing dramatically. In addition, as early as 1957, the termination of the Klamath was being declared “premature” by both policymakers and tribal members.<sup>173</sup> In a poll

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<sup>170</sup> “Ending Celilo Fishery Boon to Salmon Run,” *The Wenatchee Daily World*, January 28, 1958.

<sup>171</sup> Ulrich, *Empty Nets*, 93.

<sup>172</sup> Ulrich, *American Indian Nations from Termination to Restoration*, 10-11.

<sup>173</sup> “Klamath Indian termination statute declared premature,” *The Oregonian*, April 10, 1958. III:5,

conducted by the Commission nearly 20 years after termination, 93 percent of Western Oregon tribal members would remain opposed to termination.<sup>174</sup>

This chapter has attempted to demonstrate that central to postwar federal Indian policy was the targeted and calculated interest by the BIA, and other federal agencies, in tribally held lands and natural resources, of which, would contribute greatly to the quickly expanding postwar economy in the Pacific Northwest. This chapter has offered a less acknowledges explanation for the motivations behind Native dispossession and displacement, one that is explicitly stated in the BIA's own records from the period. The topic of Native displacement and dispossession is rarely acknowledged in 20<sup>th</sup> century histories. It has been the premise of this chapter that Native dispossession and displacement, particularly of rights, lands, and resources was an active and politically designed force in the 1940s and 1950s. By using the official legal rhetoric and unilateral decision-making of the BIA during the 1940s and 1950s, this chapter has highlighted how the postwar policies were crafted, who was involved, and who sought to benefit from Native dispossession and displacement in the Pacific Northwest.

However this is hardly a unique observation for Native American communities. In 1955, numerous tribes had spoken to the BIA about their opposition to the recent directions in federal Indian policy, particularly, the unilateral dispossession and displacement of Native communities. In a presentation to Emmons, representatives of the Spoken Tribe spoke of their disapproval of how the BIA had unilaterally approached Indian policy, and stated "we only ask that any planning be done *with* us and not *against* us."<sup>175</sup>

This was not the only criticism addressing the unilateral policies of the BIA. In 1957, Secretary of the Interior Fred Seaton declared that implementing policies of dispossession and displacement without tribal consent was "unthinkable"<sup>176</sup> Former Commissioner of Indian Affairs, William Zimmerman, commented in 1957 "there are signs that Congress is giving a second look at these policies, which in many instances have proved detrimental rather than helpful."<sup>177</sup> Oliver La Farge, President of the Association of American Indians in 1957, wrote, "we begin to see that for practical purposes the present debate is not about termination as such, but about a particular kind of termination, something characterized by hasty impatience, to be applied to tribes who do not want it."<sup>178</sup> In the same year, former BIA Commissioner John Collier also offered his own critique of the governments dispossession and displacement of Native communities. Collier writes, "the immediate issue, which must be settled in terms of months at the outside, is whether Congress, through default or under the Administration's pressures, shall 'go along with' with dismemberment of the tribes, the immediate clear-cutting of their great forests, and the breach of Senate-ratified treaties which these tribes have observed faithfully down the generation."<sup>179</sup>

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<sup>174</sup> Wilkinson and Biggs, "The Evolution of the Termination Policy," 163.

<sup>175</sup> Statement to Commissioner of Indian Affairs. January 21, 1955. Box 6, Folder 1, Colville – Long Range & Withdrawal. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

<sup>176</sup> As quoted in Wilkinson and Biggs, "The Evolution of the Termination Policy," 163.

<sup>177</sup> Zimmerman, "The Role of the Bureau of Indian Affairs Since 1933," 31.

<sup>178</sup> La Farge, "Termination of Federal Supervision," 46.

<sup>179</sup> The Menominee of Wisconsin and the Klamath of Oregon Cases by John Collier. Box 33, Folder 5. Collier, John. The Menominee of Wisconsin and the Klamath of Oregon Cases.

These critiques of Native dispossession and displacement were emerging from multiple directions, and from unexpected sources. In late 1952, Commissioner Myer received a letter, forwarded to the Portland area office of the BIA. The author of the letter was Roy Cronkhite, a Minister at the Niantic Christian Church in Niantic, Illinois. In the letter, Cronkhite stated his concerns over the handling of Indian affairs in the Pacific Northwest. It's not certain if Cronkhite had any direct relationship to Native communities in the region, or why he had an invested interest in the Indian politics within in the region. However in the letter, Cronkhite offers a remarkably insightful critique of the current handling of federal Indian policy, and the misguidance of its officials. He writes:

The fact that the treaty is an old one has nothing to do with its validity. One might as well argue that the law of gravity is obsolete because it is old. Our treatment of the minority groups is a test of national integrity. When we set aside an obligation to those unable to defend themselves...we put a loaded gun into their hands.<sup>180</sup>

The remarkable insight of Cronkhite's remark is that he provides a forecast for a change in federal Indian policy that would begin to emerge in the wake of the dispossession and displacement of the 1950s. As Native American communities began to respond to these policies, we witness Native peoples begin to shape their own future, and begin to argue, in a very powerful way, "the fact that the treaty is an old one has nothing do with its validity." This statement would become emblematic of the birth of Native sovereignty movement by the early 1960s.

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PAO 07: Records of the Assistant Area Director Related to the Termination of Western Oregon Tribes, 1954-1960. BIA PAO, RG 75, NARA: Seattle.

<sup>180</sup> Letter from Minister to Commission of Indian Affairs. December 13, 1952. Box 11, Folder 12, The Dalles Dam 7/1/1952 to 6/30/1953. PAO 1: Subject files of the Area Director, 1946-1957. BIA PAO, RG 75, NARA: Seattle.

## CHAPTER 3

### **“Talk the Language of the Larger World:” Fishing Wars, Natural Resources, and the Birth of the Native Sovereignty Movement**

“If we’re going to say we’re nations and we got sovereignty and our treaties are as valid as other treaties, then we got to talk the language of the larger world.”<sup>181</sup>

-Vine Deloria Jr., 2001

On March 2, 1964, Hollywood actor Marlon Brando and Puyallup tribal member Robert Satiacum were arrested on the Puyallup River in Washington State for a staged violation of state net fishing regulations. The local newspaper, *Tacoma News Tribune*, ran the headline, “Marlon Nets 2 Steelhead in the Puyallup.” The National Indian Youth Council (NYIC) had organized the demonstration, soon called the “fish-ins,” and they became a common occurrence on waterways in the Pacific Northwest in the 1960s. However, this one was different, because it had garnered national attention because of Brando’s involvement. However by this time, the arrests of treaty fishermen had become routine. Tribal council meetings around the Pacific Northwest became inundated with cases of tribal members that had recently been arrested by state game officials for violating fishing laws. In most cases, the concern for the tribe was how to get their tribal members released from jail, and how to get their confiscated equipment back.<sup>182</sup> More Native peoples were fishing openly with the aim to get arrested, and the states of Oregon and Washington were willing to increase enforcement of fishing violations. The confrontation between tribal members, exercising disputed fishing rights, and state agencies, enforcing disputed fishing laws, became a commonplace occurrence, and encompassed the emerging fishing wars of the 1960s and early 1970s.

The backdrop of the fishing wars was the long disregarded threat industrial development posed to natural resource economies in the Pacific Northwest. The tremendous industrial growth of the region in the years following World War II was made possible by the intensive harnessing of natural resources, and in the late 1940s and 1950s, very few were talking about the long-term sustainability of these resources. The momentum of the postwar economy was too powerful to ignore. However by the early 1960s, there was a striking realization that policies of natural resource management in the region must change if resources can survive in the long term. Once again, Native communities in the Pacific Northwest would pay a price greater than others. In the boom years of the postwar economy, it was Native communities that were displaced and dispossessed to make way for the development of a seemingly immeasurable supply of natural resources, and when the postwar boom years begin to fade, and the immeasurable suddenly becomes measurable, Native communities would have their already limited rights garnished even further. In climates of both abundance and scarcity, Native peoples were the first to lose. The outcome, this time, would ultimately be different.

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<sup>181</sup> As quoted in Daniel Cobb and Loretta Fowler, *Beyond Red Power: American Indian Politics and Activism since 1900* (School for Advanced Research on Global Indigenous Politics, 2007), 162.

<sup>182</sup> Nisqually Community Council. Meeting Minutes, June 11, 1962. Box 1574, Folder 11. Nisqually Tribal Minutes, 1962. PAO 58: Tribal Council Minutes and Resolutions, 1946-1965. BIA PAO, RG 75, NARA: Seattle.

During this time, treaty rights and federal Indian policy became entangled with regional debates around environmental conservation and natural resource management. So in this way, an understanding of treaty rights and federal Indian law and policy can be used to help interpret and analyze regional postwar environmental and economic histories more critically. One of the striking ironies of the attack on Native fishing rights was the concern by state agencies in Oregon and Washington that the annual fish harvest of treaty tribes would threaten the long-term returns of fish to waterways in the Pacific Northwest. In the 1960s, the annual harvest of treaty tribes accounted for only a marginal amount compared to those reserved for sport and commercial fishing. As state agencies were taking a firm position that the issue was fundamentally and exclusively about the “conservation” of natural resources, it’s difficult not to see these policies as a direct and ongoing attack on the rights of Native American communities. The fishing wars emerge as a dramatic example of treaty rights under attack by regional economic interests, and their organized and powerful lobbyists. This period in the Pacific Northwest shows how the rights of Native communities were directly undermined to ensure the continuation of a vital natural resource economy in the region by the 1960s and early 1970s.

At the center of the fishing wars were the treaties of 1855, which had guaranteed tribes in the Pacific Northwest the continual right to fish at “usual and accustomed places” and “in common with the citizens of the territories,” yet the dispute over this provision became the signature conflict of this period. The original treaties themselves began to impact people of the region like never before. After 100 years since they were negotiated, the treaties took on a new life and influenced the day-to-day for both Native and non-Indian peoples alike. From the federal courts, to state courts, to local courts, to state commissions, to game officers, to newspaper columnists, and to Native men, women, and children, the treaties of 1855 were cited, disregarded, interpreted, reinterpreted and debated throughout the 1960s and 1970s. As stated in an article from *The Oregonian* in May of 1969, “each court decision seems to make the problem more complex.”<sup>183</sup> At the core of the debate was the central question of what validity do century-old treaties have in the modern United States. The debate around the treaties of 1855 was not only legal, rather, it reflects systemic legacies of colonialism. As remarked by Native historian Alvin Josephy, “the issue of Indian treaty-fishing rights has often been attended more by emotion and racist prejudice than by understanding.”<sup>184</sup>

Throughout the 1960s and 1970s, as Native peoples were attempting to exercise their own rights, the debate surrounding the treaty exposes “the microtechniques of dispossession.”<sup>185</sup> Paige Raibmon identifies these microtechniques as “the intimate interactions between policies and practices,”<sup>186</sup> and in the 1960s and 1970s Pacific Northwest these interactions take shape as Native peoples confront state and federal authorities to maintain the critical cultural and ceremonial practice of taking fish. More than a history of laws or treaties, Raibmon allows for the consideration of the specific ways in which Native peoples were culturally and personally

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<sup>183</sup> “Indian rights unclear,” *The Oregonian*, May 02, 1969, 30.

<sup>184</sup> Alvin M. Josephy’s *Now That The Buffalo’s Gone: A Study of Today’s American Indians* (University of Oklahoma Press, 1984), 178.

<sup>185</sup> Raibmon explores this concept in her chapter “Unmaking Native Space: A Genealogy of Indian Policy, Settler Practice, and the Microtechniques of Dispossession” in *The Power of Promises: Rethinking Indian Treaties in the Pacific Northwest* (University of Washington Press, 2008), 56-85.

<sup>186</sup> Raibmon, “Unmaking Native Space,” 79.

dispossessed by federal Indian law and policy. By the 1960s, the treaties of 1855 had been embedded in the daily life of Pacific Northwest Native communities for over 100 years. To defend the treaties of 1855, Native peoples suffered physical abuse, imprisonment, and confiscation of property, loss of livelihood, racism and prejudice. For the Native peoples of the Pacific Northwest, the right to take fish at “usual and accustomed places” was not merely a legal issue.

The fishing wars of the Columbia River and Puget Sound and the accompanying court cases and legal debates also exhibit the shifting direction in federal Indian policy. By the early 1960s, the fallout from the termination was being felt by the Klamath and the tribes of Western Oregon. So amidst increasing criticism of the termination policy coming from nearly all angles of the political spectrum, the BIA had yet to adopt and design a new direction for federal Indian tribes. In contrast to the Termination policies of the 1950s, by the late 1960s the BIA would emerge on the defensive of treaty rights. The fishing wars provide a gateway from which to witness the birth of the new era of Native sovereignty. In addition, examining the era of the fishing wars in the Pacific Northwest also forces us to reconsider our chronology of modern Native activism, as the fishing wars predated the national activist movements of the late 1960s and early 1970s, and were fundamentally based on the protection of treaty-fishing-rights and tribal natural resources. The fish-ins of the early 1960s helped pave the way for the Native activism of the late 1960s and early 1970s.

The fishing wars of the 1960s and early 1970s Pacific Northwest are documented quite well in the existing historical scholarship. The majority of the scholarship has exclusively focused on the legal and policy history of the fishing wars, with the most notable being American Friends Service Committee’s *Uncommon Controversy*, Fay H. Cohen’s *Treaties on Trial*, Alvin Josephy’s *Now that the Buffalo’s Gone*, and Robert Ulrich’s *Empty Nets*. Recently scholars have examined other dimensions of the fishing wars. In addition, Andrew H. Fisher’s *Shadow Tribe* and Alexandra Harmon’s *Indians in the Making* discuss how fishing rights have shaped regional tribal identities on the Columbia River and Puget Sound. While others have looked at the connection between the fish-in’s and other forms of Native and non-Native activism, particularly Paul Chaat Smith and Robert Allen Warrior’s *Like a Hurricane*, Bradley Shreve’s “From Time Immemorial: the Fish-In Movement and the Rise of Intertribal Activism,” and Sherry L. Smith’s “Indians, the Counterculture, and the New Left.” And Charles Wilkinson’s *Blood Struggle* is perhaps the most thorough analysis of this period in Native American history. Despite the existing studies of the period, the fishing wars have not been considered in a broader scope of postwar environmental and economic history of the Pacific Northwest. While the fishing wars themselves have been thoroughly documented, our understanding of them in relation to regional environmental and regional histories has not. This chapter seeks to use environmental and economic histories of the Pacific Northwest to help read and critically analyze postwar federal Indian policy and Native American history.

But perhaps most importantly, the fishing wars of the Columbia River and Puget Sound highlight the critical ways in which Native communities actively resisted forces aimed at that the further erosion of treaty rights, and began to critically influence new directions in federal Indian law and policy. Through forms of political, legal, and social activism, this resistance also heralded the dawn of a new period in Native American history. In the 1960s and early 1970s, Native communities began to actively reshape their own political, social, and economic destinies, however, an important dimension of this story has not been explored in the existing scholarship. Too often, this period is discussed in isolation from the period that directly preceded it, the era of

Termination and the “withdrawal from supervision.” This chapter seeks to intertwine these periods and their important linkages. The Pacific Northwest provides the perfect context to analyze the connections between these periods. In the 1960s and early 1970s, Native peoples of the Pacific Northwest reshaped the direction of federal Indian law and policy, and the status of federal Indian tribes regionally and nationally for the next generation. As poignantly noted by journalist Mark Trahan, this period expands our understanding of “Indian wars,” and “the 1960s and 1970s were a full-length chronicle of skirmishes.”<sup>187</sup> This chapter seeks to foreground these skirmishes, and highlights their critical significance to understanding federal Indian law and policy, regional growth, environmental change, and postwar Pacific Northwest. From fish-in’s, to federal courts, to the birth of the sovereignty movement, Native peoples of the Pacific Northwest were, as Vine Deloria Jr. eloquently expressed, beginning to “talk the language of the larger world.”

### *Natural Resources and Economic Growth in the Pacific Northwest*

Throughout the 1960s and into the early 1970s, the Pacific Northwest continued its intensive postwar industrial growth. The development of natural resources, particularly timber and water, had reshaped the regional economy and its national importance. Timber from the region’s forests shipped across the country to help in postwar development projects and in constructing emerging suburban centers.<sup>188</sup> And water from the Columbia River Basin, with the help of massive hydroelectric and multipurpose dams, helped irrigate vast acres of previously infertile agricultural land, and made the river system one of the greatest hydroelectric and nuclear energy producers in the world.<sup>189</sup> The development of natural resources in the Pacific Northwest had reshaped the region, and its identity, in postwar America. By the early 1960s, the attitude toward natural resources changed as the seemingly never-ending abundance suddenly showed its limits.

The Pacific Northwest timber industry flourished in the postwar years as regional forests supplied the nation with building materials it needed to make the construction and development boom possible. The region became the primary national supplier of forest products like plywood, which was helping construct new low-cost suburban homes across the country. The region was producing nearly 95 percent of the national plywood supply in the 1950s and early 1960s, yet the states of Oregon, Washington, and Idaho only consumed 5 percent of the supply in that time.<sup>190</sup> In 1950, there was 1.9 billion board feet harvested in national forests in the Pacific Northwest, by 1960 this number increased to 3.6 billion, and by 1970, it was 4.1 billion. The value of the timber

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<sup>187</sup> Trahan, *The Last Great Battle of the Indian Wars*, viii.

<sup>188</sup> For historical and environmental analyses of the 20<sup>th</sup> century Pacific Northwest timber industry, see W. Scott Prudham’s *Knock on Wood*, William G. Robbins *Landscapes of Conflict*, Nancy Langston’s *Forest Dreams, Forest Nightmares* and William Dietrich’s *The Final Forest: the Battle for the Last Great Trees of the Pacific Northwest* (Simon & Schuster, 1992).

<sup>189</sup> For more on the hydroelectric development of the Columbia River, see Richard White’s *The Organic Machine*.

<sup>190</sup> United States Forest Service, Pacific Northwest Research Station, “Production, Consumption, and Prices of Softwood Products in North America: Regional Time Series Data, 1950-1985,” (Resource Bulletin PNW-RB-161), 41.

harvest increased as the national demand increased. In 1950, the total timber harvest in national forests was worth \$23 million, by 1960 it was \$63 million, and by 1970, it was \$125 million.<sup>191</sup> But by the mid-1960s, federal agencies became concerned with the overharvesting of Pacific Northwest timber, and began to adopt sustained-yield practices in many national forests, as a way of preventing a sudden collapse of the regional industry.

Dams continued to appear on the Columbia River Basin throughout the 1960s and early 1970s. In 1961, the United States had signed with Columbia River Treaty with Canada increase hydroelectric capacity in the Canadian stretches of the Columbia River. Around the same time, nearly all hydroelectric projects in the region had been either completed or were under construction. On the main stem of the Columbia River, Rocky Reach and Priest Rapids dams opened in 1961, Wanapum in 1963, Wells in 1967, and John Day in 1971. On the Snake River, Oxbow opened in 1961, Ice Harbor in 1962, Hells Canyon in 1967, Lower Monumental in 1969, Little Goose in 1970, and Lower Granite in 1972. By 1975, there were 44 operating dams in the Columbia River Basin,<sup>192</sup> and many of which contained no fish passages for salmon. The Bonneville Power Administration (BPA), the federal energy entrusted with hydroelectric power generation in the Columbia River Basin, had become one of the largest power suppliers in the country and had provided the “backbone”<sup>193</sup> for the postwar development of the region. By 1970, with nearly 12,000 circuit miles of power lines, it was serving Oregon, Washington, Idaho, Montana, and sections of California, Nevada, Utah, and Wyoming. In 1946, the BPA was generating 6.2-kilowatt hours of Columbia River hydroelectricity; by 1970, it was generating 55.6-kilowatt hours, an increase of nearly 900 percent in the generation since World War II.<sup>194</sup>

In addition to hydroelectric production, the federal government had decided during the war that the Pacific Northwest was the perfect location for a large-scale nuclear production facility, Hanford. The Hanford Nuclear Facility was operating nine nuclear reactors by 1963, and from 1956 to 1965 it supplied the vast majority of the federal government’s nuclear bomb fuel. The reactors underwent a decommissioning process from 1965 to 1971, as most had reached their maximum thermal output. In 1968, there was another push to make the Pacific Northwest the leading nuclear power producer. The BPA announced in a report titled “Hydro-Thermal Power Program for the Pacific Northwest” that hydroelectricity alone would not be able to meet the region’s power needs for the next generation, and called for continued regional investment in nuclear power development. By the early 1970s, the Washington Public Power Supply System (WPPSS) assumed responsibility for building five new large-scale nuclear plants, all in Washington State.<sup>195</sup> In addition to hydroelectricity, nuclear power and weapons production was making the Pacific Northwest a national energy powerhouse in the 1960s and early 1970s.

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<sup>191</sup> Ibid.

<sup>192</sup> This number also includes dams on the Pend Oreille, Clark Fork, and Flathead Rivers in Idaho and western Montana, and those constructed and maintained by the Canadian government in southern British Columbia.

<sup>193</sup> Bonneville Power Administration, “Everything You Always Wanted to Know About the BPA,” (Bonneville Power Administration: Portland OR, 1971).

<sup>194</sup> Ibid.

<sup>195</sup> For more about the WPPSS and the nuclear power proposal for the Pacific Northwest, see Daniel Pope’s “Antinuclear Activism in the Pacific Northwest: WPPSS and Its Enemies” in *The Atomic West*, edited by Bruce Hevly and John M. Findlay (University of Washington Press, 1998), 236-254.

The across-the-board growth of the region's natural resource economies would ultimately have unintended consequences, and by the mid 1960s, salmon would emerge as possibly the first natural casualty of an otherwise heralded era of regional and industrial prosperity.<sup>196</sup> There is no greater symbol of the Pacific Northwest than the Pacific salmon, but the seasonal salmon runs into regional waterways were paying the price for the regions postwar industrial expansion. The ongoing construction of hydroelectric dams since the late 1930s had obstructed the major migratory waterways, and, in some cases, completely prevented salmon from entering them. The development of an extensive irrigation system in the Columbia Basin had hydrated vast landscapes for agricultural expansion, yet it would displace migratory salmon into unfamiliar areas. The clear-cutting of forests would make the Pacific Northwest the primary timber producer in the country, but it had flooded waterways with debris and destroyed habitats. At near the Hanford Nuclear Facility, leaking contaminants were being discovered in the Columbia River. Each industry contributed its own unique forms of devastation to the fish runs and had pushed many salmon runs to near extinction by the early 1970s. In 1947, roughly 2.1 million salmon and steelhead returned to the Columbia River from the ocean, but by 1960, it declined to around 1.1 million. Throughout the 1960s, the number of returning fish would average around 1.5 million. The commercial take of Columbia River salmon and steelhead would decline as well. In 1946, 22 million pounds of fish were commercially harvested, and by 1960, only 5 million pounds would be harvested. This number would average between 5-10 million throughout the 1960s. By contrast, 50 million pounds had been harvested in 1910. As a result of declining seasonal returns, the States of Oregon and Washington responded to the salmon crisis by limiting fishing access to the Columbia River. In 1945, the Columbia River was open for commercial salmon and steelhead fishing for over 220 days, by 1970, access was limited to around 80 days.

And salmon returns were not the only statistics declining by the 1960s. Several economic surveys of reservation communities in the American West suggested Native peoples were certainly not benefiting from the region's heralded economic transformation in the postwar years.<sup>197</sup> Since the end of World War II, unemployment rates on reservations had risen, and the average annual family income was only around 1/5 of the national average. During this era many Native families of the Pacific Northwest had returned to fishing, not just for commercial harvesting, but also for subsistence purposes. For many families, fishing once again became a necessity. As the 1960s progressed, Native peoples would be faced with even further restrictions on their rights to fish. The fishing wars and debate over treaty rights emerged from this context: the continued disenfranchisement of Native peoples, declining natural resources, and a still growing, yet threatened regional economy.

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<sup>196</sup> For historical and environmental analyses of the Pacific Northwest salmon crisis, see Michael C. Blumm's *Sacrificing the Salmon: a Legal and Policy History of the Decline of Columbia Basin Salmon* (BookWorld Publications, 2002), Jim Lichatowich's *Salmon Without Rivers: A History of the Pacific Salmon Crisis* (Island Press, 1999), David Montgomery's *King of Fish: the Thousand-Year Salmon Run* (Westview Press, 2003), and Joseph Taylor's *Making Salmon: an Environmental History of the Northwest Fisheries Crisis* (University of Washington Press, 1999).

<sup>197</sup> Harmon, *Indians in the Making*, 221.

## *The Treaties of 1855 and the Origins of Conflict*

By the 1960s, the treaties of 1855 had become a passport to daily life for tribal fisherman in the Pacific Northwest. More than 100 years after they were originally negotiated and crafted, the treaties remained the most powerful legal document for the tribes in the region. In addition, the year of 1855 had emerged as one of the most critical years in the history of the Pacific Northwest. In 1855, multiple treaties between tribes of the Pacific Northwest and encroaching American settlers established the bedrock of tribal fishing rights in the region.<sup>198</sup> From December 1854 to January 1856, the Governor of Washington Territory, Isaac Stevens, had signed ten treaties with tribes in Oregon, Washington, Idaho, and western Montana. The original treaties, in chronological order, were: Treaty of Medicine Creek in Washington (December 26, 1854), Treaty of Point Elliot in western Washington (January 22, 1855), Treaty of Point No Point in western Washington (January 26, 1855), Treaty of Neah Bay in western Washington (January 31, 1855), Treaty with Walla Walla, Cayuse in eastern Oregon and Washington (June 9, 1855), Treaty with Yakama in central Washington (June 9, 1855), Treaty with Nez Perce's in eastern Oregon and Idaho (June 11, 1855), Treaty of Hell Gate in western Montana (July 16, 1855), Treaty with Blackfeet in western Montana, and Treaty of Olympia in western Washington (January 25, 1856).<sup>199</sup>

In just a 13-month span, Stevens had negotiated treaties that opened vast stretches of the Pacific Northwest to white settlement. In compensation for granting non-Indians access to tribal lands and resources, tribes reserved the right to keep their most important social, economic, and ceremonial activity, harvesting fish from regional waterways. The original treaties each contained a provision guaranteeing the right to fish at “usual and accustomed places” regardless of territorial boundaries, and this was the centerpiece of the treaty negotiations. Many note that without such a provision, the treaty negotiations would have failed.<sup>200</sup> Many of the treaties contained almost the exact same wordage regarding fishing rights, much like this excerpt from the “Treaty with the Nez Perce's:”

The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bonds of Indians, as also the right of taking fish at all usual and accustomed places, in common with Citizens of the Territory, and of erecting temporary buildings for curing them, together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.<sup>201</sup>

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<sup>198</sup> For critical examination of the contemporary importance of Pacific Northwest treaties, see *The Power of Promises: Rethinking Indian Treaties in the Pacific Northwest*, edited by Alexandra Harmon (University of Washington Press, 2008).

<sup>199</sup> Alexandra Harmon, “Introduction: Pacific Northwest Indian Treaties in National and International Perspective” in Harmon ed., *The Power of Promises*, 3-31.

<sup>200</sup> Columbia River Inter-Tribal Fish Commission. *Empty Promises, Empty Nets*. Wild Hare Media, 1994. Online video.

<sup>201</sup> “Treaty with the Nez Perce's, 1855.” Accessed August 31, 2013, [http://www.critfc.org/member\\_tribes\\_overview/nez-perce-tribe/treaty-with-the-nez-perces-1855](http://www.critfc.org/member_tribes_overview/nez-perce-tribe/treaty-with-the-nez-perces-1855).

Following the ratification of the treaties, they immediately posed a legal dilemma for the rapidly increasing non-Indian settlement of the region. The treaties were signed on the cusp of a major demographic shift in the Pacific Northwest. In 1855, Native peoples still constituted the demographic majority in the region, but in the years following 1855, a massive influx of non-Indians to the Pacific Northwest had swept across the region, and brought with it an emerging criticism of the 1855 treaties. Stevens had originally negotiated the treaties to gain access to former tribal lands for incoming settlers, but within a few years the land itself was not enough to satisfy newcomers, and settlers began to target the “special” rights of treaty tribes. The first major challenge to fishing rights came in 1887 with *United States v. Taylor*<sup>202</sup> that ultimately upheld treaty-fishing rights of the Yakama Indians in Washington Territory. The case was a dispute as whether treaty-fishing rights extended across private property. When Washington achieved statehood in 1889, it tried to eliminate net fishing altogether, which had been the most effective strategy of treaty fishermen. In 1905, in the case of *United States v. Winans*<sup>203</sup> in 1905, the United States defended the rights of treaty tribes by stating that the original treaty provisions allow for tribal members to cross non-Indian lands to access “usual and accustomed” sites, and reiterated the “reserved rights doctrine.” And again in 1919, in *Seufert Brothers v. United States*,<sup>204</sup> treaty-fishing rights were upheld against the interests of regional fish canneries, who had tried several times to limit tribal access to traditional fishing sites. Regardless of the legal challenges to the treaties, fishing rights of Native peoples had remained largely unscathed.

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<sup>202</sup> *United States v. Taylor*. 3 Washington Territory 88 (1887).

<sup>203</sup> *United States v. Winans*. 198 US 371, 25 S.Ct. 662. 1905.

<sup>204</sup> *Seufert Brothers v. United States*. 249 US 194 (1919).

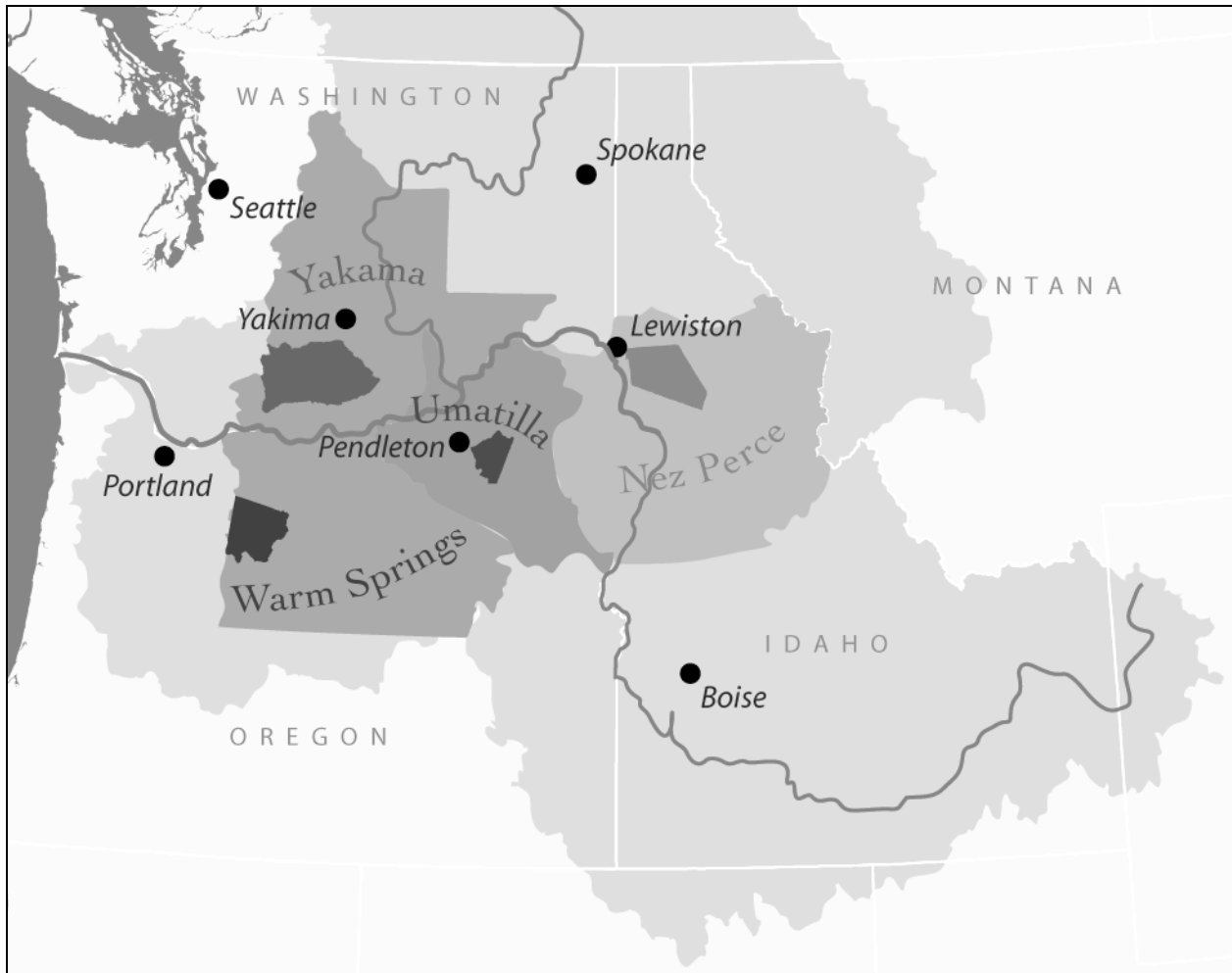


Figure 15: The Columbia River tribes with treaty rights established in 1855 (Columbia River Inter-Tribal Fish Commission. “Member Tribes Overview.” Accessed September 16, 2013. [http://www.critfc.org/member\\_tribes\\_overview/](http://www.critfc.org/member_tribes_overview/)).

For the Native peoples of the Pacific Northwest, treaty-based fishing rights had always been something to maintain and protect, and this became more important as the region underwent intensive development in the first half of the 20<sup>th</sup> century. As noted by Alexandra Harmon, “before the 1950s the fishing issue simmered without boiling over.”<sup>205</sup> But by the late 1940s, as numerous hydroelectric projects were being planned for the Columbia River, the issue of Native fishing rights began to circulate in the general public, and the dams themselves posed an obvious and well-acknowledged threat to the vitality of fisheries. The dams garnered much public support, and pro-dam supporters presented Native fishing rights as irrelevant roadblocks that shouldn’t interfere with regional development and growth. Many of those who opposed the validity of Native fishing rights argued that special rights for Native Americans were in conflict with their status as American citizens. In a series of *The Oregonian* editorials, citizens in favor of hydroelectric development voiced their opinion on the status of Native fishing rights. In a 1946 editorial, one citizen wrote that “If an Indian is to claim privilege or benefit under a treaty

<sup>205</sup> Harmon, *Indians in the Making*, 218.

enacted by an Indian nation he must show that he is a member of that nation and a not a citizen of the United States.”<sup>206</sup> Although the tribes of the Columbia River were legally granted citizenship as both US citizens and members of federally recognized tribes, it was believed that this dual identity makes tribal members more privileged than the “average citizen” in the region. Many also argued that being both a United States citizen *and* member of a federally recognized tribe was a fundamentally incompatible national identity, and gave them a “legal advantage.” Many of these criticisms emerged in 1942 in the case of *Tulee v. Washington*<sup>207</sup> that determined that since federal treaties legally supersede state laws, treaty fishermen are not required to purchase state fishing licenses or need to abide by state fishing regulations.

In addition to their legal status, many opposed treaty-fishing rights also chose to focus on the specific language from the treaties of 1855. In addition to the provision regarding “usual and accustomed places,” the treaties also contained a statement that tribal fishing rights should be “in common with all citizens of the territories.” Treaty fishermen understood that this statement referred to the amount of fish tribes were entitled to, rather than about access to them. However, those opposed to the treaties adopted this statement to mean that tribal members were restricted to the same laws regulations as non-Indians and that the treaties did not guarantee special rights for the treaty tribes.

By the early 1960s, as a result of the inundation of Celilo Falls by The Dalles Dam in 1957 and the construction of The John Day Dam in 1960, the central debate surrounding Native fishing rights had been the disputed interpretations of what “usual and accustomed” meant. These sites had been established by the treaties of 1855 for tribes of the Columbia River and Puget Sound, but the postwar development of the river systems had disrupted continuous access to these sites by treaty fishermen. Often these sites were located off reservation lands, yet still legally accessible as guaranteed by the treaties. The construction of The Dalles Dam had been the most recent, and more egregious, violation of the “usual and accustomed places” provision. Throughout the 1960s, the controversy over these sites would dominate regional affairs between the state and federal governments and tribes.

In addition to the “usual and accustomed places,” there was also a growing controversy surrounding access to “in-lieu” fishing sites on the Columbia River. In-lieu sites were designated in 1939, after the backflow of the Bonneville Dam had inundated numerous “usual and accustomed” fishing sites above dam. The sites were established by the BPA and the BIA in the early 1940s, and were located above Bonneville Dam. By the 1950s, the fish commissions in Oregon and Washington State were beginning to regulate access to these sites by tribal fishermen, and determining what regulations tribal members would need to follow to use them. Many Native families would take up residence on these sites, which, again, would emerge as a critical point of contention between Native peoples and state officials.

The state’s discrimination against treaty-tribe fishermen was evident in the organization of fishing sites and fisheries on the Columbia River. As a result of the significant decline of salmon runs caused by the construction of the Bonneville Dam, Congress passed the Mitchell Act in 1938. The Act allowed for the development of the first fish hatcheries on the Columbia River, and meant to help preserve and protect the commercial and tribal fish harvests. However, the original hatcheries from the Mitchell Act were all located below Bonneville Dam, away from the in-lieu fishing sites, and in the commercial fishing areas of the Columbia River. Again, in

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<sup>206</sup> “Indian treaty rights,” *The Oregonian*, September 14, 1946, 6.

<sup>207</sup> *Tulee v. Washington*, 315 US 681 (1942).

1957, as a result of the inundation of Celilo Falls by The Dalles Dam, salmon runs plummeted and the states were forced to reconsider the fishing access for all parties, Indian and non-Indian alike. The river was then divided into six distinct fishing “zones.” Zones 1 through 5 are located along the stretch of the Columbia from Bonneville Dam westward to the Pacific Ocean, while Zone 6 was a stretch from Bonneville Dam eastward into the Columbia Plateau. The non-Indian commercial fishery held rights to Zones 1 through 5, while Zone 6 was reserved for the Columbia River treaty tribe fishery. This meant that the non-Indian commercial fishery had rights to the earliest and unimpeded runs of migratory fish coming from the Pacific Ocean, while treaty tribes only had access to fish above Bonneville Dam, and those which had already made it beyond the non-Indian commercial fishery (See Figure 16). To compound the issue, from 1957 to 1967, joint action by Oregon and Washington officials closed Section 6 to commercial fishing altogether for “conservation purposes.” As a result, tribes were prohibited from taking fish for commercial purposes, only for subsistence and ceremonial usage. This prohibition greatly impacted the economic subsistence of many Native families. By 1960, of the 867,000 pounds of commercial spring Chinook harvested, only 1,200 pounds were by treaty tribes.<sup>208</sup> The treaty tribes’ inability to commercially harvest fish, while still granting non-Indian commercial fisheries to operate, would be challenged in 1968 with the *Puyallup v. Washington*.

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<sup>208</sup> Ulrich, *Empty Nets*, 117.

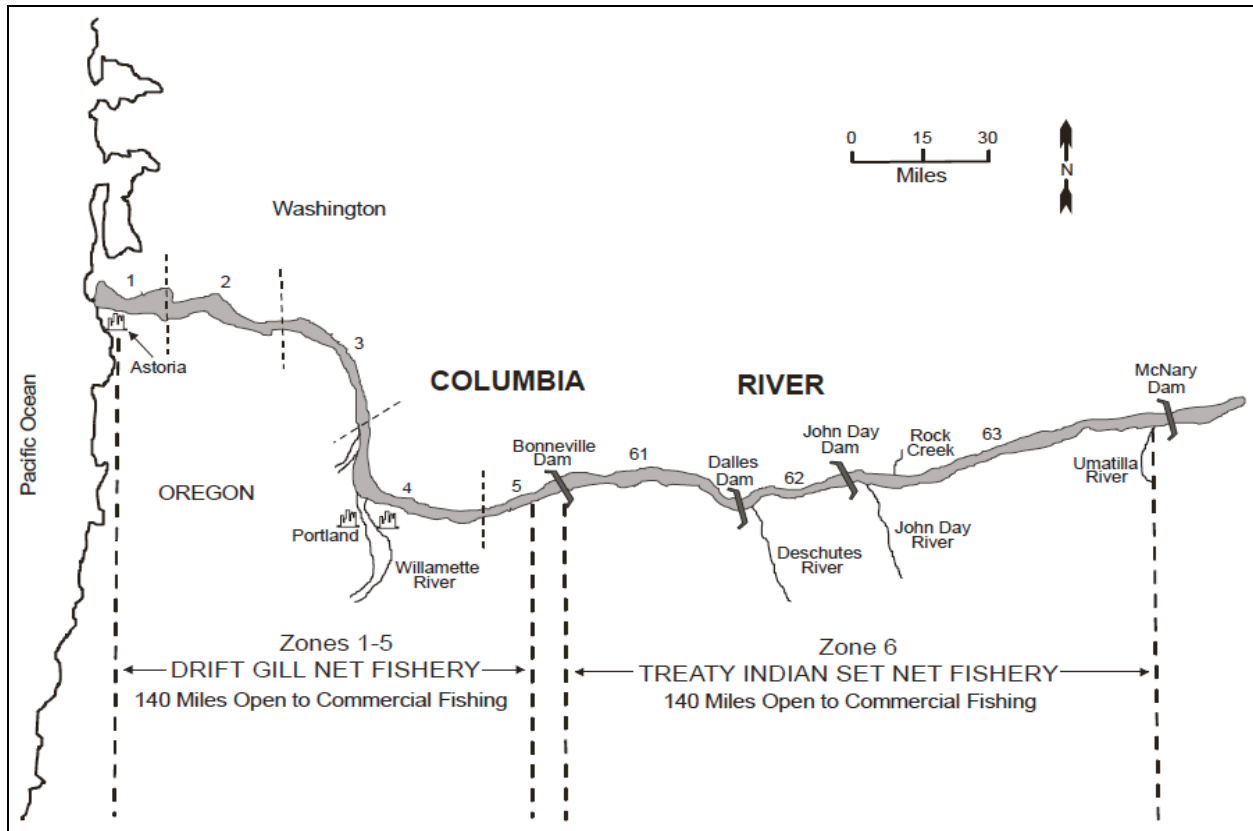


Figure 16: The organization of fishing zones on the Columbia River, as established in 1957. (Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife. “Status Report: Columbia River Fish Runs and Fisheries, 1938-2000.” Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife, August 2002).

In addition to the official policy of Termination, which had unilaterally relinquished the status of over 100 federally recognized tribes in the Pacific Northwest, the 1950s also produced several other assimilationist policies. In particular, Public Law 280, originally passed in 1953, complicated the administration of tribal affairs in the postwar Pacific Northwest by the 1960s. Unlike Termination, PL 280 kept the trust status of federally recognized tribes, but it transferred civil and criminal jurisdiction over reservation communities to the state, regardless of their preference for autonomy.<sup>209</sup> The statute was offered to all states, but only five states adopted it in 1953. Oregon adopted it 1953, Washington followed in 1957, and Idaho in 1963. PL 280 complicated the issue of treaty-fishing rights because it provided for state’s to assume they could develop policies without regard for treaty rights if needed, and regardless of existing federal treaties. However, the extent to which PL 280 allowed states to override treaty rights was unclear. The contested meanings of tribal status and treaty rights, the discriminatory organization of tribal fishing sites on the Columbia River, and the policies of Termination and PL 280 had all laid the groundwork for a confrontation between Native communities and regional agencies in the emerging “fishing wars.”

<sup>209</sup> Getches, Wilkinson, and Williams Jr., *Federal Indian Law: Cases and Materials*, 3<sup>rd</sup> Edition, 479.

## *Civil Rights and the Emergence of Native Activism*

The official organizer of the inaugural “fish-ins” of 1964 was the National Indian Youth Council (NIYC). Prior to the formation of the NIYC, Native activism had not resembled that of the emerging Civil Rights movement and strategies of civil disobedience.<sup>210</sup> The largest national intertribal organization, National Congress of American Indians (NCAI), did not seek association with the treaty-fishing rights controversy, and did not approve of the NIYC’s form of activism and civil disobedience. This ideology evident in the NCAI’s motto of “Indians Don’t Demonstrate.”<sup>211</sup> The NIYC shared many of the same ideals as the NCAI but disagreed on tactics. Many of the Native peoples involved in NIYC were young students who shared alliances with other activist student groups, most notably, the Student Nonviolent Coordinating Committee (SNCC). NIYC decided to head to the Pacific Northwest to support the treaty fishermen, and shine a national light upon the fishing rights controversy.

Despite their alliances with other activist organizations, the NIYC did not seek association with the nationally recognized Civil Rights Movement. At the core of their division was a difference of identity and goals. In the eyes of Native activists, Native Americans held a unique *legal* relationship with the federal government, and sought to *uphold* existing treaties. In contrast, for Civil Rights activists, African Americans and other racial minorities held a problematic *racial* relationship with the American legal system, and sought to *challenge* discriminatory laws and policies. As an NIYC spokesperson remarked in 1964, “The Negroes don’t have the law on their side yet and they have a lot of popular prejudice against them, while the Indians’ problem is the federal bureaucracy; we almost have the law on our side in the form of treaties, and all we ask the white man to do is to live up to those treaties.”<sup>212</sup> The NIYC’s decision to involve celebrities like actor Marlon Brando in 1964 and comedian Dick Gregory in 1966 also complicated the matter, since both had already established themselves as Civil Rights advocates. For many, there was a visual similarity between the Civil Rights movement and the media-covered violence of the fish-ins. As remarked by historian Andrew Fisher, the fish-ins “appeared to mirror the brutality of southern official defending Jim Crow.”<sup>213</sup>

The emerging Civil Rights Movement had a significant impact on the perceived social and cultural status of Native peoples. By the mid 1960s, Native claims to sovereignty, and special rights seemed obsolete or otherwise incongruent. The issue of minority rights was being dominated by the rhetoric of Civil Rights movement, and in Indian Country, the policies of Termination and Relocation were seeking to erode the cultural and political fabric of reservation communities. Native peoples exercising treaty rights were met with opposition in the 1960s, even among those who supported “minority rights.”

In the early 1960s, then Commissioner of Indian Affairs, Philleo Nash, used the Civil Rights Movement to advocate for an energized approach to Native American assimilationist policies. In a 1963 speech to Oregon state officials at the Portland City Club, Nash remarked that

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<sup>210</sup> For a complete history of the NIYC and its involvement in the fish-ins, see Bradley Shreve’s, “From Time Immemorial: the Fish-In Movement and the Rise of Intertribal Activism” (*Pacific Historical Review*, Vol. 78, No. 3 (August 2009), 403-434).

<sup>211</sup> Shreve, “From Time Immemorial,” 404.

<sup>212</sup> *Ibid*, 419.

<sup>213</sup> Fisher, *Shadow Tribe*, 214.

African Americans were succeeding in breaking down the wall of “cultural separatism,” but “Indians want to be thought of as Indian.”<sup>214</sup> He continued, “The problem is a cultural one, the Indian desires to maintain his cultural identity and cultural separatism, yet he wants to share fully in the country’s citizenship and economy.”<sup>215</sup> In his remarks, Nash sought to use the seemingly progressive and integrationist social agenda of the Civil Rights Movement to criticize anti-assimilationist attitudes of Native communities. Nash, however, acknowledged the validity of these attitudes and a vital difference between the struggles of Native Americans and other minority groups. He remarked that many Native peoples “feel that trusteeship was an agreement made at the time the lands were ceded and that relinquishment is a breach of the agreement.”

Despite the ideological reasoning about the uniqueness of Native peoples, and their effort to distance themselves from other forms of activist rhetoric, Native activists of the NIYC certainly borrowed significantly from it. From “sit-ins” to “fish-ins” and “Black Power” to “Red Power,” Native activists were able to channel much of the national activist momentum into the Native treaty rights discussion. Native activists were capable of making their own unique imprint, and it would put the issue of Pacific Northwest treaty-fishing rights in the national headlines. As remarked by Fay Cohen in *Treaties on Trial*:

During the 1960s, confrontations with the state would propel Indians onto television screens and into newspaper headlines. Just as the sit-ins in the South would increase and accelerate federal enforcement of black civil rights, so also the fish-ins would focus public attention on the Indians’ appeal for federal enforcement of their full treaty right in the face of almost a century of state restriction. Treaty-fishing rights would become an issue of major national concern.<sup>216</sup>

The social and political impact of the “fish-ins” has a profound influence on the understanding of modern Native activism. Chronologies of modern Native activism often begin in the late 1960s or early 1970s, placing emphasis on the founding of national organizations like the American Indian Movement (AIM) in 1968, and larger intertribal and collective protests like the Occupation of Alcatraz Island in 1969, the Trail of Broken Treaties in 1972, and the Siege at Wounded Knee in 1973.<sup>217</sup> However, the era of Native activism began much earlier in the Pacific Northwest and was fundamentally based on the protection of treaty rights and tribal natural resources.<sup>218</sup>

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<sup>214</sup> “Indian held differing from Negro in wishing to preserve own culture,” *The Oregonian*, July 27, 1963, 6.

<sup>215</sup> Ibid.

<sup>216</sup> Cohen, *Treaties on Trial*, 65.

<sup>217</sup> For a chronology of Native activism in the late 1960s and early 1970s, see Paul Chaat Smith and Robert Allen Warrior’s *Like a Hurricane: the American Indian Movement from Alcatraz to Wounded Knee* (The New Press, 1997).

<sup>218</sup> In addition to the fishing wars, Native activists, in solidarity with the activists at Wounded Knee, had taken over the Bonneville Power Administration Office in Portland in August 1975. They accused the federal government of the “exploitation and murder of Indian people.”

## *Treaty Rights versus Conservation*

In the early 1960s, the dispute over Native fishing rights and “usual and accustomed places” had moved beyond the “fish-ins” and was declared an outright “salmon war” and “fishing war” by the regional media. The “fish-ins” throughout the Pacific Northwest had become more militant, with both state game officials and tribal members carrying weapons in preparation for a confrontation. These confrontations have been well documented in previous scholarship on the period, but the banks of Pacific Northwest rivers were not the only place the “fishing wars” were being waged. The “fishing wars” would largely be decided in local, state, and federal courts throughout the 1960s and early 1970s, as the treaties of 1855 would become perhaps the most debated and contested pieces of law in the region. From the banks of the Puyallup and Columbia Rivers, to courtrooms in Tacoma, Washington, Salem, Oregon, and Washington DC, the contemporary relevance of treaty-fishing rights was debated by a variety of stakeholders.

The fishing wars of the Pacific Northwest had two central geographical battlefields: Puget Sound and the Columbia River. Tribes in both areas had treaty-fishing rights established in 1855, and by the 1950s, these treaty rights were facing increasing threats at state agencies and commercial fishing interests attempted to limit tribal access to receding fish runs. Despite many similar central issues between these two sites, the geographical separation between Puget Sound and the Columbia River made each “fishing war” fundamentally unique. The key difference between them had become an issue of jurisdiction, and the provisions of PL 280. The tribes of Puget Sound were confronting the State of Washington, which had been one of the original states to adopt the jurisdictional authority over tribes as outlined by PL 280. The tribes of the Columbia River covered a region in both Washington and Oregon States. In the mid-1950s, both states had been determining its legal powers to regulate treaty-based fishing rights.

Puget Sound was the home of the first days of the fishing wars.<sup>219</sup> The first arrest occurred on the Puyallup River in 1954, as state officials were attempting to increase control over, and regulate access to, fish runs. Robert Satiacum, a Puyallup and Yakama fisherman, was arrested for possession of a steelhead during a closed fishing season. As early as *Washington State v. Satiacum*<sup>220</sup> in 1957, courts in the Pacific Northwest became the central battleground over the treaty-based fishing rights for tribes, and began an era of legal confusion and ambiguity that would last nearly 20 years. In *Washington State v. Satiacum*, an early legal precedent was established that the treaties from 1855 guaranteed the right to fish at “usual and accustomed” sites, but how the state would observe this provision was unclear, and the arrests of tribal fisherman was commonplace. There had been numerous suggestions on how to deal with the legal confusion of the “usual and accustomed places.” By 1963, it was even being considered to amend treaty rights at the federal level, or to simply purchase treaty rights outright, which would

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<sup>219</sup> For a comprehensive history of the fishing wars in Puget Sound, see American Friends Service Committee’s *Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians* (University of Washington Press, 1970) and Charles Wilkinson’s *Message’s from Frank’s Landing: a Story of Salmon, Treaties, and the Indian Way* (University of Washington Press, 2000).

<sup>220</sup> *Washington State v. Satiacum*, 314 P. 2d—Washington: Supreme Court (1957).

cost several hundred million dollars.<sup>221</sup> At the time, the State of Washington was trying to establish its own legal authority over treaty tribes, regardless of the federal treaties. It maintained that, despite treaty-based fishing-rights, the state held the power to regulate natural resource management regardless of federal treaties. Many Washington politicians believed that treaty-fishing-rights gave tribal members an unequal share of the fish runs, and therefore made them more “privileged citizens,” as compared to a non-Indian commercial or sport fishermen. In 1964, the Washington Fish Commission made a statement about its objection to upholding treaty rights:

The State has to operate on a system of equality of all its citizens...the State of Washington is unalterably opposed to Federal regulation of off-reservation sites...In order to have an intelligent management program, it should be unified.<sup>222</sup>

But by the mid-1960s, the State of Washington had changed the legal rhetoric surrounding the issue of treaty-fishing rights, as it had now become a debate about natural resource “conservation.” The debate over Native fishing rights and “usual and accustomed places” had evolved into a question of “what is necessary for conservation,”<sup>223</sup> and whether granting further access for tribal members would ultimately injure the annual salmon harvest. Despite claims that the state agencies were discriminating against tribal members, they held that a general concern about natural resource management and sustainability, and the regional industries that depend on them, was at the core of their objections. They refuted the claim that they were discriminately targeting tribal members. Once again, the interests of Native communities were presented as in conflict with a general consensus of “the greater good” for the region. However, despite state agencies’ insistence that the annual tribal harvest of fish was negatively impacting annual runs, the claim did not match the actual percentages of annual fish allocation. Central to the State of Washington’s argument was that “conservation” supersedes treaty rights, and that the tribes’ annual harvest, if not limited, would impact conservation and sustainability efforts. From 1958 to 1967, only 6.5 percent of the annual salmon harvest was by tribal fisherman, while 93.5 percent of the harvest went to non-Indian sport and commercial fisherman (See Figure 17).<sup>224</sup>

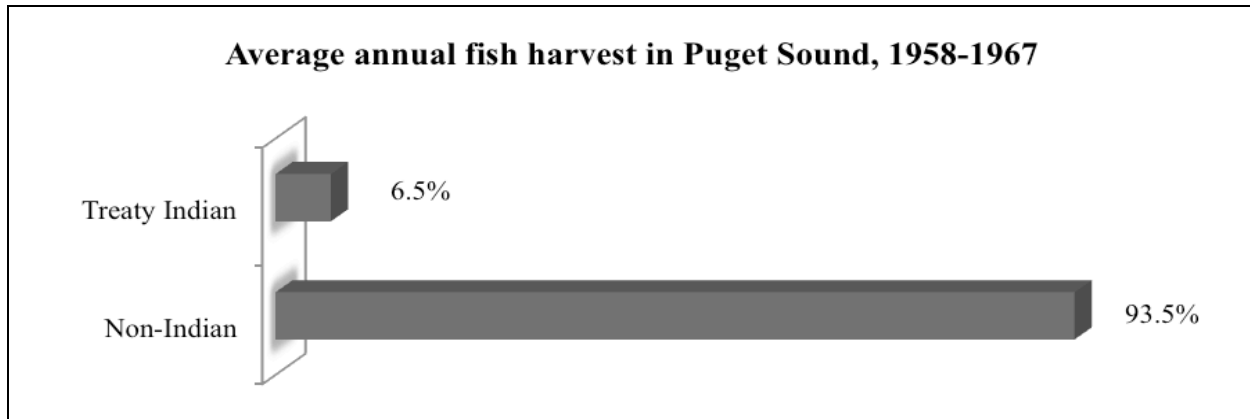
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<sup>221</sup> “3 solutions suggested on Indian fishing rights,” *The Oregonian*, April 25, 1962, 5.

<sup>222</sup> American Friends Service Committee, *Uncommon Controversy*, 122-130.

<sup>223</sup> “Root of 'salmon war' found in Indian treaty,” *The Oregonian*, May 08, 1966, 4.

<sup>224</sup> The 93.5 percent accounts for 12.2 percent sport fisherman, and 81.3 percent commercial fisherman.



17: Average annual fish harvest in Puget Sound by both non-Indians (includes commercial and sport fishers) and treaty Indians, by percentage from 1958-1967. (Data source: American Friends Service Committee. *Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians*. University of Washington Press, 1970, 127).

On the Columbia River, the story was very similar. Many tribal fishermen had taken up residence at in-lieu fishing sites on the Columbia River, in opposition to the requests of Oregon officials. In 1965, Richard Sohappy, his family, and other Yakama tribal members<sup>225</sup> took residence at Cook's Landing, an original in-lieu site on the Columbia River above Bonneville Dam. By the spring and summer of 1966, over thirty-two arrests were made at Cook's Landing by state officials for fishing and harvesting violations. Many of those arrested would use the treaties of 1855, and their treaty based rights to fish at the in-lieu sites, to have the charges dismissed, and the vast majority were successful in their claims. Yakima tribal member, Margaret Cloud, was arrested in January 1967, and was later released after a local judge, interpreting the original treaty, noted that Cloud's processing of fish taken on the Columbia River at an in-lieu site was "reasonable and necessary" according to the treaty.<sup>226</sup> The series of arrests and the subsequent hearings was further compounding the legal confusion over the treaties.

And much like in Puget Sound, state agencies in Oregon were claiming that the annual fish harvest by tribes of the Columbia River would further threaten the vitality of already declining salmon runs. To strengthen its position to further regulate treaty rights, they In addition claimed that allowing tribes to claim unregulated amounts of salmon would potentially injure the commercial fishing economy on the Columbia River. The annual tribal fish harvest on the Columbia River from 1958 to 1967 was almost identical to Puget Sound over the same period.. Non-Indian commercial and sport fishermen accounted for around 93.5 percent of the total fish harvest on the Columbia River while treaty tribes claimed only 6.5 percent (See Figure 18).

<sup>225</sup> The Sohappy family is a prominent figure in the Pacific Northwest fishing rights controversy. Richard was the primary plaintiff in *Sohappy v. Smith* (discussed later in this chapter) and his son, David, was the centerpiece of the "salmon scam" dispute of the early 1980s (will be discussed in Chapter 4).

<sup>226</sup> "Court upholds Indian treaty in fish case. Woman freed by circuit judge; 1855 agreement cited in ruling," *The Oregonian*, January 14, 1967, 1.

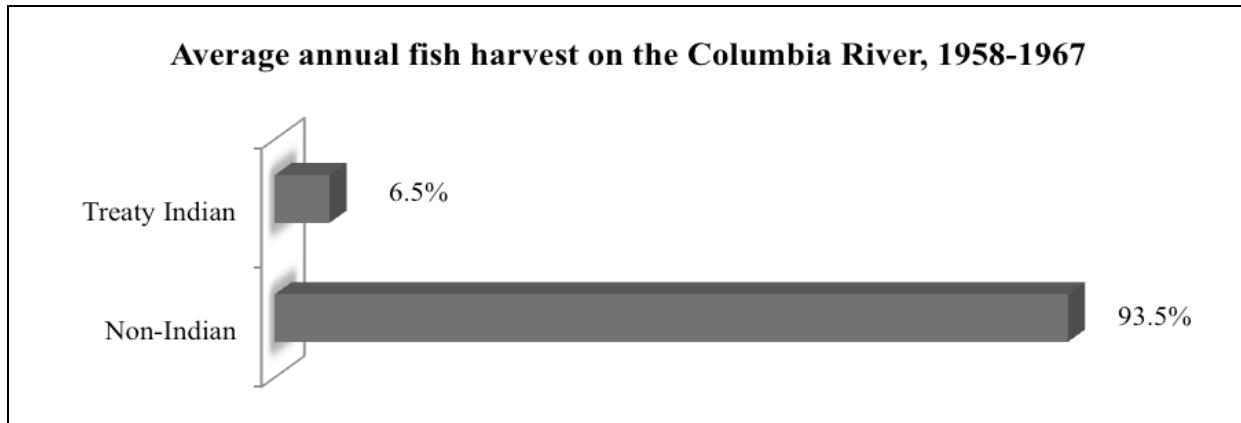


Figure 18: Average annual fish harvest on the Columbia River by both non-Indians (included commercial and sport fishers) and treaty Indians, by percentage from 1958-1967. (Data source: Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife. “Status Report: Columbia River Fish Runs and Fisheries, 1938-2000.” Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife, August 2002, 25).

In early 1967, the tension was mounting between tribal fisherman and the Oregon and Washington State agencies. The agencies were reluctant to establish commercial fishing season dates until they had a chance to study the long-term outlook of the annual fish harvests. Many tribes disregarded this policy and began to establish their own fishing season dates in Puget Sound and on the Columbia River. The Oregon Fish Commission responded, “Apparently they did not pay attention to our request.”<sup>227</sup> To an extent, fishing regulations were being established at three different levels: the state, the tribe, and the individual treaty fisherman. The state would define its own season; the tribe would follow with its own, and many tribal members disregarded both and fished on their own schedule. There was no established legal precedent state how fish runs should be managed while addressing both issues of treaty rights *and* conservation. As confrontations escalated, and the legal confusion over the treaties of 1855 became compounded, county courts were officially announcing that they would not accept any further fishing rights cases until the US Supreme Court would intervene, and establish a precedent for all other lower courts to follow. Later that year, the United States Supreme Court agreed to help resolved the issue.

### *Fishing Wars and the Emergence of Native Sovereignty*

As the fishing wars escalated in the Pacific Northwest, the BIA had remained relatively silent about its position on tribal fishing-rights. It remained absent in almost every protest or court decision or negotiation between state officials and tribes. As the administrator of reservation lands and resources, local, state, and federal officials were looking to the BIA for guidance in how treaty rights should be interpreted and implemented, but they provided little direction or support in resolving the disputes. Much like the state courts, the BIA struggled to defend both the legality of the treaties, and how rights should be practically implemented on off-

<sup>227</sup> “Indian salmon season ignores state request,” *The Oregonian*, March 01, 1967, 21.

reservation sites. Records on the treaty rights disputes from this period are notably absent from the BIA Portland area office files, the office responsible for overseeing tribal relations in the 1960s. In addition, the Portland area office only employed one fisheries specialist to oversee tribal fisheries issues in Oregon, Washington, and Idaho. The Portland area office of the BIA appeared uninterested in the regions critical natural resource and the treaty rights debate.

Much of the BIAs indifference to the treaty rights debate can be attributed to its own ideological confusion during in the early 1960s. Amidst the increasing criticism and critique of the Termination-era policies, the BIA was struggling with its own political identity, while at the same time being asked to intervene in a critical discussion about the legality of treaty rights. Both a defense *or* dismissal of treaty rights would be a critical policy stance, and the BIA was not willing to make a commitment. It was not until the 1968 ruling in *Washington Department of Game v. Puyallup*<sup>228</sup> that the BIA would emerge on the *defense* of treaty rights. The *Puyallup* decision determined that the state officials have the right to regulate fishing rights, regardless of treaty, for the “interest of conservation.” In the wake of the *Puyallup* decision, BIA Commissioner Robert Bennett stated, “If an Indian is fishing in his usual and accustomed place under tribal rules and regulations and he is arrested by the state, the Department of Justice will defend that Indian person.”<sup>229</sup> In contrast the to the Termination-era policies only a decade earlier, the fishing wars illustrate a change in the policy stance of the BIA, one that strengthened tribal rights and upheld the treaty rights. The fishing wars provide a gateway from which to witness the birth of a new era in federal Indian law and policy: self-determination.

In April 1969, the Oregon Supreme Court also ruled in favor of treaty-fishing rights in *Sohappy v. Smith*,<sup>230</sup> named after Yakama tribal fisherman Richard Sohappy, who had sued the state in 1968 over a wrongful fishing rights arrest. Sohappy, along with other tribal fishermen, was disputing the State’s regulatory control over tribal members. The case was combined with *United States v. Oregon* (1969),<sup>231</sup> when the United States joined Sohappy as plaintiffs. The decision required that commercial fishing laws be rewritten to allocate the annual harvest by treaty tribes. In justifying his decision, US District Judge Robert C. Belloni remarked that the state’s interpretation of the treaty “seems to be affected much more by the superior political power of sport and commercial fisherman over a handful of Indians, rather than on reason and fairness.”<sup>232</sup> Belloni acknowledged publicly that anti-Indian and pro-commercial and sport fishing lobby was impacting an honest interpretation of the treaty. Belloni continued: “the regulating must be done according to the Supreme Law of the land which in this case is the Treaty of 1855...no one, Indian or non-Indian, has a right to violate this law.”<sup>233</sup> Belloni defended the original treaty agreement as one between two sovereign nations.

However, there was a critical logistical flaw in the decision. Belloni did not provide a specific allocation amount, only that there *should* be an allocation for treaty tribes. He argued that the state could not use “conservation” to undermine treaty rights and that the amount of fish reserved for treaty tribes should be “fair and equitable.” However, it remained unclear as to what

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<sup>228</sup> *Puyallup Tribe v. Department of Game of Washington*, 391 US 392 (1968).

<sup>229</sup> American Friends Service Committee, *Uncommon Controversy*, 141.

<sup>230</sup> *Sohappy v. Smith* 302 F.Supp. 899 (1969).

<sup>231</sup> *United States v. Washington* 382 F.Supp. 312 (1974).

<sup>232</sup> “Judge rules in favor of 1855 Indian fishing treaty,” *The Oregonian*, April 25, 1969,

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<sup>233</sup> *Ibid.*

“fair and equitable” meant in terms of numbers. While the Belloni decision had made an official legal stance on treaty-fishing rights in Oregon, it had not offered specifics for the state or the tribes to implement.

This Belloni decision temporarily alleviated tensions between Oregon state officials and the Columbia River tribes. Representatives of the Warm Springs, Yakima, Umatilla and Nez Perce, agreed to suspend fishing at “usual and accustomed” sites until the fish commission had adequate time to study the sustainability of the salmon runs. The tribes were encouraged by the potential of Belloni’s decision, as the State of Oregon had established a stance on the issue of treaty-fishing rights. Washington officials were not ready to concede the treaty rights of Native communities. The optimism following the Belloni decision was short-lived, and as the state agencies and the treaty tribes waited for Judge Belloni’s decision to become official, conflicts continued. By early 1969, as Oregon and Washington put a halt on the commercial fishing seasons, the arrests of tribal fisherman continued. Despite Belloni’s decision, the legal confusion was not resolved; rather, the decision may have further exacerbated the legal confusion. As stated in an article from *The Oregonian* in May of 1969, “each court decision seems to make the problem more complex.”<sup>234</sup> Since Belloni had not specified a clear allocation of the fish runs, many did not follow the provisions of the decision, and considered it too vague to implement. In the first years of the 1970s, non-Indian commercial and sports fishermen accounted for more than 85 percent of the fish harvest the Columbia River; 10 percent would be released for spawning purposes, and the treaty tribes would only acquire 3 percent of the return.<sup>235</sup> The Belloni Decision had not changed the discriminatory allocation of fish on the Columbia River. But nationally, the status Native communities were beginning to change.

The presidency of President Richard Nixon, beginning in 1968, would bring an unlikely change to federal Indian law and policy, and Nixon himself would leave his own imprint on federal Indian policy. Despite his larger focus on domestic and international issues, Nixon faced increasing pressure to provide direction to the BIA. His intervention in federal Indian law and policy had more to do with a national effort to resolve lingering domestic issues, in particular rural and urban poverty, rather than the emergence Native activism. His administration had recognized that, in terms of social welfare, Native communities were among the most desperate. In comparison to all other minority groups in the United States, reservation communities were the most disadvantaged with regard to health, employment, and education. In addition, when he was elected, there was almost unanimous agreement in Washington DC that the Termination-era policies had been an ill-conceived failure. In July 1970, Nixon officially announced the change in policy with “Special Message on Indian Affairs.” In the statement, he called for a policy of “self-determination without termination,” and it read:

It is long past time that the Indian policies of the federal government began to recognize and build upon the capacities and insights of the Indian people. Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with

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<sup>234</sup> “Indian rights unclear,” *The Oregonian*, May 02, 1969, 30.

<sup>235</sup> Ulrich, *Empty Nets*, 133.

the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian resources.<sup>236</sup>

This national policy shift would coincide with a critical legal victory for tribes in the Pacific Northwest. The pressure between tribes and state agencies in Washington had culminated in the 1974 case of *United States v. State of Washington*. Judge George Hugo Boldt would preside over the case that would decide whether the treaty-based fishing rights of Native peoples held relevance in managing and allocating state fish runs. Well-organized and powerful commercial fishing groups had heavily politicized the case in the local, and hoped the case would finally override the claims of Native communities and their rights to fish. In the *United States v. State of Washington*<sup>237</sup> decision of March 22, 1974, or the “Boldt Decision,” Judge Boldt stated:

It is the responsibility of all citizens to see that the terms of the Stevens’ treaties are carried out, so far as possible, in accordance with the meaning they were understood to have by the tribal representatives at the councils, and in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people... The taking of anadromous fish from usual and accustomed places, the right to which was secured to the Treaty Tribes in the Stevens’ treaties, constituted both the means of economic livelihood and the foundation of native culture... Settlement of the West and the rise of industrial America have significantly circumscribed the opportunities of members of the Treaty Tribes to fish for subsistence and commerce and to maintain tribal traditions. But the mere passage of time has not eroded, and cannot erode, the rights guaranteed by solemn treaties that both sides pledged on their own honor to uphold... The treaty was not a grant of rights to the treating Indians, but a grant of rights from them, and a reservation of those not granted.<sup>238</sup>

In one definitive decision, Boldt had established that the state could not apply its fishing regulations to members of federally recognized tribes covered by federal treaties. He had made his decision largely on the precedents established in the *Sohappy* decision, and established specific provisions that the Belloni Decision had not. Boldt had declared that both non-Indians and treaty tribes are entitled to 50 percent of the harvestable fish runs. Later in the year, Judge Belloni revised his original decision, and the 50/50 principle applicable to the entire Columbia River fishery. The Boldt Decision suddenly emerged as a landmark decision in contemporary federal Indian policy because it upheld the validity, in a modern court, of mid-19<sup>th</sup> century treaties, interpreted in ways that gave the benefit of the doubt about treaty language to the “weaker party.” Even more striking, it did so in the midst of threatened natural resources and regional economies, and against tremendous political pressure. State fish officials unanimously opposed the decision, and immediately began discussing an appeal. Their opposition to Judge Boldt’s decision was mostly because he was using “1850s logic to solve 1960s fisheries

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<sup>236</sup> Colin G. Calloway, *First Peoples: a Documentary Survey of American Indian History: Second Edition* (MacMillan, 2008), 465.

<sup>237</sup> *United States v. Washington* 382 F.Supp. 312 (1974).

<sup>238</sup> *Ibid.*

management problems.”<sup>239</sup> Further, they argued that the treaties of 1855 were crafted during a vastly different demographic and environmental makeup of the region, and, therefore, it should not be used to determine contemporary policies and problems.

Carl Crouse, the Director of the Washington Game Department in 1974, framed the possible implications of the Boldt Decision in a much larger way. He believed that the decision gave tribal members the “potential of decimating” regional fisheries, and could even be extended to cover hunting, logging, and agricultural policy. Additionally, Crouse argued that the decision was an assault on the rights of states.<sup>240</sup> There was also a legitimate concern by the fish commissions of the foreign harvesting of Pacific Northwest fish. By the late 1960s, Russian, Canadian, Korean, and Japanese trawlers were getting closer to the mainland United States, and returning fish numbers were subsequently declining. International law requires that foreign ships obey a 12-mile offshore zone, but this limit still gives foreign ships access to fish from the Pacific Northwest. Many were favoring an increase of the offshore zone to limit foreign impact on the fishery. Fish commissioners attached foreign impact to the Native fishing rights discussion to compound the threat to the Pacific Northwest fishery.

Herbert Lundy covered the Native fishing rights controversy and the Boldt Decision fallout as a columnist for *The Oregonian*. In response to non-Indian sport fisherman who strung up an effigy of Judge Boldt in front of his Tacoma, Washington, courtroom, he remarked in an editorial that, “the effigy more properly might have been that of Isaac I. Stevens.”<sup>241</sup> In his summary of the case, Lundy writes:

The whole controversy may wind up in Congress, which has the exclusive right to abrogate or change treaties. But Indian fishing disputes have been there before and the Indians have come out on top every time. They couldn't stand off the white man's troops and armed settlers. But they do all right in the white man's courts.<sup>242</sup>

In the aftermath of the Boldt Decision, and while it underwent an extensive appeals process, the decision had provoked an unspoken truce between state agencies and the treaty tribes. State officials were no longer arresting tribal fisherman on the Columbia River or in Puget Sound, and tribes were observing, with only few exceptions, the fish seasons established by the states. The Boldt Decision had also awoken the issue of federal recognition. While his decision officially pertained only to treaty tribes, thirteen Native communities in Oregon and Washington had asked for inclusion as descendants of the original treaty parties. One the thirteen petitioning tribes, eight were recognized by the BIA and were included in the fish allocation. However, the other five tribes were “unrecognized” and therefore were left out.<sup>243</sup>

The BIA, to strengthen its stance on tribal self-determination, openly supported the Belloni and Boldt Decisions. In a speech to the Portland City Club in 1975, then BIA Commissioner Morris Thompson articulated his support of the decisions:

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<sup>239</sup> “Court decision on Indian wishing rights, foreign invasion embitter conservationists,” *The Oregonian*, March 13, 1974, 31.

<sup>240</sup> “Judge's decision on Indian fishing rights disturbs agencies,” *The Oregonian*. March 26, 1974, III:3.

<sup>241</sup> “Indians gave up land, but keep their fish,” *The Oregonian*, April 05, 1974, 32.

<sup>242</sup> Ibid.

<sup>243</sup> Harmon, *Indians in the Making*, 241.

Because the Belloni and Boldt decisions are the law of the land and must be implemented, I think it is very important that all people affected by them understand the unique relationship Indian tribes have with the federal government and the reasons for that relationship... When Indian tribes signed treaties with the United States, in most cases they relinquished title to lands wanted by the federal government and which Indians formerly occupied. But it was not a question of the tribes 'getting' something from the federal government. They 'gave up' something, and what they did not specifically give up, they reserved. And they reserved their right, and that is an important word, to fish in their usual and accustomed places, both on and off reservations... An Indian does not have a right to fish because of any racial differences. He has a right to fish because his tribe has a valid treaty with the United States giving him that right.<sup>244</sup>

By early 1976, *United States vs. State of Washington* had reached the Ninth US Court of Appeals, but the court would not satisfy the hopes of the non-Indian commercial and sport fisherman. The Court of Appeals upheld the Boldt Decision, and decided that the allocation of resources established by the decisions contained nothing "inequitable or impracticable."<sup>245</sup> After the decision was upheld, non-Indian fishermen tried to get the Boldt Decision reviewed several more times, however, each case got rejected by the court. In late 1976, in response to these attempts, the Court commented that these challenges were "like that strutting and fretting carried on before it finally sinks in on people that Boldt is the law of the land."<sup>246</sup> Alvin J. Ziontz, the Senior Attorney representing the tribes in *United States v. Washington* reflected on the significance of the Boldt decision in his 2009 memoir, *A Lawyer in Indian Country*.<sup>247</sup> In the memoir, Ziontz remarks, "the decision enabled the Indian people of the Pacific Northwest to return to fishing as a way of life."<sup>248</sup>

### *Finalizing Klamath Termination*

Throughout the 1960s, the fallout from the Klamath termination was being felt. In 1961, the tribal members who had voted in-favor of termination, nearly 75 percent of the over 2000 total members, had received their final monetary settlements in the amount of \$43,000 each. An appraisal of Klamath timberlands estimated the total value at \$90 million. Once the federal government officially purchased the timberlands, it was renamed the Winema National Forest. At the same time Klamath termination was finalized in late 1961, the BIA acknowledged, in an official review of the Klamath Termination Act, "the original law was enacted on the basis of inadequate information concerning the attitudes and opinions of the Klamath Indian people and

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<sup>244</sup> "Indian fishing rights negotiated, upheld as sovereign nation-to-nation treaties," *The Oregonian*, November 16, 1975, Forum H3.

<sup>245</sup> "Court upholds as equitable '74 Indian fishing decision," *The Oregonian*, February 04, 1976, B17.

<sup>246</sup> "Indian fishing rights pass court test," *The Oregonian*, November 02, 1976, A1.

<sup>247</sup> Alvin J. Ziontz's *A Lawyer in Indian Country: A Memoir* (University of Washington Press, 2009), 129.

<sup>248</sup> *Ibid.*

concerning the many social and economic ramifications that could result from the termination proceedings.”<sup>249</sup>

This statement of followed by an extensive 1965 report by the Portland area office that surveyed the social, political, and economic status of Klamath people since termination finalized.<sup>250</sup> At nearly every level, the report concluded, the Klamath people were struggling compared to non-Indians in the same community. Termination, once viewed as a solution to impoverishment in Indian Country, had exacerbated it. The Klamath was now dealing with greater health, economic, educational, and legal disadvantages. Most striking was that, in 1965, 55 percent of the child foster care cases handled by Klamath County were Klamath Indian children.<sup>251</sup> Among the only improvements, it was noted, was in criminal activity of Klamath tribal members. The report stated: “Younger people among the Klamath are apparently assimilating themselves into the non-Indian community and its way of life and are not causing the trouble their forefathers did.”<sup>252</sup>

And the experience was not so different for the 473 Klamath tribal members who originally opposed termination in the early 1950s. Their shares had been placed in a trust at the United States National Bank in Portland, Oregon. These members retained rights to nearly 144,000 acres of the original Klamath reservation. The remaining timberlands were appraised at \$23 million in the late 1950s. By the late 1960s, the federal government was attempting to convince the original Klamath shareholding tribal members to relinquish the remaining timberlands.<sup>253</sup> For the BIA, Oregon policymakers, and the non-Indian residents of the Klamath Basin, it was believed that Klamath Termination had settled, once and for all, any disputes regarding Native rights to land and resources in the region. However, by the late 1960s, another “Indian war”<sup>254</sup> was underway in the Klamath Basin.

In 1959, the remaining Klamath shareholders to agreed to vote every five years on the status of the trust, whether to retain the trust or liquidate the remaining portions of the Klamath reservation. In 1964, they had voted to retain the trust. In the following years, the Klamath were growing disillusioned with how the trust was being handled, citing reasons of mismanagement

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<sup>249</sup> Critique of Klamath Indian Termination Act by Bureau of Indian Affairs, January 1962. Box 72, Folder 9. Critique of Klamath Termination Act, 1962. PAO 15: Desk Files of the Assistant Area Director for Resources Relating to the Termination of the Klamath Tribe, 1951-1961. BIA PAO, RG 75, NARA: Seattle.

<sup>250</sup> Report on Socio-Economic Status of Klamath Indians. Box 162, Folder 5. Klamath Survey Correspondence, 1965. PAO 18: Records Relating to the Socio-Economic Status of the Klamath Indians in 1965, 1960-1965. BIA PAO, RG 75, NARA: Seattle.

<sup>251</sup> Klamath Indian Welfare Report, September, 1965. Box 162, Folder 6. Klamath Survey – Education, Welfare, Health. PAO 18: Records Relating to the Socio-Economic Status of the Klamath Indians in 1965, 1960-1965. BIA PAO, RG 75, NARA: Seattle.

<sup>252</sup> Report of Law and Order. Box 162, Folder 3. Employment, Income, Law & Order. PAO 18: Records Relating to the Socio-Economic Status of the Klamath Indians in 1965, 1960-1965. BIA PAO, RG 75, NARA: Seattle.

<sup>253</sup> “Assets of Klamath Indian Trust prepared for sale, distribution,” *The Oregonian*, May 08, 1969, 24.

<sup>254</sup> Press coverage by local newspapers, specifically *The Oregonian* and *The Register Guard*, invoked the term “Indian war” to describe the dispute over a second Klamath settlement.

by the National Bank in Portland.<sup>255</sup> In May of 1969, at the next vote of Klamath tribal members, the remaining shareholders voted nearly unanimously to liquidate their shares held at the National Bank. However, there was a critical misinterpretation of the vote by the Klamath tribal members. Those who voted in favor of liquidating their shares held at the National Bank still wanted to retain right to the remaining 144,000 acres of Klamath land. The vote by the Klamath was meant to remove the National Bank as manager of the trust. Despite the intention of their vote, and in the eyes of the BIA, the vote had effectively relinquished the rights of the Klamath to the remaining land. The federal government began preparing payments for the remaining tribal members, and the 144,000 acres no longer belonged to the Klamath. Tribal member objected stating that the final sale of the land was never considered, nor did it appear on the ballot.<sup>256</sup>

By 1961, with all settlements having been distributed, terminated tribal members suddenly experienced a major influx of cash. In 1965, economists from the University of Oregon notified the BIA Portland area office of their interest in studying the fallout of Klamath termination. The BIA received a proposal for a research project titled “Liquidation of a Southern Oregon Indian Reservation: a Study of the Economic Impact of Windfall Payments.”<sup>257</sup> The economists wanted to track the spending habits of the Klamath tribal members who had received the one-time settlement payments as a result of termination, or “windfall payments.” In the proposal, the economists sought two main objectives; first, to determine whether Klamath tribal members were assimilating into mainstream American culture, and two, to use the Klamath as an example of how low-income minority groups would handle welfare payments. The proposal reads:

Usual economic incentives of saving and investment are not applicable to this group [Klamath]. On the other hand, the windfall incomes may have been largely saved or invested in a variety of assets. If so, this might indicate that these Indians aspire to enter into the mainstream of American economic life but have lacked the means to do so. Regardless of the findings, liquidation of the Klamath reservation offers an ideal opportunity, nearly a laboratory experiment, to study the impact of large cash payments for a poor minority group. This liquidation offers a direct evaluation of the most obvious method to eliminate poverty – large, direct cash payments.<sup>258</sup>

The economists sought to use the case study of the Klamath to inform policies regarding poverty in minority communities. There is no record that the BIA or the University of Oregon economists notified Klamath tribal members that their usage of the settlement payments was being tracked. The project began in early 1970, once all tribal members had received their payments, and enough time had elapsed to track their habits. The study was soon made public,

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<sup>255</sup> “Indian 'war' fought over Klamath trust lands held by bank,” *The Oregonian*, August 18, 1970, 8.

<sup>256</sup> Ibid.

<sup>257</sup> Research Proposal for *Liquidation of a Southern Oregon Indian Reservation: a Study of the Economic Impact of Windfall Payments*, Department of Economics, University of Oregon. Box 162, Folder 5. Klamath Survey Correspondence, 1965. PAO 18: Records Relating to the Socio-Economic Status of the Klamath Indians in 1965, 1960-1965. BIA PAO, RG 75, NARA: Seattle.

<sup>258</sup> Ibid.

and tribal members were angered over the numerous “invasions of privacy” it contained.<sup>259</sup> Local media reported that the economists were using a wide variety of data for the study, including tax records, vital statistics, educational background, and welfare and business information, all without tribal members consent. The economists tried to reassure tribal members that the project meant to improve welfare policy as a whole, not to change or influence federal Indian policy or the affairs of the Klamath. Tribal members remained angered over the study, and disagreed with the projects premise that they were receiving a welfare payment, rather than a settlement for the loss of tribal land.

By 1972, after numerous appraisals of the remaining timberland, the remaining Klamath members made an offer to the US Forest Service of \$52 million. Tribal members decided that the Forest Service was the most logical buyer of the timberland, because they had promised to maintain the production of the forest through sustained-yield practices, while private enterprises had expressed interest in clear-cutting the forest or converting it into high-priced riverfront properties.<sup>260</sup> The State of Oregon agreed with the Klamath, and wanted the land purchased and managed by the federal government. Additionally, many tribal members asked for compensation with timber acreage in lieu of a cash payment.

However, the Nixon Administration was not interested in purchasing the Klamath forest. His administration believed that the federal government already owned too much land in the American West, and that purchase by private interests would be an economically preferable option. The Administration wanted to keep private land private, and limit continued federal investment in the region.<sup>261</sup> Tribal members and Oregon politicians reacted dramatically to this decision. Amidst growing fears of private ownership for the Klamath forest, Oregon Representative Al Ullman stated, “It has the making of the grossest land and forest exploitation of anything that’s happened in our generation, and yet the administration, with full authority to act, is sitting down and letting it happen.”<sup>262</sup>

After continued agitation by politicians and conservation groups, the Nixon Administration agreed to purchase the timberland in August 1973. The Klamath trust land was added to the previously established Winema National Forest. The bill passed by Congress authorized payments of \$100,000 each to the remaining 470 tribal members, as the final payout totaled \$48 million. Many of the remaining Klamath tribal members were elders by the time the bill passed, and the trust had paid them \$3,600 a year.<sup>263</sup> In exchange for the last remainder of the Klamath land, many had experienced a financial wealth like never before. Local newspapers documented several Klamath tribal members who had received their payments, and their plans for the money. Journalists were especially intent on documenting tribal members who immediately went on vast spending sprees. Darryl Ortis, the subject of *Register Guard* article

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<sup>259</sup> “Indian money study angers Klamath Indians: Where did the land and timber money go?,” *The Register Guard*, January 17, 1970, 1A.

<sup>260</sup> “Oregon solons urging purchase of Indian timberlands,” *The Register Guard*, March 28, 1972, 10A.

<sup>261</sup> “Klamath Indian tract timber purchase resisted,” *The Register Guard*, April 17, 1972, 13A.

<sup>262</sup> “U.S. decides not to buy Klamath Indian lands,” *The Oregonian*, April 21, 1972, 1.

<sup>263</sup> “Klamaths close book as tribe,” *The Register Guard*, August 12, 1973, 5E.

titled “This man’s Christmas came a little early,”<sup>264</sup> used his payout to purchase a motor home and lizard cowboy boots, and, as quoted in the article: “Darryl Ortis received a check for \$103,000 at 10:30 am Wednesday; eight hours later, he had just a couple of bucks in his pocket.”<sup>265</sup> Ortis noted that he wanted to wear a war bonnet when he went to pick up his check.

But other tribal members were less enthusiastic about the payments. Recipients noted that, despite the payments, the ultimate loss of the land was priceless. Despite termination, the members of the Klamath had retained rights to hunt and fish on the remaining land, but this final settlement abrogated that agreement. Even some recipients refused to accept the payment, and wished instead for compensation with acreage on the traditional Klamath land. Edison Chiloquin the grandson of the Klamath’s last chief, had voted against the 1969 bill to liquidate the remaining trust, and had attempted to keep 640 acres of Klamath land. He wanted the land to serve as a place for Klamath cultural restoration. In 1974, Chiloquin had received a check for \$103,000, but never cashed it, and the money remained in the US National Bank. In April 1976, after several years of refusing to leave his original allotment, the US Forest Service granted him a special-use permit for 77 acres of the Winema National Forest. On this acreage, he constructed traditional homes and practiced traditional ceremonies for local Klamath tribal members, although many in the Klamath community did not support his actions. After receiving the acreage from the US Forest Service, Chiloquin remarked: “They probably feel that I should do live everyone else and take the check, instead of fighting for land... We want to set up a place where Indian people can live in the old ways.”<sup>266</sup>

### *Conclusion*

By the mid-1970s, the political and economic climate of the Pacific Northwest, and the United States as a whole had changed dramatically. The heralded era of post-World War II economic growth had largely dissolved by the national recession of 1973. As did the Fordist economic policies that had dominated the national economy for most of the 20<sup>th</sup> century. The emergence of the environmentalism, and the founding of both Greenpeace and the Environmental Protection Agency (EPA) in 1970 shifted the national perspective on natural resources, and their limitations. Federal agencies were now being pressured to *preserve* and *sustain*, rather than *develop* and *exploit*, natural resources economies. In the Pacific Northwest, the era of dam building had come to an end, and the environmental devastation of the previous generation of development was being felt throughout the region. As early as 1967, US Supreme Court Justice William O. Douglas overturned the Federal Power Commission’s grant of a license to build the High Mountain Sheep Dam on the Snake River in Idaho. In his objection to the dam, Roberts wrote: “the importance of salmon and steelhead in our outdoor life as well as commerce is so great that there certainly comes a time when their destruction might necessitate a halt in so-called ‘improvement’ or ‘development’ of our waterways.”<sup>267</sup>

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<sup>264</sup> “This Klamath Indian’s Christmas came a little early,” *The Register Guard*, December 05, 1974, 1A.

<sup>265</sup> Ibid.

<sup>266</sup> “Indian shuns land money,” *The Oregonian*. November 20, 1977, B12.

<sup>267</sup> Michael C. Blumm, *Sacrificing the Salmon: a Legal and Policy History of the Decline of Columbia Basin Salmon* (Book World Publications, 2002), 13-14.

The situation had also changed dramatically for Native peoples, but in very different ways. Nixon's policy of "self-determination without termination" had come to fruition in 1975 with the passage of the Indian Self-Determination and Education Assistance Act, and with it came an official reversal of the legal status of federal Indian tribes. The Boldt Decision of 1974 had upheld treaty rights against states rights, and it would survive two more challenges at the US Court of Appeals. It appeared that Native communities were emerging victorious in an otherwise dire era of American prosperity. Further changes were coming for tribes in the Pacific Northwest. In late 1976, the American Indian Policy and Review Commission announced that it was releasing to Congress a 25-year program for the "development of Indian America."<sup>268</sup> The program would create an American Indian Development Authority within the executive branch, and would focus of issues of jurisdiction, community health, and strengthening tribal governments.

The legal victories of the 1970s marked a significant shift in the status of Native peoples and, as remarked by Charles Wilkinson, this political revival "deserves to be recognized as a major episode in American history."<sup>269</sup> As noted by Standing Rock tribal leader P. Sam Deloria, "Indians did not discover they were Indians in the early 1970s. We were not reborn. We were simply noticed."<sup>270</sup> However, it's necessary to not only examine the political gains of the 1970s. Too often we are quick to generalize the significance of the 1960s and early 1970s for Native communities. Though its often heralded as "the golden era" of federal Indian policy, this new generation also introduced a new set of challenges for Native communities. Tribes would be forced to consider their own natural resource limitations, and their management and sustainability programs. For the tribes, treaty that guaranteed access to natural resources was meaningless if there were no more natural resources.

But in many ways, the 1960s and early 1970s had prepared tribes for the new challenges of self-determination, because, as noted by historian Roberta Ulrich, "most Northwest tribes, with their long history of battling for fishing and hunting rights, were well prepared to manage their own affairs."<sup>271</sup> By the mid 1960s, tribes of the Columbia River had begun to take ownership over their own natural resource management and sustainability programs. The Confederated Tribes of the Warm Springs, for example, were threatened by the substantial loss of salmon and steelhead returns as a result of the dams, and developed their own hatchery projects to sustain harvests. In the same year, they developed their own forest and range management projects.<sup>272</sup> It was the beginning of tribes taking significant steps toward natural resource sustainability and management, and this would become a primary challenge to tribes in the new era of self-determination. Nevertheless, the Native peoples of the Pacific Northwest, during the 1960s and 1970s, had reshaped our modern understanding of treaty rights and self-determination.

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<sup>268</sup> "Indian economic aid plan prepared," *The Oregonian*, December 18, 1976, A16.

<sup>269</sup> Wilkinson, *Blood Struggle*, xiv.

<sup>270</sup> As quoted in Trahant, *The Last Great Battle of the Indian Wars*, 2.

<sup>271</sup> Ulrich, *Empty Nets*, 129.

<sup>272</sup> "Indian tribes' hunting, fishing rights argued before 9th Court of Appeals," *The Oregonian*, September 04, 1964, 14.

## CHAPTER 4

### “More Rhetoric than Action:”

#### Tribal Natural Resources, Economic Development, and the Challenges of the Early Sovereignty Era

“The principles of self-determination and of self-government set forth in the 1970 national Indian policy and in the 1975 Indian Self-Determination and Education Assistance Act were good starting points. However since 1975 there has been more rhetoric than action.”

-Presidential Commission on Indian Reservation Economies, 1984<sup>273</sup>

In December of 1983, law enforcement agents raided in-lieu tribal fishing sites along the Columbia River, and arrested over seventy-five treaty fishermen for supposedly poaching over 40,000 wild salmon. The raid was part of the now infamous “Salmonscam,” an undercover operation headed by the National Marine Fisheries Service that directly targeted treaty fishermen on the Columbia River for abusing treaty rights. Among those arrested and convicted was David Sohapp Jr., the original plaintiff from the landmark *Sohappy v. Smith* case from 1969, a predecessor of the 1974 Boldt Decision. Salmonscam merely became the most recent attempt by federal and state officials to curtail treaty-fishing rights. At almost the same time, the Reagan Administration was criticizing the lack of economic stability and increasing financial dependence of federal Indian tribes on the federal government, and was calling for a renewed investigation into policies that would bring the Indian Self-Determination Act of 1975 back to life. Within only a few years, the often called “golden era” of federal Indian policy in the Pacific Northwest, marked by the Boldt Decision and the Indian Self-Determination Act, seemed like it had never happened, and that both policies were now “more rhetoric than action.”

The 1970s had brought a dramatic new approach to the status of federal Indian tribes. By the late 1960s, it became obvious to nearly all parties that the termination policies had failed, as both a social and economic policy for Indian affairs. It was a flawed approach to making tribal communities economically self-sufficient and culturally integrated. However, the termination era policies, despite its official repudiation by the federal government in the early 1970s, had left an ominous impact on federal Indian law and policy. It proved that, given the specific circumstances, the federal government equipped the paternalistic capability to give federal Indian tribes an official death sentence. The ideology of termination became the new edge on the spectrum of federal Indian law and policy, and by the 1970s, it became the new measuring stick that all policies, both tribal and federal, would be evaluated. Native scholar Philip S. Deloria observed in Mark Trahan’s *The Last Great Battle of the Indian Wars*, “tribes have tended to measure all policy and policy proposals according to a termination template, and those on the federal side have at least implicitly allowed the fear and the threat of termination to keep the ‘Indian’ federal policy within bounds.”<sup>274</sup> In short, any policy decision that did not result in the termination of federal Indian tribes was viewed as progress.

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<sup>273</sup> Originally stated in Presidential Commission on Indian Reservation Economies, *Report and Recommendations to the President of the United States* (US Government Printing Office: Washington DC, 1984), 3.

<sup>274</sup> Trahan, *The Last Great Battle of the Indian Wars*, iv-v.

If termination was one edge on the spectrum, tribal self-determination soon became the opposing edge by the 1970s, and new parameters for federal Indian law and policy had been established within a generation. However, despite the overarching and vastly contrasting policy differences between termination and self-determination, there remains too often overlooked similarity between the two policies: the necessity to develop tribally held natural resources. In historicizing federal Indian law and policy, it has become quite commonplace to present these two periods as directly opposite of the other. Several scholars of federal Indian policy have presented its history as a constantly oscillating pendulum, swinging between policies of tribal assimilation versus autonomy.<sup>275</sup> For instance, in the 20<sup>th</sup> century, scholars often periodize federal Indian law and policy beginning with the policies of cultural assimilation in the Progressive Era, which was contrasted by the attempt to strengthen tribal rights with the Indian Reorganization Act of 1934, which again shifted back to the ideology of tribal termination by the early 1950s, but was again repudiated by the tribal self-determination policies of the 1970s.<sup>276</sup> However perhaps this tendency to periodize federal Indian policy risks an accurate recognition of the nuances and similarities between these policy eras. As is argued in this chapter, policies of termination *and* tribal self-determination contained critical and striking similarities, particularly with regard to tribally held land and natural resources. In the era of termination, tribal lands and resources were liquidated and developed for profit by non-Indians. So in the era of self-determination, tribal lands and resources remained in the hands of the tribes but were developed through government programs for the profit of both tribal members and non-Indians. So regardless of the termination or tribal self-determination, corporate interest in Native lands and natural resources remained largely consistent in the postwar Pacific Northwest.

The primary challenge of the early sovereignty era, for both the federal government and tribes, was to decide what tribal self-determination meant, not ideologically, but logistically. By the early 1970s, it was nearly a unanimous decision all sides that tribal self-determination was the best direction for federal Indian policy, but by the mid-1970s, it had raised more question than it had answered. It was quickly becoming apparent that both sides, tribes and the federal government, had different definitions of what “tribal self-determination” meant. By 1984, the Reagan Administration had admitted that tribal self-determination hadn’t been realized, and that the federal government’s “excessive regulations and self-perpetuating bureaucracy have stifled tribal decision-making, thwarted Indian control of reservation resources, and promoted dependency rather than self-sufficiency,”<sup>277</sup> and that tribal self-determination had become “more rhetoric than action.”

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<sup>275</sup> Several federal Indian scholars have addressed this trend, namely Donald Fixico, Charles Wilkinson and Thomas Biolsi. Biolsi identifies this historical trend of contradictory moments as a “tension between *uniqueness* and *uniformity*.” For more, see Biolsi’s *Deadliest Enemies: Law and Race Relations On and Off Rosebud Reservation* (University of Minnesota Press, 2001). Also see Wilkinson’s *Blood Struggle*, and Deborah A. Geier’s article “Essay: Power and Presumptions; Rules and Rhetoric; Institutions and Indian Law” (*Brigham Young University Law Review* 3, 1994, 451-497).

<sup>276</sup> See Robert Williams’ *American Indians in Western Legal Thought: the Discourses of Conquest* (Oxford University Press, 2002) for a longer chronology of federal Indian policy.

<sup>277</sup> Presidential Commission on Indian Reservation Economies, *Report and Recommendations to the President of the United States*, 3.

The early years of the sovereignty era exposed one of the striking ironies of the period. While federal policies of tribal self-determination were being implemented across the country, and tribal restoration bills being passed, the federal budget for tribal social service and economic development projects were growing immensely. In the early years of the sovereignty-era, the very concept of tribal self-determination was financially and structurally dependent on the federal government, and it appeared the era of tribal self-determination and self-sufficiency was another episode of federal paternalism over tribes. As noted by anthropologist Donald D. Stull, “It is ironic, and alarming, that the era of self-determination has witnessed this decline in the economic welfare of reservation communities in spite of significant increases in federal spending on programs designed improve the quality of life in these same communities.”<sup>278</sup> In 1973, the total spending on Indian affairs was \$1.08 billion, and by 1981, it was \$2.75 billion.

In this chapter, I seek to challenge the often-called “golden era” of federal Indian law policy. This period, beginning in the early 1970s, was marked by dramatic changes in federal policy regarding the legal status of Native communities. Policies of tribal self-determination had reversed policies of assimilation and termination from the 1950s, and sought to strengthen the political and economic foundation to tribes. In addition, in the Pacific Northwest, courts had upheld treaty-fishing rights against states rights with the 1974 Boldt Decision in *United States v. Washington*. However the Boldt Decision had not solved everything, rather, for the decade following, it created a serious policymaking dilemma for the tribes, states, and the federal government. As noted by the Nez Perce tribal attorney, Doug Nash, the Boldt Decision proved that tribes could “win a legal victory, but lose the practical battles.”<sup>279</sup> At the core of this dilemma was a matter of unfortunate historical timing. By 1975, the era of dam building on the Columbia River had ended, but there were now 18 dams on the main stem of the Columbia and Snake Rivers, and generations of intensive hydroelectric production had taken a major toll on wild fish runs. Less than a year after the Boldt Decision in 1975, the Columbia River recorded record lows of returning salmon and steelhead, and there was an emerging political pressure to impose rigid environmental protection and preservation policies. Almost immediately, the policy victory of the Boldt Decision was threatened increasingly limited natural resources, and tougher environmental regulations. If there are no fish, there are no treaty rights. So the threat to treaty fishing was no longer discriminatory allocation policies, but the vitality of the salmon runs themselves.

In the late 1970s and early 1980s, as tribes in the region attempted to exercise new forms of political and economic autonomy, they were met with a new set of challenges. Beginning in the late 1970s, it became increasingly difficult for tribes to even exercise their recently upheld treaty rights in light of significant resource scarcity. This chapter follows several interrelated stories about the experiences of federal Indian tribes in the Pacific Northwest during the early sovereignty era. First, it discusses the aftermath of the Indian Self-Determination Act of 1975, and the efforts of tribes and federal government to make reservations economically self-sufficient. Second, it chronicles the tribal restoration bills that restored federal status to tribes wrought by the termination policies of the 1950s. Third, it follows the aftermath of the Boldt Decision, and the continued struggles of Columbia River to hold the states accountable for

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<sup>278</sup> Donald D. Stull, “Reservation Economic Development in the Era of Self-Determination” (*American Anthropologist*, Vol. 92, No. 1, March 1990), 207.

<sup>279</sup> Columbia River Inter-Tribal Fish Commission. *Empty Promises, Empty Nets*. Wild Hare Media, 1994. Online film.

observing its provisions. Lastly, it presents the environmental factors that contributed to declining salmon runs in the post-Boldt Decision era. In all, this chapter will examine how Native communities in the Pacific Northwest responded to the challenges of the early sovereignty, and sought to ensure that treaty rights and self-determination were not “more rhetoric than action.”

### *Self-Determination and Tribal Economic Development*

On January 4, 1975, Congress passed Public Law 93-638, or the Indian Self-Determination and Education Assistance Act, one of first pieces of legislation passed by the 94<sup>th</sup> Congress. Despite President Nixon’s statement in 1970 that a new direction in federal Indian law and policy was necessary, it took several more years before the policy shift became official. The Indian Self-Determination Act allowed for tribal control over education, health care, natural resource management, law enforcement, and other services typically administered by the federal government. The Indian Self-Determination and Educational Assistance Act stated:

The prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities... The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination.<sup>280</sup>

The Act specifically targeted several areas of tribal self-determination, in particular, gaining economic stability, providing greater educational opportunities, and improving public health resources. By the mid-1970s, Native American communities were still ranked at the bottom amongst all minority groups with regard to these social and economic indicators, and tribal self-determination policies sought to remedy these issues.

Earlier in 1975, the instrumental American Indian Policy Review Committee (AIPRC) was established. In the time between Nixon’s call for a policy shift toward tribal sovereignty and the passing of the Indian Self-Determination Act, there had been a widespread legal confusion about the status of federal Indian law and policy. While termination-era policies were now dissolved, there was not yet an official policy shift. In the early 1970s, Senator James Abourezk of South Dakota called for a commission to study “the historical and legal status of federal Indian tribes and to recommend new legislation.”<sup>281</sup> Such a comprehensive review of the status of federal Indian law and policy had not been organized since the Institute for Government Research’s

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<sup>280</sup> Indian Self-Determination and Education Assistance Act, 1975, Public Law #93-638. 94<sup>th</sup> Congress, 1<sup>st</sup> Session (January 4, 1975).

<sup>281</sup> Prucha, *Documents of United States Indian Policy*, 53.

*Meriam Report* of 1928, which had been the influential precursor to the landmark Indian Reorganization Act of 1934.<sup>282</sup>

Congress approved the establishment of the AIPRC on January 2, 1975, under the premise that the special relationship between federally recognized in the United States and the federal government “has shifted and changed with changing administrations and passing years, without apparent rational design and without a consistent goal to achieve Indian self-sufficiency.” The Committee was entrusted to make several critical interventions into designing a new direction for federal Indian law and policy, among them:

An exploration of the feasibility of alternative elective bodies which could fully represent Indians at the national level of Government to provide Indians with maximum participation in policy formation and program development; a consideration of alternative methods to strengthen tribal government so that the tribes might fully represent their members and, at the same time, guarantee the fundamental rights of individual Indians; and the recommendation of such modification of existing laws, procedures, regulations, policies, and practices as will, in the judgment of the Commission, best serve to carry out the policy.<sup>283</sup>

Tribal leaders had originally criticized the Meriam Report because it lacked direct input from Native communities, and was based largely on the research of politicians. The organizers of the AIPRC sought to correct this, and decided to appoint tribal leaders as full commissioners. The AIPRC composed of three members of the Senate (Chairman James Abourezk of South Dakota, Lee Metcalf of Montana, and Mark Hatfield of Oregon) three members of the House of Representatives, (Lloyd Meeds of Washington, Sidney Yates of Illinois, and Don Young of Alaska) and tribal leaders from federally recognized tribes, one from an urban Indian population, and one from a tribe not recognized by the federal government (John Borbridge of Tlingit-Haida, Louis Bruce of Mohawk-Sioux, Ada Deer of Memoninee, Adolph Dial of Lumbee, and Jake Whitecrow of Quapaw-Seneca-Cayuga. The AIPRC Report made several critical observations about the status of federal Indian policy up to the 1970s.

It is the fortune of this generation to be the first in our long history to listen attentively to the Indians, and thereby begin to understand what they are saying, to recognize realistically their own points of view, as a unique part of our population, and to heed their voices for the righting of wrongs, the ending of frustrations and despair, and the attainment of their needs and aspirations as Indians and as free and proud Americans... or the Federal Government to continue to unilaterally break its agreement, especially to a people as unique to our history as are the Indians, would constitute moral and legal malfeasance of the highest order.<sup>284</sup>

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<sup>282</sup> For more on the Meriam Report and federal Indian law and policy in the Progressive era, see Tom Holm’s *The Great Confusion Indian Affairs: Native Americans & Whites in the Progressive Era* (University of Texas Press, 2005).

<sup>283</sup> Prucha, *Documents in United States Indian Policy*, 273-274.

<sup>284</sup> American Indian Policy Review Commission, *American Indian Policy Review Commission: Final Report, Volume One* (US Government Printing Office, Washington: 1977), 1-2.

In their recommendation of future policy, the Commission directly supported tribal-determination.

The fundamental concepts which much guide future policy determinations are: (1) that Indian tribes are sovereign political bodies, having the power to determine their own membership and power to enact laws and enforce them within the boundaries of their reservation and (2) that the relationship which exists between the tribes and the United States is premised on a special trust that must govern the conduct of the stronger toward the weaker.<sup>285</sup>

The Commission identified economic self-sufficiency as the primary necessity to realize goals of tribal self-determination.

The first order of business of future Indian policy must be the development of a viable economic base for the Indian communities...every effort must be made to encourage and aid tribes in the development of economic projects relevant to their natural resource base...Congress must appropriate funds and provide technical assistance to insure the preservation, consolidation, and acquisition of Indian land upon which to build tribal future.<sup>286</sup>

AIPRC did not hesitate to stress the importance of tribal land and natural resources in reaching goals of self-determination, and stated that “economic security and development of tribal economies depend on it; the very survival of Indian cultures and the permanency of Indian tribes as governmental units depend on it.”<sup>287</sup> The Report encouraged the maximum development of natural resources on reservation lands as a necessary policy to resolve tribal economic issues. For instance, the AIPRC estimated that, between 1970 and 1974, tribes in the United States lost out on over \$25 million because reservation timberlands were not being harvested at their maximum capacity.<sup>288</sup> Water, minerals, agriculture, and grazing lands, received similar assessments.

Following the release of AIPRC’s Report, numerous critics emerged suggesting that the AIPRC had accomplished nothing more than providing a general policy history and a condemnation of the federal government’s treatment of Native communities, rather than recommending clear and accessible policies.<sup>289</sup> Despite these criticisms of the AIPRC, their

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<sup>285</sup> Ibid, 1-2.

<sup>286</sup> Ibid, 8-24.

<sup>287</sup> Ibid, 308.

<sup>288</sup> Ibid, 324.

<sup>289</sup> Among other points of contestation with the AIPRC’s report were that the tribal leaders appointed to the Commission were not representative of the “mainstream” Native politics, as they were from demographically smaller Native communities. The Commission only used data gathered by the federal government, rather than use additional data gathered by independent researchers or Native communities themselves. These and other critiques of the AIPRC’s report are documented in UCLA’s American Indian Studies Center’s volume titled

report contains several important innovations. First, the AIPRC provided a unique admission by the federal Commission that the special relationship between the federal government and tribes was ambiguous and misguided, and this was having a detrimental impact social, political, and economic impact on Native communities. Second, is advocated that Native peoples themselves are the most well equipped to decide what is in the best interest for their own communities, and should have direct involvement in policymaking. Lastly, that tribes exercising sovereign control over their own lands, and natural resources are the path toward tribal self-determination, and should dictate the relationship between tribes and the federal government.

In addition to their official report, in January 1977 the AIPRC also submitted to Congress a \$22.5 billion, 25-year economic program proposal for the “development of Indian America.”<sup>290</sup> The proposal, named the Kah-Nee-Ta Plan because it was drafted at the new luxury lodge on the Warm Springs Indian Reservation in central Oregon. The plan meant to reverse the growing dependence of tribes on resources from the federal government in the era of self-determination, and called for the development the American Indian Development Authority, an executive agency that would be entrusted with overseeing the development of reservation-based economies. The proposal would provide long-term economic assistance and planning for federal Indian tribes, without forcing tribes to seek additional financial support from the Economic Development Administration to fund tribal enterprises, which tribes had been doing throughout the early 1970s.

Among the most successful tribes nationally in realizing economic growth and managing tribal natural resources was the Warm Springs Tribe of central Oregon. By the mid 1970s, Warm Springs had become known regionally as the “best models of corporate Indian know-how,”<sup>291</sup> and even dubbed “the corporate tribe”<sup>292</sup> by local media. In many ways, the tribe was exercising self-determination before it became implemented nationally. Warm Springs was benefiting from the \$4 million settlement it received in 1958 as compensation for the drowning of Celilo Falls on the Columbia River. Unlike the other tribes that had opted to distribute payments to individual members of the tribe, Warm Springs decided to put the funds in a tribal treasury account. At that time, the Confederated Tribes of Warm Springs decided to organize themselves as a federally backed corporation. The tribe also utilized low-interest loans from the Economic Development Administration (EDA). With the settlement funds, and the use of low-interest loans, the tribe began to implement numerous development projects beginning in the mid-1960s. In 1965, the tribe developed its first fish hatchery program on the reservation. In 1967, the tribe invested in a tribal sawmill and plywood plant, and founded the Warm Springs Forest Products Industries (WSFPI). In 1971, the tribe began construction on Kah-Nee-Ta Lodge, a luxury resort located on the reservation.<sup>293</sup> In 1972, the tribe won a century-old land dispute with the federal government, known as the McQuinn Strip Land Dispute, and was returned an 8,000 acres stretch of additional

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*New Directions in Federal Indian Policy: A Review of the American Indian Policy Review Commission* (University of California Press, 1979).

<sup>290</sup> “Indian economic aid plan prepared,” *The Oregonian*, December 18, 1976, A16.

<sup>291</sup> “Klamath Indians seek to recover rights they lost 19 years ago,” *The Register Guard*, November 30, 1980, 1E.

<sup>292</sup> “Confederated Tribes of the Warm Springs Reservation,” *The Register Guard*, December 12, 1976, 1D, 2D.

<sup>293</sup> *The People of Warm Springs* (Confederated Tribes of the Warm Springs Reservation of Oregon, 1984), 43-45.

timberlands.<sup>294</sup> After the passage of the Indian Self-Determination Act in 1975, Warm Springs joined together with the three other Columbia River treaty tribes to organize the Columbia River Inter-Tribal Fish Commission (CRITFC), an agency that coordinates with local, state, and federal agencies to ensure treaty fishing rights are observed and maintained.<sup>295</sup>

By the late 1970s, Warm Springs was the largest employer in north-central Oregon. From 1974 to 1979, the tribal payroll doubled, reaching over \$13 million. By 1979, tribal revenues were large enough to pay an annual dividend of \$2,400 to each member of the tribe.<sup>296</sup> The vast majority of the tribal revenue, over two-thirds, came from the reservation's timber harvest, as more than half of the reservation's 640,000 acres contained valuable and harvestable timber. The BIA manages the reservation timberlands as part of the trust responsibility, but independent logging businesses, mostly owned by tribal members, harvested the forest products for profit. By 1979, the tribe had an extensive, and highly profitable, timber industry on the reservation. In 1981, Warm Springs received a \$15 million loan from the Oregon Department of Energy to construct and administer their own hydroelectric dam on the reservation, the first deal of its kind involving a federal Indian tribe.<sup>297</sup> By 1985, tribal enterprises were grossing an estimated \$50 million. As noted by Charles Wilkinson, Warm Springs "shines as an example of stable, responsive, and capable tribal governance grown organically from the soil of its own cultural and traditions."<sup>298</sup>

However many on Warm Springs realized that their economic success had come at a cultural price. Kenneth Smith, the general manager of the Confederated Tribes of the Warm Springs Reservation in the mid-1970s, was quoted in an article for *The Oregonian* that despite the annual growth of the tribal economy, it had been made possible by moving away from traditional cultural practices:

I guess I don't blame the older Indians who talk about the old days. The old Indians did not get ulcers. They weren't in debt. The land provided their food. So maybe they had a good way of life. I think they did. I don't knock it. But today, all the food is not provided by the land. The game is killed off. There is a scarcity.<sup>299</sup>

However all tribes had not been as fortunate or economically successful as Warm Springs. In the midst of the federal government's movement toward policies of tribal self-determination and encouraging the development of tribal natural resources, the BIA developed a task force aimed at assisting tribes with development and planning, the Planning Support Group

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<sup>294</sup> For more information about the McQuinn Strip Land Dispute, see Eugene S. Hunn's *Neh'i-Wana "The Big River: Mid-Columbia Indians and their Land"* (University of Washington Press, 1989).

<sup>295</sup> A more detailed discussion of the CRITFC will appear later in the chapter.

<sup>296</sup> *The People of Warm Springs*, 53-54.

<sup>297</sup> "Tribe wins initial OK on \$15 million energy loan," *The Oregonian*, March 20, 1981, C3.

<sup>298</sup> Wilkinson, *Blood Struggle*, 278.

<sup>299</sup> "Confederated Tribes of the Warm Springs Reservation," *The Register Guard*, December 12, 1976, 1D, 2D.

(PSG).<sup>300</sup> The PSG organized in 1973, and was designed to assist “tribal leaders, planners, and community leaders in their planning efforts.”<sup>301</sup> In an obvious departure from the termination-era policies of removing tribes from federal support, the PSG reflected a federal effort to assist tribes in developing and implementing sustainable economic infrastructure on reservations across the country. In drafting their development projects, the PSG evaluated several elements of the reservation community; most notably was an assessment of tribal natural resources and land bases. In most cases, the PSG was suggesting an intensive development of tribal natural resources on reservation lands. With the passage of the Indian Self-Determination and Assistance Act in 1975, the PSG was required to work directly with tribal governments on development plans, and that “tribal involvement at every stage in the planning effort is of critical importance.”<sup>302</sup> In addition, after the passage of the Self-Determination Act, many tribes across the country requested the assistance of the PSG in formulating development plans.

In total, the PSG developed projects for over 80 reservations across the country, and by the late 1970s, they had developed comprehensive development plans for several tribes in the Pacific Northwest.<sup>303</sup> The PSG was particularly interested in assisting the Umatilla and Yakima, both Columbia River treaty tribes who had received compensation for the loss of fishing rights in 1958, but had not been as economically successful as Warm Springs by the mid-1970s.<sup>304</sup> In their 1976 reports on the Umatilla and Yakima, the PSG acknowledged that, despite the relatively large land bases that both reservations encompassed, the vast majority of reservation resources were being developed largely for the benefit of non-Indians. On Umatilla, the tribe’s main source of income had been leasing out dry farms lands to non-Indian farmers, rather than developing the land themselves.<sup>305</sup> Their agricultural revenue was also largely benefitting non-Indians. The Umatilla only earned about 5 percent of the total agricultural revenue on the reservation, the rest being earned off allotted tribal lands. From 1970 to 1974, the average yearly agricultural income for the tribe was \$36,740 compared to an average of \$667,617 from coming

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<sup>300</sup> Prior to 1973, the PSG was known as the Missouri River Basin Investigations Project (MRBI), which had overseen tribal development efforts in the Missouri River Basin since 1946. The BIA absorbed them in 1972, and their work extended to tribes nationally.

<sup>301</sup> United States Department of the Interior, Bureau of Indian Affairs, Planning Support Group, *A List of the Reports by The Planning Support Group* (Report 255: Billings, Montana, July 1977), ii.

<sup>302</sup> *Ibid.*, iv.

<sup>303</sup> For reservations with smaller land bases, the PSG’s planning focused on the development of tribal commercial and tourist economies, as was the case with their reports on the Skokomish Indian Tribe and Confederated Tribes of the Chehalis Reservation in Washington. See United States Department of the Interior, Bureau of Indian Affairs, Planning Support Group, *Confederated Tribes of the Chehalis Reservation: Human and Natural Resources* (Report No. 248: Billings, Montana, March 1977) and *Commercial Development Analysis for the Skokomish Indian Tribe* (Report No. 280: Billings, Montana, June 1979).

<sup>304</sup> The PSG never assessed either the Nez Perce or Warm Springs, the other two Columbia River treaty tribes who had collectively signed treaties in 1855.

<sup>305</sup> United States Department of the Interior, Bureau of Indian Affairs, Planning Support Group, *The Confederated Tribes of the Umatilla Indian Reservation: Its Resources & Development Potential* (Report No. 236: Billings, Montana, January 1976), v.

from allotted Yakima lands.<sup>306</sup> On the Yakima reservation, positioned in an extensively irrigated agricultural landscape of central Washington, the PSG noted “their irrigated and potentially irrigable land...is mainly leased to non-Indians,” and “although some Indians are engaged in intensive agriculture most of them raise feed and cattle, more Indian people may become interested in the future of intensive agriculture.”<sup>307</sup>

In addition to economic self-sufficiency, tribal self-determination policies were also aimed at improving public health resources in Native communities. Only a year after the passage of the Indian Self-Determination Act, Congress passed the Indian Health Care Improvement Act in September of 1976. This Act specifically targeted the health disparities gap between Native communities and the rest of the United States population. The Act acknowledged:

Federal health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government’s historical and unique legal relationship with, and resulting responsibility to, the American Indian people...Despite such services, the unmet health needs of the American Indian peoples are severe and the health status of the Indian is far below that of the general population.<sup>308</sup>

The central feature of the Act was the allocation of funds to develop both reservation-based and urban health centers, which acknowledged the increasing urban Indian populations. Federally funded Indian health centers emerged across the Pacific Northwest, both on reservations and in the region’s urban centers. However many Native families, especially those living off reservation, were aware the federal health programs were now available to them. In the first years after the passage of the Indian Health Care Improvement Act, enrollment in the newly founded health centers remained low and inconsistent. Many Native families stated that they were either skeptical of the clinics, or were unaware of their existence.<sup>309</sup>

In 1981, due largely to the economic success of the Confederated Tribes of the Warm Springs as a model of tribal self-sufficiency, the general manager of Warm Springs, Kenneth Smith, was appointed as Secretary of Interior for Indian Affairs by President Ronald Reagan.<sup>310</sup> Smith was a dedicated advocate for tribal self-determination, but his stance on the economic self-sufficiency provoked controversy in Native communities across the country. At the beginning of his tenure, Smith criticized the ongoing paternalism of the federal government with regard to tribal affairs, but believed that tribes should seek their economic development in the open market, and the road to tribal self-sufficiency is through private-sector capital formation. Smith argued that the ongoing dependence of tribes on federal funds was unacceptable in the era of

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<sup>306</sup> Ibid, 43.

<sup>307</sup> United States Department of the Interior, Bureau of Indian Affairs, Planning Support Group, *Yakima Indian Reservation: Agricultural Potential* (Report 235: Billings, Montana, June 1976), 1.

<sup>308</sup> Indian Health Care Improvement Act, 1976, Public Law 94–437 (September 30, 1976; 25 U.S.C. 1601).

<sup>309</sup> “Health plan for Lane County Indians to be revised,” *The Register Guard*, January 16, 1979, 5B.

<sup>310</sup> This position was known as the Commissioner of Indian Affairs until 1977.

tribal self-determination, and the at tribes will have to go “somewhere else to get funding.”<sup>311</sup> Smith continued:

In the past, we (the BIA) have funded lousy projects. Now, projects will have to be feasible and make sense to attract investment dollars from banks and other lending institutions... Indian people have been so dependent, but now we're turning that around and saying, 'All right, tribal government, you make the decisions. If you make bad decisions, well, that's life.' The tribes are governments, after all.<sup>312</sup>

Smith even noted that tribal leaders across the country had engaged in “abuses and misuses”<sup>313</sup> of federal funds, and warned that the federal government would no longer tolerate such violations by federal Indian tribes. However not all tribes had experienced the same economic success as Warm Springs, and several reservation communities were threatened Smith's statement on tribal self-determination. By the early 1980s, on the Umatilla Indian Reservation, the momentum from the policies of the 1970s had largely worn off, and many of the social programs established to improve reservation conditions required a stronger reservation economy. The tribal unemployment level had risen back to over 45 percent by 1982.<sup>314</sup> Smith's approach to private-sector investment in reservation economies had worked at Warm Springs, but the halting of federal support to reservations like Umatilla would potentially send them back to pre-tribal self-determination social and economic conditions.

However by the early 1980s, federal Indian tribes were finding it increasingly difficult to exercise political and economic autonomy. The era of tribal self-determination witnessed deteriorating economic conditions on reservations across the country. In 1980, 41 percent of reservation households were living below the national poverty level, compared to 12 percent of the US population. For male tribal members aged 20 to 64 years of age, the unemployment rate was 58 percent, compared to 18 percent of the same demographic nationally. While the national unemployment rate declined during the Reagan Administration, beginning in 1980, the unemployment on reservations increased dramatically;<sup>315</sup> and even more striking, the era of tribal self-determination marked a near tripling in federal spending on Indian affairs (See Figure 19).

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<sup>311</sup> “Indian tribes instructed to seek private money,” *The Oregonian*, August 21, 1981, D4.

<sup>312</sup> Ibid.

<sup>313</sup> Tribes warned about abusing federal funds,” *The Oregonian*, July 27, 1983, B1.

<sup>314</sup> “Old ways aid survival, but Indians hurting financially,” *The Oregonian*, April 25, 1982, E7.

<sup>315</sup> Stull, “Reservation Economic Development in the Era of Self-Determination,” 207.

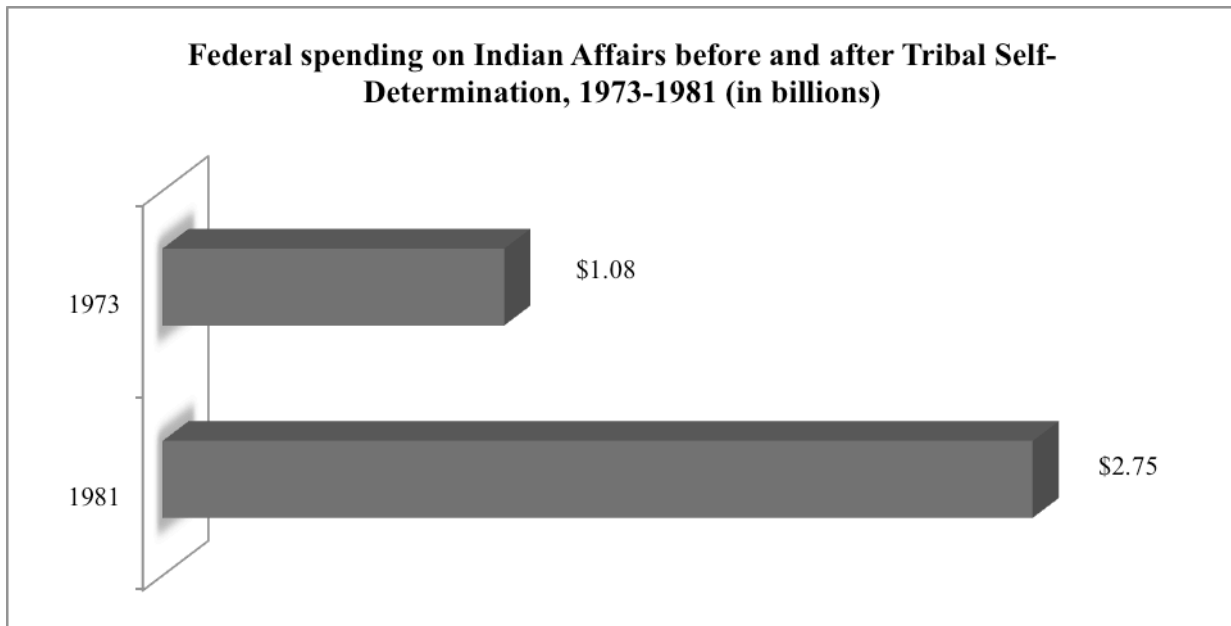


Figure 19: Federal spending on Indian Affairs before and after Tribal Self-Determination in 1973 and 1981, in billions. (Stull, Donald D. “Reservation Economic Development in the Era of Self-Determination.” *American Anthropologist*, Vol. 92, No. 1, March 1990, 206-210).

In early 1983, President Reagan responded to these conditions in his American Indian Policy Statement. He announced:

Instead of fostering and encouraging self-government, federal policies have, by and large, inhibited the political and economic development of the tribes. Excessive regulation and self-perpetuating bureaucracy have stifled local decision making, thwarted Indian control of Indian resources and promoted dependency rather than self-sufficiency.<sup>316</sup>

As a result of his criticisms of federal Indian policy, he established two commissions to examine the status of reservation economies: the Presidential Commission on Indian Reservation Economies (PCIRE) and the Task Force on Indian Economic Development (TFIED). Both had the goal to “identify obstacles to Indian reservation economic development and to promote the development of a healthy private sector on Indian reservations.”<sup>317</sup> The PCIRE composed nine Commissioners, six of which were from federal Indian tribes, sought to identify the challenges federal Indian tribes were facing with regard to exercising tribal self-determination and establishing sustainable reservation economies. The Commission’s report would be the first comprehensive evaluation of federal Indian policy since the AIPRC’s Report in 1977. The Reagan Administration was a firm believer in the “government-to-government” relationships between the federal government and tribes, but despite policies encouraging tribal self-determination, many federal Indian tribes were still largely dependent on government resources.

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<sup>316</sup> Presidential Commission on Indian Reservation Economies, *Report and Recommendations to the President of the United States*, 7.

<sup>317</sup> *Ibid*, 1.

The Reagan Administration had even acknowledged that since 1975, tribal self-determination had been “more rhetoric than action.”<sup>318</sup>

In late 1984, the Presidential Commission on Indian Reservation Resources made its recommendations to the President Reagan. Their report is focused on the concept that tribal self-determination is only possible through economic stability, or as they note, “Without sound reservation economies, the concept of self-government has little meaning...the federal-Indian relationship needs to mature beyond that benign paternalism to that of a federalist partnership.”<sup>319</sup> The Commission provided a more sophisticated methodology in their recommendations than previous studies of federal Indian tribes by a federal commission. At the center of their research data were testimonials from over 2,000 members of reservation communities, and a greater sensitivity of what type of economic structures can work in tribal communities. In their recommendations, the Commission recognized “no Indian tribe or nation can simply import an Industrial Revolution, unpack it like a piece of machinery, and then set it in motion.”

Among their recommendations was that House Concurrent Resolution 108, or the Termination act, be once for all repudiated as a federal policy. Despite the Indian Self-Determination Act of 1975 and a generation of harsh criticism, the policy had never been officially dissolved. Many of the tribal members that provided testimonials to the Commission felt that termination still remained a lingering threat to tribal self-determination, especially to economically dependent tribes, as it had been in the early 1950s. The Commission believed that any recommendation for tribal economic development depended on the premise that termination, or similar threats to tribal status, would never again be considered as policy. With regard to major economic recommendations, the PCIRE suggested the following changes to existing policies and laws: the trust responsibility between tribes and the federal government be altered based on the *protection* of tribal resources rather than the *management*, the founding of the National Commission on Indian Business Development to permanently oversee the issue of tribal economic growth, the amendment of the tax code so that tribes are taxed the same way as local and state governments, and that BIA funds be directly appropriated to create private sector businesses on reservations. Despite Reagan’s effort to improve the economic stability of federal Indian tribes and their federal dependency, his policies did little to accomplish this. Outside of establishing review commissions and claiming a “commitment” to tribal self-determination, economic stability and federal dependency were made worse during his administration.

### *Tribal Restoration in the Pacific Northwest*

A critical element of the federal government’s changing stance on federal Indian law and policy in the 1970s was the unanimous agreement that Termination era policies had largely devastated the cultural, economic, and political foundation of Native communities. As a result of termination, historian David R. Beck noted, “poverty and unemployment or underemployment exacerbated problems related to housing, health, education, and other needs, and now there was no federal means to ameliorate these problems on a tribal level. Federal and state officials largely

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<sup>318</sup> Ibid, 3.

<sup>319</sup> Ibid, 25.

ignored their plight.”<sup>320</sup> The criticisms of termination had emerged on nearly every level of the political landscape, let alone the critiques from Native communities themselves. As part of President Nixon’s “Special Message to Congress on Indian Affairs” in 1970, came a specific repudiation of Termination as a federal policy, and the opportunity for terminated tribes to regain their federal status. The legal process of tribal “restoration” became a product of the self-determination era. On December 22, 1973, the Menominee of Wisconsin, one of the first tribes terminated in 1954, became the first terminated tribe to regain federal status. Thus, a legal precedent had been set for other terminated to seek restoration, as they did throughout the late 1970s and 1980s. Although a path to restoration was established, legal scholar Michael C. Walch observed, “most of the terminated tribes and tribal members still suffer from the loss of autonomy and economic and psychological caused by termination.”<sup>321</sup>

The Siletz Tribe, who had been terminated in the Western Oregon Termination Act of 1954, had begun to reorganize by the late 1960s, and formed a non-profit corporation by 1973 aimed at providing social service programs to former tribal members in the community. They even began to work closely with the town of Siletz, Oregon, to develop a new community headquarters. By 1975, tribal members voted in favor of supporting a Siletz Restoration Bill. Oregon Senator Mark Hatfield and the state’s full congressional delegation supported the bill, which had been drafted by the University of Oregon Professor of Law, Charles F. Wilkinson. The main challenges facing the Siletz were the issues of land and demographics. All tribal lands had been relinquished with termination, and in the over twenty years since termination, many a significant portion of tribal members had relocated. The restoration of tribal status, however, would provide immediate assistance to the Siletz community, which had been severely damaged by termination. By 1974, the unemployment rate in the community was over 43 percent, and 44 percent of tribal members had not completed high school.<sup>322</sup> The restoration of tribal status would make them eligible for economic and educational assistance from the federal government. An official Siletz Indian Tribe restoration bill was sent to Congress in 1975, but the response was not immediate. For many federal officials, restoration posed several challenging questions, in particular with regard to what rights and resources should “restored” to a previously terminated tribe. Issues regarding the reestablishment of hunting and fishing nearly derailed several restoration attempts in Western Oregon.

Two years later, in 1977, the Siletz Indian Tribe Restoration Act was passed. They had become the second terminated tribe officially granted restoration. The act did not initially resolve the issues of restoring a tribal land base, and even though restoration had arrived for the Siletz, they were now the only federal Indian tribe in the country with no land base.<sup>323</sup> The act stated, “Inasmuch as the reservation of the tribe has been terminated, the Secretary shall negotiate with

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<sup>320</sup> David R. Beck, “‘Standing out Here in the Surf:’ the Termination and Restoration of the Coos, Lower Umpqua and Siuslaw Indians of Western Oregon in Historical Perspective” (*Oregon Historical Quarterly*, Vol. 110, No. 1 (Spring 2009), 6-37), 17.

<sup>321</sup> Michael C. Walch, “Terminating the Indian Termination Policy” (*Stanford Law Review*, Vol. 35, No. 6 (June 1983), 1181).

<sup>322</sup> United States Department of the Interior, Bureau of Indian Affairs, Planning Support Group, *A Profile of the Confederated Tribes of Siletz Indians of Oregon* (Report No. 264: Billings, Montana, February 1978), 9-16.

<sup>323</sup> After several years of controversial planning and local non-Indian opposition, a 3600 acre reservation was created for on the central Oregon coast for the Siletz Indian Tribe.

the tribe, or with representatives chosen by the tribe, concerning the establishment of a reservation for the tribe... within two years of the date of enactment of this Act.”<sup>324</sup> The act also did not grant or restore any hunting, fishing, or trapping rights that were extinguished with termination.<sup>325</sup> The Act had made the Siletz Indian Tribe eligible for \$300,000 a year to support health, education, and job training programs. In the original Siletz Treaty of 1892, the tribe had relinquished valuable timberlands on the coast of Oregon for a total sum of \$142,000. By the time of restoration in 1977, the original land had been estimated at \$8,000,000.<sup>326</sup> Pauline Bell Ricks, a Siletz tribal member, stated that land would provide them the resources to manage their own programs without being dependent on the federal government. She observed, “We need the land. We need the timber and the steady source of income that will enable the tribe to run our programs.”<sup>327</sup>

Following the restoration of the Siletz, several other tribal communities in Western Oregon that had been terminated in 1954 also begun to reorganize and draft restoration bills. Former tribal members of the Upper Umpqua held regular community meetings beginning in 1975, and by 1977, lawyers representing the Upper Umpqua drafted a tribal restoration bill. Like the Siletz, the Upper Umpqua were hoping a restoration of tribal status would make them eligible for federal grants to help alleviate economic, education, and public health problems. The Cow Creek Band of Umpqua Tribe of Indians gained restoration in 1982. The Grande Ronde Restoration Act was passed the following year in 1983.<sup>328</sup> The act, in terms of policy, was nearly identical to the Siletz Indian Tribe Restoration Act with regard to the granting or restoring, or lack thereof, of tribal lands, or hunting, fishing, and trapping rights. While the act made tribal members eligible for federal services, it did not settle the issues of establishing a tribal land base, nor did it extend rights to hunt, fish, or trap. Like the Siletz, the Act made the tribe eligible for \$850,000 a year from the BIA in health, education, and housing funds. Following the passage of the Grande Ronde bill, Senator Hatfield of Oregon stated “the Grand Ronde have persevered in the face of inequity, in the face of dire economic circumstances and in the face of justifiable despair.”<sup>329</sup> Oregon Representative Les AuCoin called it an “act of justice.”<sup>330</sup> Other Western Oregon tribes soon followed: the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians in 1984, and the Coquille Tribe of Indians in 1989. Although restoration was a major milestone for the tribes devastated by termination, the legacy of the policy was still having its impact on Native communities. After restoration, Siletz tribal members noted “when I was a kid, it seemed that everybody here was an Indian, now, since restoration, not very many of us have

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<sup>324</sup> See Siletz Indian Tribe Restoration Act, 1977, Public Law 95-195, 95<sup>th</sup> Congress (November 18, 1977).

<sup>325</sup> However, this did not necessarily stop tribal members from exercising long-standing hunting, fishing, and trapping rights on former reservation lands. There were several documented arrests and citations issued to tribal members throughout the late 1970s.

<sup>326</sup> “Siletz Indians’ rights to government assistance stripped from them 23 years ago,” *The Register Guard*, November 07, 1977, 8A.

<sup>327</sup> As quoted in Ulrich, *American Indian Nations from Termination to Restoration*, 164.

<sup>328</sup> See Grande Ronde Restoration Act, 1983, Public Law 98-165, 98<sup>th</sup> Congress (November 22, 1983).

<sup>329</sup> “Grande Ronde bill approved,” *The Oregonian*, November 12, 1983, C3.

<sup>330</sup> “Grand Rondes gain official tribal status,” *The Oregonian*, November 23, 1983, B8.

come back,” and “just trying to preserve tradition proves difficult when membership is spread over nine counties.”<sup>331</sup>

By the mid-1970s, the restoration of the Klamath Tribe in southern Oregon was taking a different shape. The Klamath was the casualty required for policymakers to realize that termination era policies had harmed the same communities it was supposed to assist. Tribal members began to refer to the era as “the termination experiment.”<sup>332</sup> Klamath tribal members were still seeking to exercise treaty rights on former reservation lands. In September 1976, a US District Court upheld the rights of Klamath descendants to hunt, fish, and trap on former Klamath lands. The Court decided that these rights extended to the descendants of Klamath persons who were on the final Klamath rolls. By the mid-1970s, Klamath descendants were frequently encountering Oregon Fish and Wildlife Officials, as well as Oregon State Police, as they attempted to hunt, fish and trap on Klamath lands. The legacy of Klamath Termination had posed a challenging legal question regarding the ongoing right of Klamath tribal members and their descendants to continue traditional cultural practices. US District Court Judge Gus J. Solomon, the judge who ruled in the case, noted “If Congress intended the Klamath Termination Act to terminate all of the treaty rights of the Klamath Indians on the death of the last survivor whose name appeared on the final tribal roll, Congress could have so provided in clear and unambiguous language.”<sup>333334</sup>

Former Klamath tribal members were also becoming more economically mobile by the mid-1970s, in part due to payouts from the 1969 vote to dissolve the remaining 135,000 acres of the Klamath reservation. The original payouts of \$43,000 in 1961 had largely been an economic disaster for Klamath tribal members. Many who received the original payouts had cited victimization and discrimination at the hands of local entrepreneurs, steering them toward faulty investments and overpriced goods.<sup>335</sup> A 1974 Federal Trade Commission Report on the Klamath payouts stated that the Klamath tribal members had become “captive consumers” since the original payouts in 1961.<sup>336</sup> As a result, the remaining tribal members who were receiving their payments by the late 1970s, some upward of \$175,000, were vowing to invest the money in a more sustainable way. Several tribal members sought financial advice from investment firms, while others collaborated in a local Klamath Falls shopping district. Several Klamath tribal members even adopted the slogan of “Don’t call us Indians, call us investors.”<sup>337</sup> Many families had decided to use their payouts to purchase agricultural or timberland on or near their former reservation land base.<sup>338</sup> Although almost all reservation land had been officially signed away through Termination, by the mid-1970s, former Klamath tribal members were seeking a way to

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<sup>331</sup> “Confederated Tribes of Siletz fight to recapture tribal identity,” *The Register Guard*; May 11, 1986, 10E.

<sup>332</sup> “Klamath rejoice in new era,” *The Oregonian*, August 24, 1986, A1.

<sup>333</sup> “Rule affirms tribe descendant rights in Oregon,” *The Register Guard*, September 11, 1976, 20B.

<sup>334</sup> In a 1983 decision, Judge Solomon extended these rights to include lands originally ceded by the Klamath tribe in 1906. Again, Solomon argued that termination could not extinguish existing treaty rights to land and resources.

<sup>335</sup> “Indians feeling better about selves, futures,” *The Oregonian*, July 11, 1977, A1.

<sup>336</sup> “Klamaths cautious investors,” *The Oregonian*, September 22, 1980, B1.

<sup>337</sup> *Ibid.*

<sup>338</sup> *Ibid.*

get it back. In 1980, the liquidation of the final Klamath reservation lands was finalized and sold for \$80 million.<sup>339</sup>

Amidst the final liquidation of reservation lands there was an increasing interest amongst former tribal members to seek the inevitable legal reversal of termination: tribal restoration. Beginning in the late 1980s, the Klamath tribal council had started re-enrolling tribal members.<sup>340</sup> Many of the active tribal council members were young adults who had grown up as the community struggled through the first phases of termination, and now they were seeking support from an older generation, many of whom had originally been in favor of termination. Lynn Anderson, head of the Klamath Tribal Council in 1980, stated that the tribe was now in a phase of “reorganization,” and “termination did not do away with the tribe, it cut off the government-to-government relationship.”<sup>341</sup>

The issue of Klamath restoration contained several legal and logistical hurdles. First, and most importantly, was that restoration would not include any return of reservation lands, since they had been sold to the federal government and tribal members had already been compensated. Many tribal members had already, though illegally, resumed hunting and fishing on the old reservation lands. Many were concerned that without reservation land base, a restored Klamath tribe couldn't establish economic self-sufficiency, and once again, the tribe would become dependent on the federal government for social services and economic support. Many of the older Klamath tribal members believed, despite the various disasters of termination, it had still made Klamath peoples less dependent on the federal government. In addition to issues of land, it was uncertain as to where the tribal headquarters would be established, since all reservation lands were liquidated with termination. Lastly was an issue of perception. Many tribes around the country had considered the Klamath “sellouts” because of their willingness to part with their reservation lands and resources, and many tribal members thought that seeking restoration would be seen negatively across the country.<sup>342</sup>

In June 1986, the United States House of Representatives unanimously approved and sent to Senate a bill to restore the status of the Klamath tribe. The bill was sponsored by Representative Bob Smith, an Oregon Republican, who criticized the original termination of the Klamath by saying “we discovered that mainstreaming tribal organizations really amounts to the loss of tribal identity and the loss of cultures and heritage that are uniquely American and impossible to recapture.”<sup>343</sup> However, the bill explicitly stated that no land be included in the restoration of the Klamath, nor would it alter any existing hunting or fishing rights for tribal members. The 99th Congress passed the official act, the Klamath Indian Tribe Restoration Act, on August 27, 1986. The act stated that the Klamath and its members “shall be eligible...for all federal services and benefits furnished to federally recognized Indian tribes or their members without regard to the existence of a reservation for the tribe.”<sup>344</sup> The act also called for a “plan for economic self-sufficiency.”

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<sup>339</sup> “600 Indians to split \$81 million,” *The Oregonian*, September 14, 1980, B3.

<sup>340</sup> “Klamath Indians seek to recover rights they lost 19 years ago,” *The Register Guard*, November 30, 1980.

<sup>341</sup> *Ibid.*

<sup>342</sup> *Ibid.*

<sup>343</sup> “Klamath tribal status OK'd,” *The Oregonian*, June 17, 1986, B2.

<sup>344</sup> Klamath Indian Tribe Restoration Act, 1986, 99<sup>th</sup> Congress (August 27, 1986).

Restoration came at a critical time for the Klamath community. Since the original Klamath Termination Act passed in 1954, nearly 1,000 children had been born to Klamath families. Because of their unrecognized status, Klamath children born after 1954 were ineligible to attend the Chemawa Indian School in Salem, Oregon, or the Haskell Indian Junior College in Kansas. In addition, they were ineligible to receive health or educational assistance from the federal government, benefits only allowed to federally recognized tribes. At the time of restoration, more than 60 percent of reservation households were below the federal poverty line, the infant mortality rate was three times the national average, and the average age of death was 39 years old.<sup>345</sup> The restoration of the Klamath provided health and medical services to the community, and over \$500,000 in financial aid to implement economic development plans. The plan was developed by Klamath tribal members and proposed the original budget. However, both the Klamath and politicians recognized the conflicts in a restoration bill that were making tribal members more dependent on government aid, while national policies were aiming to make tribes more self-sufficient.<sup>346</sup> As one tribal member remarked about restoration: “We were wounded in the heart for so long, kicked in the heart for so many years. But we held our heads up, and we see a new day ahead. It is truly a great time to be Klamath.”<sup>347</sup>

Despite the restoration, many Klamath still felt that termination was a direct strategy to liquidate Klamath land and resources. The restoration of the Klamath tribe was an official resolution to the disastrous era of termination. The restoration had not returned the priceless Klamath timberlands, and they remain the largest casualty of termination era policies. Many Klamath began calling the era “the termination experiment.”<sup>348</sup> Edison Chiloquin, the grandson of the Klamath’s last chief who famously rejected the federal government’s 1961 payout for the liquidated Klamath lands, had preserved a 580-acre stretch of the original Klamath reservation. Since 1954, Chiloquin had allowed tribal members to access the land for traditional and ceremonial purposes. In 1980, Congress officially authorized his use of the land.<sup>349</sup>

### *Post-Boldt Fishing Rights on the Columbia River*

The 1974 Boldt Decision had been a seminal policy decision for tribes of the Pacific Northwest. It had upheld century-old treaty fishing rights against powerful commercial fishing lobby and placed tribes in an unfamiliar position as central stakeholders in the management of Pacific Northwest fisheries. Alvin J. Ziontz, the Senior Attorney representing the tribes in *United States v. Washington* reflected on the significance of the Boldt decision. In the memoir, Ziontz writes:

No longer invisible, tribal governments have become co-managers of the fishery resource, sharing power and responsibility with the state. There has been a growth in

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<sup>345</sup> “Klamath tribal status OK’d,” *The Oregonian*, June 17, 1986, B2.

<sup>346</sup> *Ibid.*

<sup>347</sup> *Ibid.*

<sup>348</sup> *Ibid.*

<sup>349</sup> See Patrick Haynal’s “Termination and Tribal Survival: the Klamath Tribes of Oregon” (*Oregon Historical Quarterly*, Vol. 101, No. 3 (Fall 2000), 270-301) for a comprehensive overview of the Klamath experience before and after tribal restoration.

cooperation and information sharing, to the benefit of both state and tribal governments and the public. The regime has not always been without conflict, but there is a framework for solving problems without the confrontations politics of the 1960s.<sup>350</sup>

However, the optimism of the Boldt Decision was short-lived, and immediately after it passed, it underwent a decade of appeals, debates, contestations, and logistical quagmires. To an extent, there was much more legal confusion in the aftermath, then there was leading up to the decision. The Boldt Decision had created an even more complicated policy dilemma at the intersections of treaty fishing rights, fisheries management, and environmental protection. By the late 1970s, the Boldt Decision, which had originally been passed to resolve these issues, was creating an increasingly difficult situation for tribes seeking to exercise its provisions. Doug Nash, the Nez Perce Tribal Attorney, noted that the Boldt Decision proved that tribes could “win a legal victory, but lose the practical battles.”<sup>351</sup> In 1975, the Lower Granite Dam on the Snake River was completed, the same year the Boldt Decision was upheld at the US 9<sup>th</sup> Circuit Court of Appeals. This dam was the 18th dam on the mainstem of the Columbia and Snake Rivers, and the annual returns of salmon were facing a dramatic decline. The post-Boldt Decision era in the Pacific Northwest was marked by numerous by state and federal agencies to minimize the role of tribal involvement in the management of regional fisheries and policy decisions, despite their legal claim to such involvement.

In late 1976, the Bonneville Power Administration (BPA) had, for the first, made a direct confirmation of the treaty fishing rights of Columbia River tribes, and the BPA, along with the Columbia River treaty tribes, signed a “memorandum of understanding.”<sup>352</sup> The “memorandum,” although opposed by fish commissions in Oregon, Washington, and Idaho, was an agreement by the BPA that they would allocate funds from their annual revenue to preserve and enhance fish runs in the Columbia River system. The agreement also strengthened the rights of the treaty tribes, as it sought to “assure the treaty Indians equitable participation in regional fishery planning and decision-making...and give the tribes direct programmatic responsibility.”<sup>353</sup>

In February 1977, for the first time, the federal court established an in-river harvesting sharing formula for both Indian and non-Indian fisheries on the Columbia River. Representatives of the four Columbia River treaty tribes initially devised the plan, which was then supported by members of the Oregon and Washington fish commissions, as well the governors and state attorney generals. The plan was a practical implementation of the “50/50 allocation rule” that had been established with the Boldt Decision. With the Boldt Decision still in the federal appeals process, many opposed to the ruling were hesitant to make official policy commitments. Oregon Attorney General Jim Redden, who had originally supported the plan, stated, “its a resource agreement, not a legal agreement.”<sup>354</sup> To gain support for the plan, it was packaged as a mutual agreement to manage a natural resource, rather than an explicit granting of legal rights to the tribal members. However, the agreement ultimately failed. Several opponents were hesitant to

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<sup>350</sup> Ziontz, *A Lawyer in Indian Country*, 128.

<sup>351</sup> Columbia River Inter-Tribal Fish Commission. *Empty Promises, Empty Nets*. Wild Hare Media, 1994. Online film.

<sup>352</sup> “Indians, BPA Agree on fishery plan,” *The Oregonian*, October 14, 1976, B1.

<sup>353</sup> *Ibid.*

<sup>354</sup> “Indians recommend allocation plan for Columbia fish,” *The Oregonian*, February 05, 1977, A14.

implement Boldt Decision policies, since it was still under the federal appeals process. In addition, the tribes opposed several additions to the plan. The plan was unclear as to how the plan would replace fish runs destroyed by development, and how to regulate ocean fishing. The plan had largely ignored fish runs in specific regions that had disappeared as a result of hydroelectric dams, and it did not address the issue of the large number of salmon being harvested in the Pacific Ocean, long before it reaches treaty-fishing sites on the Columbia River.

In March 1977, the four Columbia River treaty tribes of Yakama, Warm Springs, Umatilla, and Nez Perce, by resolution, created the seminal Columbia River Inter-tribal Fish Commission (CRITFC). With the momentum from the Boldt Decision and the Indian Self-Determination Act, there was an increased demand from tribal members for an increased tribal management of natural resources. CRITFC convened on the mission to provide “coordination and technical assistance” for the Columbia River tribes that had an increased responsibility in region’s fisheries management. CRITFC also seeks to “ensure that treaty fishing rights issues are resolved in a way that guarantees the continuation and restoration of tribal fisheries into perpetuity.”<sup>355</sup> The Commission became an important intermediary for tribes with the BPA and the Pacific Northwest Regional Council, composed of the state Governors from Oregon, Washington, and Idaho.

In early 1979, the Boldt Decision reached the US Supreme Court, where they would either uphold the Judge Boldt’s decision or require him to revisit the case. Since the original decision in 1974, opponents were already drafting lengthy appeals, in Washington, many officials were telling state agencies not to obey the Boldt Decision until a higher court overturned the decision, which they believed was inevitable. In 1977, the Washington Supreme Court, in a challenge against the state made by commercial fishermen, said that Boldt had misinterpreted the treaties and violated the equal protection clause of the 14<sup>th</sup> Amendment.<sup>356</sup> The court argued, “Indians are citizens of the United States...they can neither be denied protection nor granted special privileges or immunities.”<sup>357</sup> As a result, the US Supreme Court, who had refused to hear the case previously, agreed to provide a ruling in 1979.

Also in 1979, after years of contestation, the US Supreme Court upheld the Boldt Decision. The Court upheld the ruling that the treaty tribes had the right to at least 50 percent of the harvestable salmon and steelhead in the Columbia River. In the aftermath of the US Supreme Court ruling, several other tribes in the region, both recognized and unrecognized, sought to benefit from the new fishing regulations. However, these tribes were not eligible for the new fishing regulations, since the Boldt Decision only pertained to the four Columbia River treaty tribes from 1855, the Warm Springs, Nez Perce, Walla Walla, and Umatilla. This policy didn’t stop, however, tribes in the region to take issue with this in the courts. Several tribes headed to court, unsuccessfully, to argue that the new fishing regulations should also extend to tribes without official treaty relationships with the federal government.<sup>358</sup>

In the same year, tribes of the Columbia River and Puget Sound sued the Secretary of Commerce over ocean fishing regulations because a large number of salmon were being

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<sup>355</sup> Columbia River Inter-tribal Fish Commission, “The Founding of CRITFC” (Accessed February 6, 2014. <http://www.critfc.org/about-us/critfcs-founding/>)

<sup>356</sup> “Indian fishing rights decision lands in Supreme Court, spawns new legislation,” *The Oregonian*, January 14, 1979, F1.

<sup>357</sup> Ibid.

<sup>358</sup> “Fishing rights claim turned down by judge,” *The Oregonian*, May 28, 1980, C5.

harvested in the Pacific Ocean, long before they reached mainland treaty fishing sites. The Department of Commerce managed ocean fishing areas. Similar lawsuits regarding ocean fishing were filed throughout the early 1980s: Confederated Tribes, et al. v. Kreps (1980), Yakama, et al. v. Klutznik (1981), Hoh v. Baldrige (1981), and Yakama, et al. v. Baldrige (1981). As a result of these lawsuits, the federal government established a legal obligation to regulate the ocean fishery to ensure that a reasonable number of salmon reached tribal fishing places on the Columbia River.<sup>359</sup>

In 1980, Congress passed one of the most influential acts in Columbia River hydropower and fish management, the Pacific Northwest Electrical Power Planning and Conservation Act,<sup>360</sup> also known as the Northwest Power Act. It passed the same year the last salmon cannery closed on the Columbia River. The Act established that Columbia River power production and fisheries are managed as co-equals. For the first time, the Act acknowledged the detrimental impact power production has on the region's natural species, and called for a Fish and Wildlife program that was specifically dedicated to reverse the losses. The Act's stated purpose was "the development of regional plans and programs related to energy conservation, renewable resources, other resources, and protecting, mitigating, and enhancing fish and wildlife resources."<sup>361</sup> Perhaps the most significant contribution of the Northwest Power Act was the concept of "co-management." The Act established that tribes, along with the federal government, could work as equal co-managers of natural resources.<sup>362</sup> Unlike previously, when the federal government held sole authority, and tribes remained dependent on federal policies. The practice of co-management would begin to greatly influence the management of natural resources in the Pacific Northwest for the remainder of the 20<sup>th</sup> century and into the 21<sup>st</sup> century. CRTITC would emerge as the major intermediary for the co-management of Columbia River fisheries.

However, the Act contained a flawed assumption about how to preserve and restore fish runs. It assumed, biologically speaking, that wild salmon and massive hydroelectric dams *could* coexist. Mere structural changes in the dams, like the fish ladders and water spillages, were long-term solutions to the salmon crisis. Also, the Act had given false hope to many invested in salmon restoration and recovery. Prior to its passage, federal and state officials were considering listing Columbia River salmon under the Endangered Species Act, to seek greater federal protection. The Act had encouraged many to believe that such a measure was not immediately necessary. In addition, the Act yet again failed to address the issue of ocean fishing, a long-standing concern of tribes. The US District Court was willing to impose limitations on commercial harvesting within the Columbia River, but not the Pacific Ocean. Many interpreted treaty right as geographically bounded by the Columbia River, and shouldn't be extended further outward.<sup>363</sup>

Following the passage of the Northwest Power Act in 1980, which originally pertained only to the Columbia River, representatives of Puget Sound tribes sought to extend the Act to

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<sup>359</sup> Columbia River Inter-tribal Fish Commission, "Fisheries Timeline" (Accessed February 6, 2014. <http://www.critfc.org/about-us/fisheries-timeline/>).

<sup>360</sup> See Pacific Northwest Electric Power Planning and Conservation Act (Dec. 5, 1980, 94 Stat. 2697. Public Law No. 96-501, S. 885).

<sup>361</sup> Ibid.

<sup>362</sup> "Indians urge changes in fisheries plan," *The Oregonian*, February 18, 1981, A13.

<sup>363</sup> See Blumm's *Sacrificing the Salmon* for a comprehensive discussion of the Northwest Power Act.

Puget Sound waterways. Tribal representatives in Puget Sound feared that, with more regulation on the Columbia River, the BPA would be headed to Puget Sound waterways to generate the region's increasing need for hydroelectric power. Tribal representative, Sue Hvalso, stated, "We need the same kind of protection the Columbia River is getting under the bill."<sup>364</sup> However, the amendments to include Puget Sound in the Northwest Power Act were rejected. So despite the similar policy victories for tribes in the Pacific Northwest in the 1970s and early 1980s, the situation for each was becoming increasingly unique and problematic.

Additionally, in 1980, the Federal District Court in Washington issued the *US v. Washington* Phase II decision.<sup>365</sup> US District Judge William Orrick, who had succeeded George Boldt in 1979 and was an original supporter of the 1974 decision, presided over the case. The case of *US v. Washington* Phase II dealt with two specific issues: first, status of hatchery-based fish in the 50/50 allocation system, and second, the responsibility of the federal government to Columbia River tribes in preservation of fish runs. Phase II dealt with critical logistical questions that had emerged from the original 1974 decision, and were not answered by Judge Boldt. In his decision, Orrick established that hatchery-based fish be included in the 50/50 allocation and that the federal government was responsible, as an extension of the treaties that guarantee fish to tribes, for taking the necessary measures toward environmental preservation. In essence, Orrick established the premise that a treaty is essentially meaningless without the natural resources to that are guaranteed within it. With this decision, treaty-fishing tribes were now influencing regional environmental policy.

In the midst of the ongoing struggles to establish treaty-fishing regulations on the Columbia River, the early 1980s would bring dangerously low returns of salmon and steelhead. As a result, the Boldt Decision appeared meaningless with so little fish available for the tribes in Pacific Northwest. In the early 1980s, there were numerous obstacles in establishing an agreed upon management of the Columbia River fishery. Despite the upholding of the Boldt Decision, the states of Oregon and Washington were still claiming that preservation and conservation legally superseded a treaty right. In 1981, the Oregon and Washington fish commissions had sought to impose fishing regulations and seasons dates on the Columbia River, specifically in the sections upstream from Bonneville Dam, the only section open for tribal fishermen. The fish commissions stated that more salmon be reserved for spawning in waterways upriver from Bonneville Dam, and as a result, attempted to restrict access to tribal fishing sites. The commissions believed that they still had the legal right to determine fishing seasons for both non-Indians and tribal fishermen and that the Boldt Decision only pertained to the right to take fish, not to establishing fishing seasons. Once again, the tribes sought the help of a federal judge to determine whether states had the right to limit tribal fishing based on seasonal access. US District Court Judge Walter Craig ruled that the Columbia River treaty tribes had the right to determine their own seasons, and this responsibility was given to the Columbia River Intertribal Fish Commission. CRITFC now became the intermediary for establishing dates for the tribal commercial fishing season.

Later in 1981, the states of Oregon and Washington proposed a plan to de-commercialize steelhead runs in the Columbia River Basin, for both non-Indian and tribal commercial fishermen. The states claimed that the steelhead runs were dangerously low and were in need of

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<sup>364</sup> "Indian fishing rights fuel power bill debate," *The Oregonian*, August 22, 1980, C3.

<sup>365</sup> See *United States v. Washington* Phase II (September 26, 1980, 506 F. Supp. 187; 1980 U.S. Dist. LEXIS 17152; 11 ELR 20016.)

protection and conservation, but tribal representatives were adamantly opposed to the de-commercialization. Nelson Wallulatum, the chief of the Wasco Tribe from Warm Springs, claimed that the plan “has nothing to do with the protection and conservation of the steelhead resource...these fish are simply not in danger and do not need the protection this bill claims to provide.”<sup>366</sup> These types of cases were typical in the post-Boldt Decision years. Tribes were arguing that their treaty rights were being undermined by unnecessary state restrictions aimed at protection and conservation.

In 1982, the Northwest Power and Conservation Council, the agency responsible for implementing the Northwest Power Act of 1980, officially adopted a Fish and Wildlife Program, drawn up largely from the recommendations of tribal fisheries. The tribes had advised the council that protection and enhancement of fish runs would require a decrease the overall amount of hydroelectricity produced on the Columbia River. They recommended that more water be used to assist young fish in moving through the dams, rather than a slower output that yields higher hydroelectric generation. The BPA, in accordance with the Northwest Power Act, had agreed to reduce its total power capacity. However, the Council attempted numerous times, in 1984 and again in 1987, to deemphasize the role of tribes in fish rehabilitation programs.<sup>367</sup>

In 1982, the ongoing disputes around tribal fishing sites and season dates culminated in the infamous 13-month undercover “Salmonscam” operation. Conducted by the National Marine Fisheries Service and Oregon and Washington law enforcement agencies, the operation was another attempt to curtail treaty-fishing rights on the Columbia River, and to an extent, punish tribal fishermen for their series of legal victories. Salmonscam developed under the assumption tribal fishermen were illegally poaching salmon from the Columbia River and that it was having a detrimental effect on the survival of the species. In 1981, 40,000 salmon were unaccounted for at McNary Dam, the first dam upriver from Bonneville Dam, and after the in-lieu tribal fishing sites. Federal and state agencies secretly suspected tribal fishermen of illegally poaching of the salmon. This time around, they went after tribal fishermen for violating the Lacey Act, the nation’s leading natural resource protection law. Several years later, it was revealed that the missing salmon had migrated into nearby tributaries, but upon initial discovery of the missing salmon, federal and state agents had suspected a massive tribal poaching operation on the Columbia River.<sup>368</sup>

At the conclusion of the operation, state law enforcement agents raided the fishing village in Cook’s Landing, Washington, and several other sites along the Columbia River. The operation ultimately arrested over 75 tribal fishermen for illegal fishing, and by December 1983, thirteen were facing prosecution. Among those arrested was David Sohappy, the original plaintiff in Oregon’s landmark *Sohappy v. Smith* fishing case from 1969. Despite its obvious targeting of tribal fishermen, and its timing in the years of post-Boldt Decision animosity, the National Marine Fisheries Service claimed that the operation had nothing to do with the fact the fishermen were Native but that the entirety of the violators just happens to be Native. Wayne Lewis, head of the fisheries services, stated: “This is NOT an Indian were non-Indian problem. Anyone who presents it that was is trying to polarize the issue. The Supreme Court settles this treaty business

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<sup>366</sup> “NW Indians say steelhead bill threatens treaty rights,” *The Oregonian*, September 29, 1981, B4.

<sup>367</sup> Joseph Cone and Sandy Ridlington, *The Northwest Salmon Crisis: A Documentary Crisis* (Oregon State University Press, 1996), 200-205.

<sup>368</sup> Fisher, *Shadow Tribe*, 230-235.

years ago. We're talking about criminals here, pure and simple."<sup>369</sup> Sohappy referred to Lewis, and the law enforcement agents, as "fish narcs."<sup>370</sup> Part of the operation involved setting up an undercover fish-buying operation and purchasing illegally caught fish from tribal fishermen. By 1984, the Portland Area Office of the BIA was issuing eviction notices for tribal families living at in-lieu sites on the Columbia River.

The federal prosecutors decided to move the hearings to Los Angeles, and away from the same Tacoma courtroom where Judge Boldt had upheld treaty rights nine years before. In 1986, the US Supreme Court denied the appeals of the thirteen tribal fishermen, nine of which were now facing jail terms of up to five years. Advocates for the tribal fishermen hoped Amnesty International could list them as political prisoners.<sup>371</sup> In the end, only Sohappy, his son David, and Matthew McConnville received a sentence of five years, but served only 20 months. Salmonsam had demonstrated the extent to which federal and state agencies were continuing to push against treaty fishing rights in the Pacific Northwest.

In the midst of the Salmonsam saga, the United States had signed a monumental treaty with Canada regarding the protection and restoration of Columbia River salmon. The treaty, known as the Pacific Salmon Treaty, was approved in the spring of 1985, and it provided an agreement between both nations on an effort to restore depleted stocks of salmon. For the implementation of the plan, the federal government allocated \$2.5 million for state and federal agencies. Tribes were set to receive \$400,000, but the federal government removed this payment. S. Timothy Wapato, executive director of CRITFC, criticized the federal government for leaving tribes out of the treaty discussion, and out of the funding allocation. Wapato stated, "Congress pulled the third leg out from under the treaty. They funded the states and federal agencies, but left the tribes high and dry. The tribes are co-manager. Our responsibilities are no less than the states. I feel that the tribes and I personally have been slapped in the face."<sup>372</sup>

In 1988, after five years of negotiations, the states of Oregon and Washington, federal fishery agencies, and the treaty tribes agreed to the Columbia River Fish Management Plan, a new, detailed harvest and fish production process under the authority of *U.S. v. Oregon*.<sup>373</sup> The CRFMP was the first unanimous agreement between the United States, Oregon, Washington, and the four Columbia River treaty tribes. The purpose of the CRFMP is to "provide a framework within which the Parties may exercise their sovereign power in a coordinated and systematic manner in order to protect, rebuild, and enhance upper Columbia River fish runs while providing harvests for both treaty Indian and non-Indian fisheries."<sup>374</sup> The CRFMP identifies habitat protection, enhancement efforts, and artificial production of fish as the three central strategies in protecting Columbia River fish runs.

### *Natural Resources and Environmental Decline in the Pacific Northwest*

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<sup>369</sup> "If Salmon were truth," *The Oregonian*, April 29, 1984, NW6.

<sup>370</sup> Ibid.

<sup>371</sup> "Appeal rejected in 'salmon scam,'" *The Oregonian*, July 08, 1986, B3.

<sup>372</sup> "24 Northwest treaty tribes rip Congress," *The Oregonian*, July 30, 1985, B10.

<sup>373</sup> Columbia River Inter-tribal Fish Commission, "Indian Fisheries Timeline." (Accessed February 26, 2014. <http://www.critfc.org/about-us/fisheries-timeline/>)

<sup>374</sup> Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife, "Status Report: Columbia River Fish Runs and Fisheries, 1938-2000," 13.

Despite the numerous legal and political contestations of the Boldt Decision in the 1970s and beyond, it established a fish allocation system that observed the treaty rights of the Columbia River tribes, and guaranteed their access to 50 percent of the “harvestable” commercial salmon runs. In the decade prior to the Boldt Decision, Columbia River tribes harvested only 16.5 percent of the commercial runs. In the decade after the Boldt Decision it had increased to 33.1 percent, and within two decades, they reached 42.7 percent (See Figure 20). With each year following the Boldt Decision, Columbia River tribes were getting closer to the average yearly 50/50 allocation. In this regard, the Boldt Decision was a striking success for the rights of Columbia River tribes.

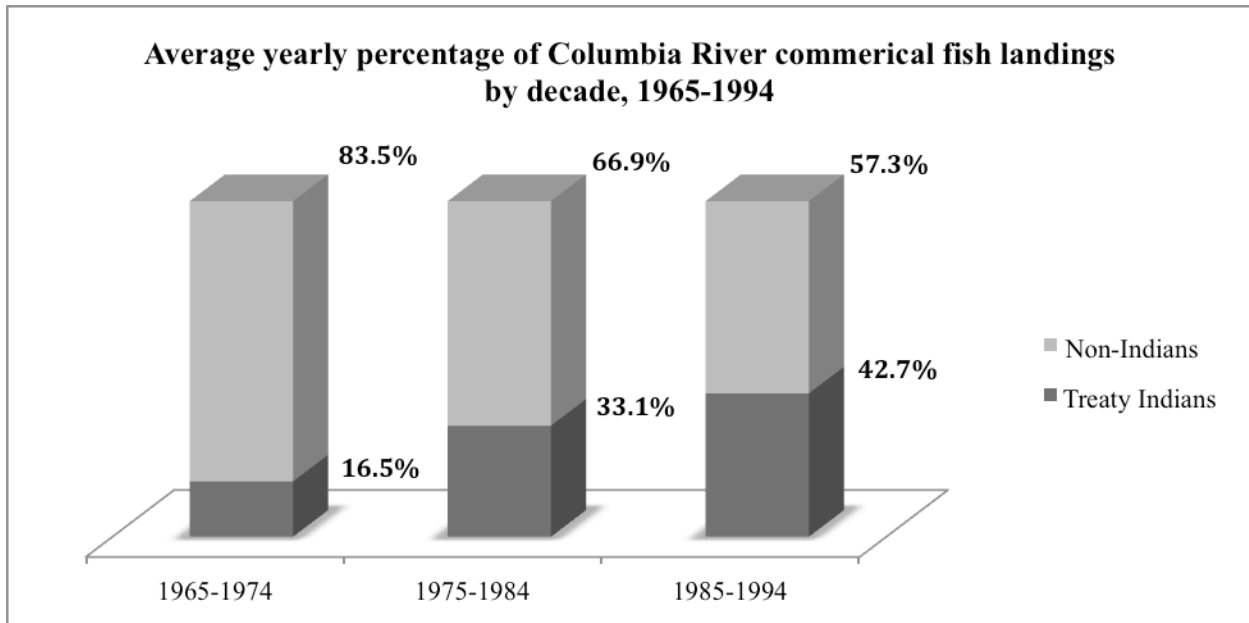


Figure 20: Percentage of the non-Indian and treaty Indian commercial fish landing on the Columbia River from 1965 to 1994. This graph begins with the decade prior to the Boldt Decision, and the two decades following. (Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife. “Status Report: Columbia River Fish Runs and Fisheries, 1938-2000.” Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife, August 2002, 25).

However, the Boldt Decision became the victim of critical environmental timing. By 1975, a year after the decision, salmon runs in the Columbia River Basin had reached their lowest points in recorded history. There were now 18 dams on the main stem of the Columbia and Snake Rivers. The BPA and other federal agencies had stated their commitment to protect and preserve wild salmon runs, as established in the Northwest Power Act of 1980. By 1983, the BPA spent \$970 million on salmon restoration projects. This support included the construction of fish ladders at the dams, the lost power revenues from spilling water over the dams for salmon to escape, and the development of fish hatcheries.<sup>375</sup> However, the production of hydroelectricity

<sup>375</sup> “Special Report: Columbia Basin Salmon: A way of life at risk: an ancient tradition hangs in the balance: For Northwest Indians salmon’s the soul of a culture: American Indian tribes of the Columbia River Basin,” *The Register Guard*, December 02, 1990, 6, 7.

remained the biggest threat to the survival of wild salmon. According to estimates, by the early 1980s the dams were killing between five and 11 million fish each year, nearly two to five times more than the annual return of harvestable salmon.<sup>376</sup> Biologists believed that wild salmon runs would largely be extinct by the mid-1980s.<sup>377</sup> In 1980, the National Marine Fisheries Service had considered listing Columbia River salmon under the Endangered Species Act, passed in 1973, but halted their effort after the passage of the Northwest Power Act, which produced much optimism for the survival of wild salmon.

Large-scale salmon hatcheries, mostly in operation in the Columbia River Basin by the early 1980s, helped mask the extent of the salmon crisis. The first hatchery in the Columbia River Basin was built in 1877, but the strategy really came to fruition after the Bonneville Dam was completed in 1937. As dams were constructed throughout the mid-20<sup>th</sup> century, hatcheries and dams became “inseparable elements of Columbia Basin water resource development.”<sup>378</sup> In particular, fish hatcheries became a critical component of post-Boldt Decision fish management policies in the Pacific Northwest. By the late 1970s, hatchery salmon were viewed as a way to increase fish allocations for both non-Indians and tribal fishermen. The use of hatchery salmon in annual fish counts posed a serious environmental dilemma: by relying on increasing numbers of hatchery salmon to meet allocation numbers, there was less emphasis on preserving wild runs. Biologists were referring to hatcheries as “an ill-advised technology aimed at fixing the damages caused by another technology, the dams.”<sup>379</sup> Despite the millions of salmon produced by the hatcheries each year, only a small percentage reach adulthood. Estimates reported that only two percent of hatchery salmon would make it downstream to the ocean and return on its migratory route to spawning grounds.<sup>380</sup>

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<sup>376</sup> Ibid.

<sup>377</sup> White, *Organic Machine*, 103.

<sup>378</sup> Blumm, *Sacrificing the Salmon*, 109.

<sup>379</sup> Ibid, 109.

<sup>380</sup> “Special Report: Columbia Basin Salmon: A way of life at risk: an ancient tradition hangs in the balance: For Northwest Indians salmon’s the soul of a culture: American Indian tribes of the Columbia River Basin,” *The Register Guard*, December 02, 1990, 6, 7.

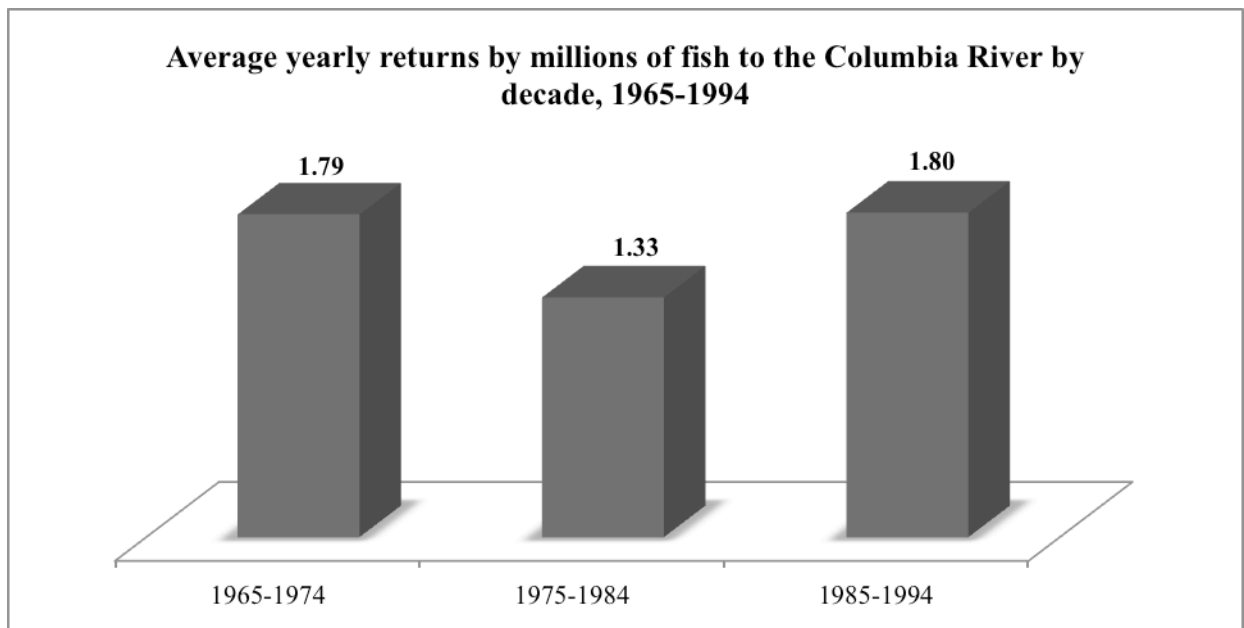


Figure 21: Average minimum numbers by millions of salmon and steelhead entering the Columbia River by decade from 1965 to 1994. This graph begins with the decade prior to the Boldt Decision, and the two decade following. (Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife. “Status Report: Columbia River Fish Runs and Fisheries, 1938-2000.” Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife, August 2002, 8).

As was established in *United States v. Washington Phase II*, hatchery salmon would be included in the annual allocation amounts. The inclusion of hatchery salmon in these amounts was evading the underlying environmental crisis. Since the 1940s, there was a steady decline in the yearly returns of fish to the Columbia River. It had reached its lowest numbers in the late 1970s and early 1980s, with an average yearly return of 1.3 million fish. However, in the following decade, in the late 1980s and early 1990s, the average return had seen its first consistent rise, up to an average yearly return of 1.8 million fish (See Figure 21). However, the increase was largely due to the counting of hatchery salmon, and doesn't specific the amount of returning wild salmon. In 1985, 85 percent of the harvestable catch was hatchery salmon. In 1986, wild Coho salmon went extinct in the Snake River. By 1988, Columbia River salmon fishing was only open for fall Chinook.

By 1990, over \$1 billion had been spent on salmon enhancement programs on the Columbia River. Wild salmon runs continued to decline. Nearly half of the original salmon habitats in the Pacific Northwest were officially closed to salmon (See Figure 22). Excess amounts of water, backed up behind hydroelectric dams, had flooded miles of spawning tributaries. Ongoing mining, grazing, irrigation, fishing, and expanding urban areas threatened salmon in numerous other ways. The billions of dollars spent on restoration efforts were not enough to compete against the ongoing capitalist ventures in the region and its natural resources. In 1991, several species of Columbia River salmon were placed on the Endangered Species list as “threatened” or “endangered.”

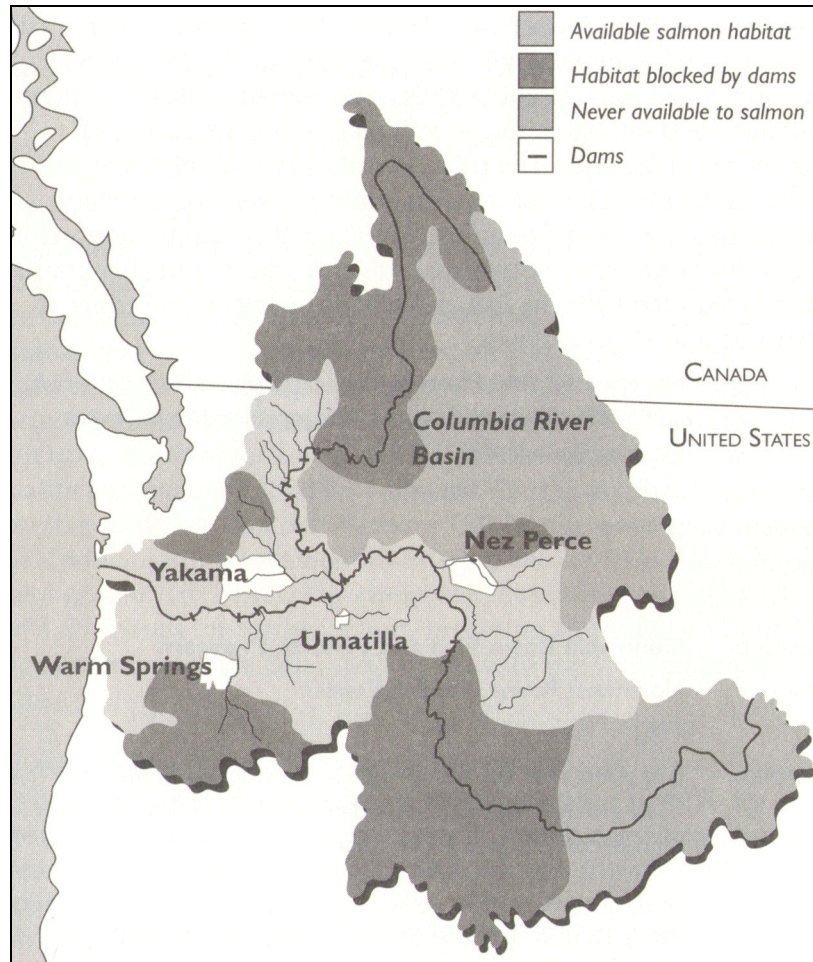


Figure 22: Map of the Columbia River Basin showing tribal regions and access to salmon spawning areas. (Cone, Joseph and Sandy Ridlington, eds. *The Northwest Salmon Crisis: a Documentary History*. Oregon State University Press, 1996. 202).

The Columbia River itself had changed since the era of dam building began. As a result reduced flow and increased turbidity, the temperature of the river has experienced a steady increase since 1940, especially since the 1970s. At first reports in the 1940s, the average summer daily water temperature at Bonneville Dam was 66.3 degrees, compared to an average temperature of 69.7 degrees in the 1990s (See Figure 23). The optimum water temperature for salmon is between 55 and 65 degrees, and large-scale population loss has occurred at minimum of 71 degrees.<sup>381</sup> More recently, the Columbia River has experienced the effects of global warming and climate change, which has further exacerbated salmon protection and restoration efforts.<sup>382</sup>

<sup>381</sup> National Wildlife Federation, “Salmon and Global Warming.” (Accessed February 25, 2014. <http://www.nwf.org/Wildlife/Threats-to-Wildlife/Global-Warming/Effects-on-Wildlife-and-Habitat/Salmon.aspx>)

<sup>382</sup> For more on the impact of global climate change on the Columbia River, see Rachael Paschal Osborn’s “Climate Change and the Columbia River Treaty” (*Washington Journal of Environmental Policy & Law*, Vol. 2, No. 1, 2012, 75-123).

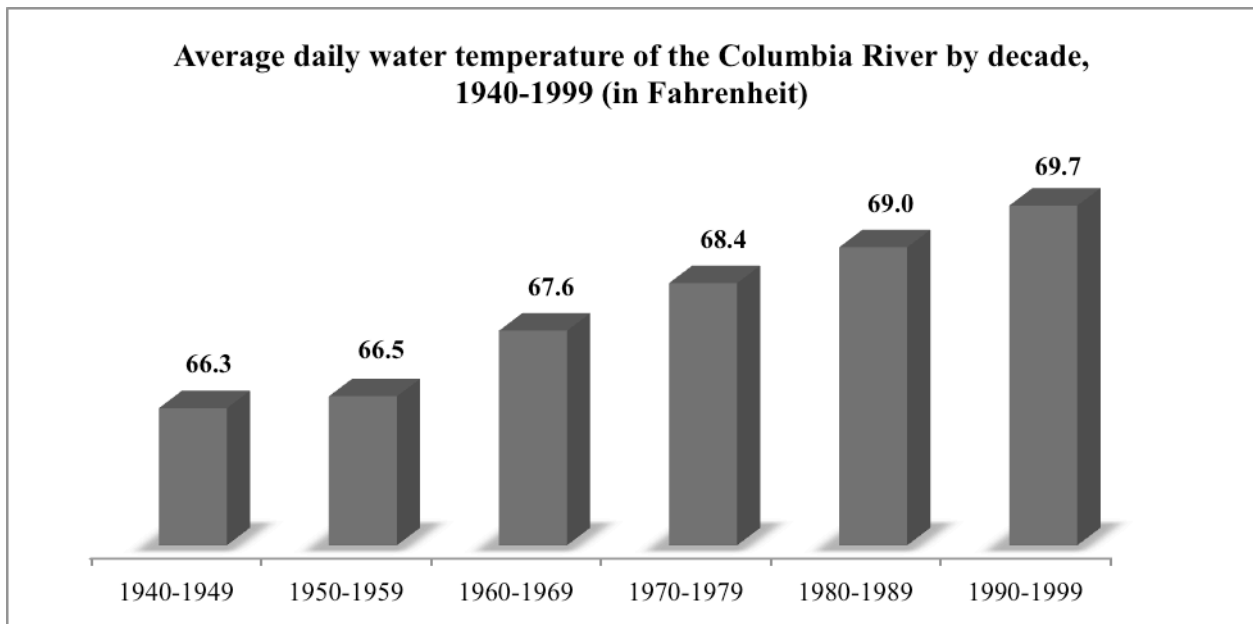


Figure 23: The average daily water temperature of the Columbia River by decade from 1940 to 1999. These temperatures were recorded at Bonneville Dam during the warmest summer months of August and September. (Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife. “Status Report: Columbia River Fish Runs and Fisheries, 1938-2000.” Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife, August 2002, 16).

### *Conclusion*

The 1988 Columbia River Fish Management Plan was the first genuine step toward a “co-management” of Columbia River fisheries between state agencies and the treaty tribes. It was the first unanimous agreement between all parties, and it would herald in a new era of tribal authority of natural resources in the Pacific Northwest. However it had taken 14 years of continued legal and political struggle, since the Boldt Decision, to finally establish a functional, procedural platform that recognized the treaty based rights on tribes and their stake in the regional management of natural resources. However not everything was resolved, as treaty tribes continued to ensure that they held an equal share of the annual harvests. In the same year that the CRFMP passed, 1988, tribal fishermen caught more than 260,000 salmon above Bonneville Dam, which accounted for revenue of about \$8 million. In comparison, commercial fishermen below Bonneville Dam caught an estimated 725,000 salmon valued at \$21. Treaty fishermen were still only claiming a marginal amount compared to non-Indian commercial fishermen.

This chapter has presented the interrelated histories of the early sovereignty era in the Pacific Northwest. First, it discussed the struggles of Native communities to realize the goals of economic stability and tribal self-determination and the continued dependence of federal Indian tribes on federal financial support. Second, it addressed the termination-reversing policy of tribal restoration, and the price several Native communities paid during the termination era. Third, it showcased the complicated legal and political dilemmas caused by the Boldt Decision, and the numerous attempts by federal and state agencies to hinder treaty-based fishing rights and tribal

involvement in natural resource management. Lastly, it presented the contributing factors leading to the dramatic decline of Pacific Northwest salmon by the late 1980s. In all, this chapter has attempted to argue that, despite the perceived policy “victories” of the 1970s, Native communities were faced with an entirely new set of political, economic, and cultural challenges and that in many critical ways, these policy victories were “more rhetoric than action.”

This chapter has sought to extend and expand our traditional chronology of both federal Indian policy and Native American history. Scholarly discussions of federal Indian policy rarely address the challenges faced by tribes in the era of tribal sovereignty. This chapter has presented this modern era of federal Indian policy in more multifaceted way, by showcasing the continued struggles of Native communities in an era of perceived “victories.” In addition, discussions of federal Indian policy rarely address critical policy decisions in other fields of law, regardless of how they may impact Native communities. This chapter demonstrates how many of the critical policy decisions impacting Native communities were being decided in environmental policy and management, outside of the legal bounds of federal Indian policy, and how federal Indian policy and environmental policy began to mutually inform the other. More broadly, this chapter showcases the changing legal arenas for tribes in the era of tribal-determination. Scholarship on Native Americans in the present must address this expanding context of “tribal self-determination.”

Lastly, this chapter has invited a more critical understanding of the sacrifices made when attempting to periodize the history of federal Indian policy. As noted, several scholars have articulated the ways in which federal Indian policy is described as an oscillating pendulum, shifting between policies of tribal assimilation versus autonomy. This pendulum has been useful in understanding dramatic policy shifts over time, and it has been particularly useful in explaining the shift from the devastating termination era policies of the 1950s to the heralded policies victories in the sovereignty movement of the 1970s. However as Native scholar Donald Fixico warns, the pendulum’s wide sweep “obscures as much as it reveals.”<sup>383</sup> In this particular case, the wide sweep of the pendulum forces us to overlook the continued, and deeply serious, political, economic, and cultural struggles of Native communities in the sovereignty era. Such an oversight can be dangerous in understanding the contemporary status of federal Indian tribes.

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<sup>383</sup> Fixico, “Federal and State Policies and American Indians,” 379.

## CONCLUSION

**“I want to go fishing whenever I feel like it. With no strings attached.”<sup>384</sup>**

For nearly five decades, David Sohappy was at the center of the treaty fishing controversy in the Pacific Northwest. From the early occupation on in-lieu fishing sites of the late 1940s and early 1950s, to the days of the fishing wars in the early 1960s, to the state and federal court cases of the late 1960s and early 1970s, to Salmonscaam of the early 1980s, Sohappy was a central figure in the postwar Pacific Northwest. Sohappy, a Yakima tribal member, began fishing the Columbia River as a child, around the same time the Bonneville Dam was completed in 1937, and continued to fish through the early 1990s. In that time, the Columbia River, the Pacific Northwest, and the status of Native peoples had changed dramatically. So Sohappy was a firsthand witness, and participant, of it all. Tom Keefe, lawyer and long-time friend for Sohappy, referred to him as “the Martin Luther King of fishing rights in the Pacific Northwest.” And regardless of whether Sohappy set out to achieve such a comparison, he was always willing to put treaty rights on a regional and national stage. In the months prior to his death in 1991, Sohappy reflected on his lasting vision for treaty rights in the Pacific Northwest. He remarked, “I want to go fishing whenever I feel like it. With no strings attached.”

In the same year of Sohappy’s death, the first species of Columbia River salmon was placed on the Endangered Species List. In 2014, this list now includes thirteen species of Columbia River salmon. There are now 208 fish hatcheries in the Columbia River Basin, and they release approximately 150 million salmon and steelhead smolt into the river. The BPA spends over \$100 million each year on the hatchery program. In the hatcheries, roughly 70 percent of the salmon will survive from egg to smolt, and be released into the river. In the wild, only around 5 percent will survive from egg to smolt.<sup>385</sup> As a result, the hatchery program is almost entirely responsible for keeping fish in the rivers. In recent years, there has been a contested introduction of genetically modified salmon into region waterways, which have been coined “frankenfish.”<sup>386</sup> Put simply, the odds are too steep for an abundant survival of wild salmon runs. Habitat destruction, increasingly poor water quality, and river obstructions have drastically limited, or in many cases made impossible, the survival of wild salmon. Today, the waterways of the Pacific Northwest are obstructed by hundreds of dams (See Figure 24), and as a result, making hundred of tributaries, and vast stretches of the region, completely unreachable for fish habitation. To an extent, it still justified the sacrifice. In 2014, the states of Oregon, Washington, and Idaho still among the lowest rates for of electricity at an average of \$7.88, compared to \$9.90 nationally, with several regions of the United States charging as high as

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<sup>384</sup> “Northwest News: Indian continues battle for rights: David Sohappy trying to regain fishing traditions,” *The Register Guard*, November 19, 1990, 5C, 6C.

<sup>385</sup> Bonneville Power Administration, “Columbia River Hatcheries: An Evolving Role (September 2010),” (Accessed March 27, 2014. <http://www.salmonrecovery.gov/Files/Hatchery/Columbia%20River%20Hatcheries%20-%20Sept%202010.pdf>).

<sup>386</sup> Timothy Egan, “Frankenfish Phobia,” *The New York Times*, March 17, 2011 (Accessed March 28, 2014. <http://opinionator.blogs.nytimes.com/2011/03/17/frankenfish-phobia>).

\$17.41.<sup>387</sup> For Sohappy’s descendants, exercising treaty fishing rights has required adaptation. With increased national concern over the longevity of Columbia River salmon runs, has come increased regulation on fishing quotas.

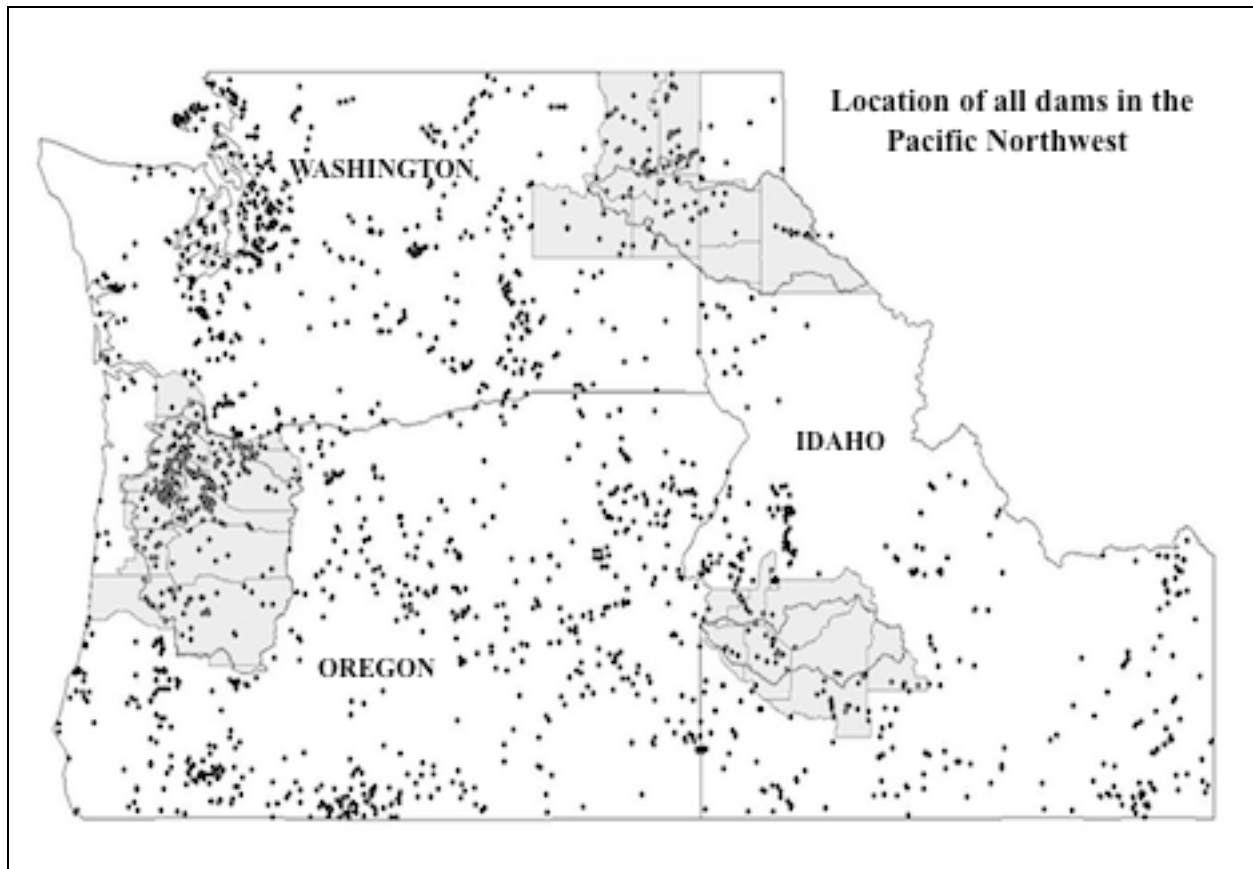


Figure 24: Map showing all dam locations, including hydroelectric, flood control, and multipurpose, in the Pacific Northwest. (Columbia River Basin Research. Portland State University. “Threats to Water Sustainability in the Columbia Basin.” Accessed December 16, 2013. <http://www.pdx.edu/columbia-basin/threats-to-water-sustainability-in-the-columbia-basin>).

However since the 1980s, numerous tribes across the Pacific Northwest have experienced significant economic growth. Tribal gaming, made possible by the Indian Gaming Regulatory Act in 1988, has revolutionized reservation economies, both regionally and nationally. So has increased development of tribal natural resources, many through “co-management” programs between the tribes and outside agencies. Warm Springs remains one of the largest employers in central Oregon and has become a regional economic power. The Klamath Tribes employ over 250 residents at the tribal headquarters and the new casino in Chiloquin, and contribute almost \$25 million to the local economy. The Coeur d’Alene Tribe in Idaho is the largest employer in northern Idaho and contributes over \$300 million to the state economy. The Nez Perce Tribe in

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<sup>387</sup> United States Energy Information Administration, “Electric Power Monthly Report,” (Accessed March 24, 2014. [http://www.eia.gov/electricity/monthly/epm\\_table\\_grapher.cfm?t=epmt\\_5\\_6\\_a](http://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_5_6_a)).

Idaho is the third largest employer in the region, employing over 1,000 residents, most of which in their fisheries division. The Umpqua Tribe and Cow Creek Band, who regained tribal status through restoration in the 1980s, reorganized as a corporation, and now employ a workforce of over 1,300 residents and earn over \$100 million through various tribal enterprises.<sup>388</sup> Yet as tribes have found ways to maintain economic stability, many reservation communities in the Pacific Northwest still keep among the highest poverty rates in the region, nearly 40 years after the policies of tribal self-determination passed.

*Flooded by Progress* is an examination of the politics of federal Indian law and the changing economic and environmental landscape of the postwar Pacific Northwest. It has argued that the changing legal status of Native lands and resources was instrumental in both the massive industrial expansion, and the subsequent environmental transformation, of the region in the year following World War II. It had traced the relations between economic and environmental changes and their connections to the dramatic policy shift in Indian affairs from the early 1950s, when the federal government unilaterally terminated tribal status of 109 Native communities, most of them in the Pacific Northwest, under the guise of working in the “best interest” of Native peoples. It then turned to the Native sovereignty movement, and the *fishing wars* of the Columbia River and Puget Sound, which precipitated new federal policies regarding tribal self-determination and treaty rights in the 1970s. Not only does the project illuminate how Native communities in the Pacific Northwest were inequitably burdened by the region’s environmental and economic transformations in the second half of the 20<sup>th</sup> century, it also demonstrates how these transformations fueled the national economy in the postwar years, and the modern ascendancy of Native nations in the Pacific Northwest. Lastly, it articulates how Native communities in the Pacific Northwest responded to the economic and environmental struggles of the early sovereignty era. In total, this project has sought to reconsider, or even remap, the field of Native American history, by foregrounding its significant intersections with 20<sup>th</sup>-century environmental and economic histories.

However there is an important consideration for this project that is not explored thoroughly in the previous chapters. Particularly, how is this story postwar growth and Native rights complicated when you expand its geographical scope to include British Columbia and Alaska? The same dynamics of settler colonialism discussed in *Flooded by Progress* are not exclusive to the Pacific Northwest, as the same types of industrial development or “modernization” that took place in the region during the postwar years were projects that were exported nationally and globally, and indigenous peoples were almost always the first dispossessed or displaced as a result of these projects. Likewise, arbitrary national boundaries rarely confine the histories and experiences of peoples living in these borderlands, and the Pacific Northwest is *certainly* a borderland. For the most part, this project has relied on this international border with Canada as a geographical barrier, as archival records of state and federal agencies operating in the Pacific Northwest only extend to the geographical limits of the United States. However as noted by historian Alexandra Harmon, Native peoples “have experienced a history that does not fit within jurisdictional lines drawn by non-Indians,”<sup>389</sup> with an important example being the treaties of 1855. While modern political and legal jurisdictions tend to conform to the international border, cultural or environmental histories make the border

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<sup>388</sup> “The growing economic might of Indian Country,” *Indian Country Today Media Network*, March 15, 2013.

<sup>389</sup> As quoted in Wadewitz, *The Nature of Borders*, 6.

quite fluid, as First Nations communities in British Columbia have struggled with the identical issues of maintaining indigenous cultural practices and traditions amidst increasing scarce natural resources.

Likewise, expanding the geographical scope to include Alaska invites notable parallels. In particular, as this project has chronicled the dramatic shifts in national federal Indian policy during the early 1970s, Native communities in Alaska were experiencing a much different change. In 1971, the landmark Alaska Native Claims Settlement Act was passed, which formally overturned indigenous claims to land, and transferred the titles to twelve Native Alaskan corporations. The Act meant to resolve a long-standing dispute about Native claims to land and resources in Alaska, and sought to make Native communities economically prosperous around the development of natural resources. The Act dealt with a substantial portion of land, nearly 150 million acres. In many ways, Alaska represented a “new space” for industrial growth by the 1970s, and as natural resources in the Pacific Northwest become increasingly regulated, there is an obvious shift toward Alaska. For instance, there is a striking increase in the value of timber harvested in Alaska after the passage of the Alaska Native Claims Settlement Act (see Figure 25). So as Native American history has proven time and again, indigenous communities rarely benefit from being on the horizon of the nation’s new frontier. Therefore, Alaska poses an interesting challenge in narrating 20<sup>th</sup> century Native American histories, because it seems to disrupt or challenge previously defined policy trends. The histories and experiences of Alaska Natives need to have a more featured role in the broader understanding of 20<sup>th</sup> century Native American history.

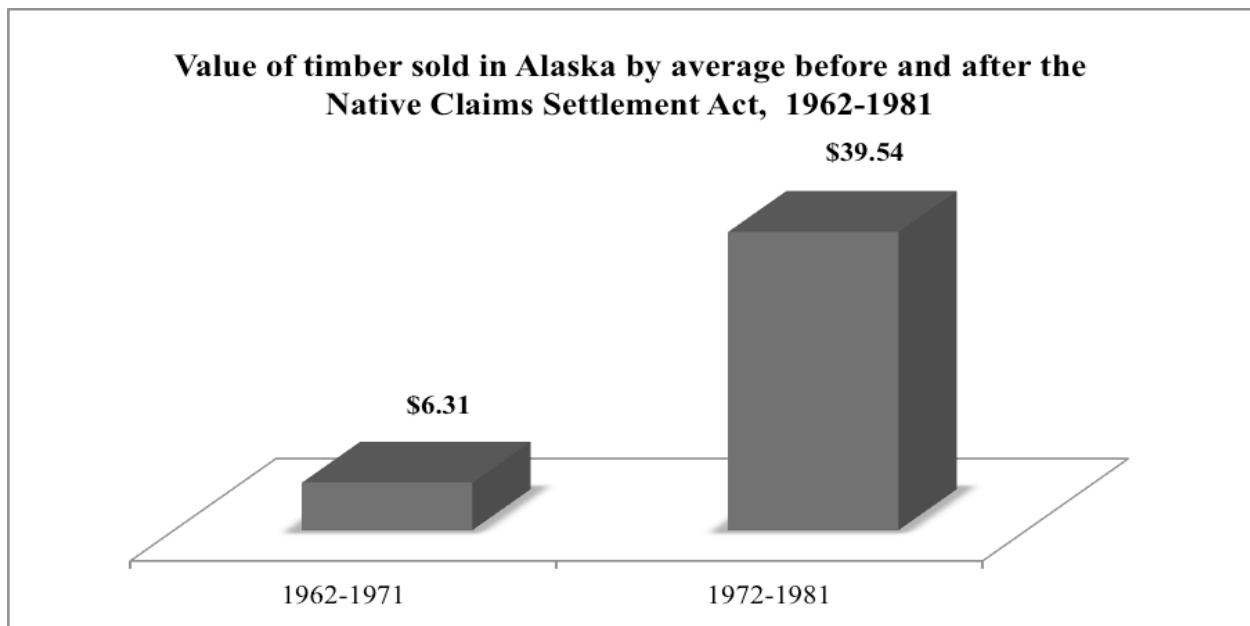


Figure 25: Value of timber sold in Alaska by average board feet before and after the Native Claims Settlement Act, by decade from 1962 to 1981. (United States Forest Service, Pacific Northwest Research Station. “Production, Consumption, and Prices of Softwood Products in North America: Regional Time Series Data, 1950-1985.” Resource Bulletin PNW-RB-161, 16).

If nothing else, the history of federal Indian policy is described as the recurrence of a *few* remarkably predictable ideologies. Among the most consistent, the belief that Native cultural practices and traditions, which had been in existence since time immemorial, were inherently obsolete, and would ultimately erode in the face of more “modern” Western world views. In the 20<sup>th</sup> century, this belief manifested itself in the form of self-declared “well-meaning” advocates of Native assimilation, who pushed for policies that would “help” Native peoples move away their traditional customs and homelands. However at the core of this belief, despite their professed “good intentions,” was the assumption that Native peoples were incapable of finding their own way, and *needed* guidance. Non-Indian policymakers makers and advocates were happy to provide it.

From a scholarly standpoint, it is easy to sit back with historical hindsight, and critique this ideology of paternalism and Native assimilation. In the same way, it is easy, also with historical hindsight, to argue that these policies posed a significant threat to, and a dramatic disruption of, indigenous cultural practices and traditions. For scholars of Native American history and federal Indian policy, this should be a foundational premise and basic analytical framework. Too often, and as is the case with numerous studies in Native American history and federal Indian policy, the analysis stops here. So that is a problem. To the detriment of the field, and to contemporary Native communities, much less attention is paid to the dynamic ways in which Native cultural practices and traditions have adapted and persisted. The scholarly trend of presenting Native peoples as tragic victims of progress, whose cultural livelihood has been irrevocably altered, is *still* alive and well. By doing this, this trend argues for the success of the policies of Native assimilation that they claim to critique.

*Flooded by Progress*, in its basic form, seeks to present the numerous ways in which Native cultural practices and traditions have survived, and to demonstrate that the credit for their survival lies squarely in the hands of Native communities themselves. Despite a federal legal campaign for the outright termination of federal Indian tribes, despite a national lobby to assimilate Native peoples into the American mainstream, despite the economic interest in tribally held lands and natural resources, despite the physical attacks on treaty fishing fishermen on the banks of rivers, despite the efforts of state and federal agencies to undermine treaty fishing rights, and despite an escalating environmental calamity that threatens the vitality of treaty-guaranteed natural resources, Native communities have kept their cultural practices and traditions. *Flooded by Progress* sets out to align itself with a critically important trajectory for Native Studies that highlights the remarkable persistence of Native cultural practices and traditions amidst such powerful external forces that seek to erode them. Or as Charles Wilkinson so eloquently acknowledged:

For more than 500 years, white society on this continent has discussed how long it would be before Indian people finally disappeared into the general society. Not if, but when...But no we have the data: five centuries of survival under the most excruciating pressure of killing diseases, wars, land expropriation, and official government policy – forced assimilation, then outright termination. Yet the tribes are now stronger than they have been in a century and a half. Never has this land seen such staying power.<sup>390</sup>

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<sup>390</sup> Wilkinson, *Blood Struggle*, 383.

One of the most evident forms of cultural persistence among Native communities in the Pacific Northwest is the First Salmon Ceremony. The ceremony has been the practice of Pacific Northwest tribes for thousands of years, as it celebrates the first salmon of the season taken from the river and the critical role of salmon in cultural and spiritual foundations of the tribes. Although the ceremony took place in numerous locations across the region, the longest recorded history of the ceremony was at Celilo Falls. In 1955, two years before construction of The Dalles Dam finished, Columbia River tribes held the last First Ceremony Salmon on the banks of the falls. The ceremony took place amidst an awkward and glaring contrast between the indigenous and Western worlds, as the sounds of jackhammers and rock often at the construction site interrupted Native songs and dances.<sup>391</sup> Documentarians from the Oregon Historical Society were present at the ceremony, and they produced a short film titled “The Last Salmon Feast of the Celilo Indians.” The narrator frames the film as “the first, and, unfortunately, last” opportunity to document the ceremony.<sup>392</sup>

Fifty-nine years later, in April 2014, the First Salmon Ceremony will be held at Celilo Village. As it has been every year since the flooding of Celilo Falls. In recent years, the ceremony attracts more than five hundred Native peoples and non-Indians. Dances and songs are performed; foods are harvested and prepared, and Native peoples of the Columbia River pay tribute to the salmon. Tribal members, young and old, acknowledge that the ceremony is both a spiritual act, and an act of persistence, or a not-so-subtle reminder that indigenous cultural practices and beliefs are not bound by conditions of outsiders.

As referenced earlier, in 1952 the Portland area office of the BIA received a letter from Roy Cronkhite, a Minister at the Niantic Christian Church in Niantic, Illinois. Cronkhite, critical of the impact dam building will have on tribal treaty rights, wrote, “The fact that the treaty is an old one has nothing to do with its validity. One might as well argue that the law of gravity is obsolete because it is old.” Perhaps the same argument can be made about indigenous cultural practices and traditions. Against time, and seemingly insurmountable odds, indigenous peoples, and their cultural practices and traditions, have remained, and the persistence, as well as ascendancy, of contemporary Native nations can be observed as a critical episode of our nation’s long and contested history.

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<sup>391</sup> “Indian Chinook salmon feast at Celilo punctuated by blasting operations for proposed The Dalles dam,” *The Oregonian*, April 21, 1952, 12.

<sup>392</sup> Oregon Historical Society. *The Last Salmon Feast of the Celilo Indians*. Oregon Historical Society, 1956. Online film.

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