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INDIAN ISSUES

Spokane Tribe's Additional Compensation Claim for the Grand Coulee Dam

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Highlights of [GAO-04-125T](#), a statement for the record for the Committee on Indian Affairs, United States Senate

Why GAO Did This Study

The Grand Coulee Dam was constructed on the Columbia River in northeastern Washington State from 1933 to 1942. The reservoir behind the dam covers land on the Colville Reservation along the Columbia River and land on the adjacent Spokane Reservation along both the Columbia and Spokane rivers. Under a 1940 act, the federal government paid \$63,000 and \$4,700 to the Colville and Spokane tribes, respectively, for the land used for the dam and reservoir. Subsequently, the Colville tribes pursued additional claims for their lost fisheries and for “water power values” and in 1994 were awarded a lump sum payment of \$53 million and, beginning in 1996, annual payments that have ranged between \$14 million to \$21 million. The Spokane tribe is currently pursuing similar claims.

S. 1438, introduced in July 2003, is a proposed legislative settlement for the Spokane tribe’s claims. While settlement proposals introduced in the 106th and 107th Congresses directed the settlement costs to be split between Bonneville and the Treasury, S. 1438 provides that the settlement be paid entirely from the Treasury.

This statement for the record addresses the (1) impact of a settlement on Bonneville if the costs were split between Bonneville and the Treasury and (2) possible allocation of these costs between Bonneville and the Treasury.

www.gao.gov/cgi-bin/getrpt?GAO-04-125T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robert A. Robinson at (202) 512-9894 or robinsonr@gao.gov.

INDIAN ISSUES

The Spokane Tribe's Additional Compensation Claim for the Grand Coulee Dam

What GAO Found

A settlement with the Spokane tribe along the lines provided to the Colville tribes would likely necessitate a small increase in Bonneville’s rates for power. While the rate increase would amount to less than 20 cents per month per household, it comes at a time when (1) Bonneville’s customers have already absorbed rate increases, including those announced on October 1, 2003, of over 40 percent and (2) the economy of the northwestern region, Bonneville’s primary service area, is experiencing difficulties. However, the bulk of Bonneville’s obligations in any settlement similar to the Colville settlement will occur in the future, when the conditions causing Bonneville’s current financial difficulties—such as costly long-term contracts to purchase power from other suppliers—will probably have abated. Therefore, Bonneville’s current financial difficulties should not unduly influence current discussions about how to compensate the Spokane tribe.

A reasonable case can be made to settle the Spokane tribe’s case along the lines of the Colville settlement—a one-time payment from the U.S. Treasury for past lost payments for water power values and annual payments primarily from Bonneville. Bonneville continues to earn revenues from the Spokane Reservation lands used to generate hydropower. However, unlike the Colville tribes, the Spokane tribe does not benefit from these revenues. Spokane does not benefit because it missed its filing opportunity before the Indian Claims Commission. At that time, it was pursuing other avenues to win payments for the value of its land for hydropower. These efforts would ultimately fail. Without congressional action, it seems unlikely that a settlement for the Spokane tribe will occur.

Mr. Chairman and Members of the Committee:

We are pleased to have the opportunity to comment on the Spokane tribe's additional compensation claim for the Grand Coulee Dam and the proposed legislative settlement, S. 1438. As you know, the Grand Coulee Dam was constructed on the Columbia River in northeastern Washington State from 1933 to 1942. When finished, the 550-foot high dam was the largest concrete dam in the world. It is still the largest hydroelectric facility in the United States. The Franklin D. Roosevelt Reservoir, which was created behind the dam, extends over 130 miles up the Columbia River and about 30 miles east along the Spokane River. The reservoir covers land on the Colville Reservation along the Columbia River and land on the adjacent Spokane Reservation along both the Columbia and Spokane rivers. Under a 1940 act, the federal government paid \$63,000 and \$4,700 to the Colville and Spokane tribes, respectively, for the land used for the dam and reservoir.¹

Subsequently, the Colville tribes pursued additional claims for their lost fisheries and for "water power values" (i.e., a share of the hydropower revenues generated by the dam from the use of their lands) before the Indian Claims Commission. The Colville tribes' fisheries claim was settled in 1978 for about \$3.3 million. Under a 1994 act—the Confederated tribes of the Colville Reservation Grand Coulee Dam Settlement Act (P.L. 103-436, Nov. 2, 1994)—the Colville tribes were awarded a lump sum payment of \$53 million for lost hydropower revenues and, beginning in 1996, annual payments that have ranged between \$14 million and \$21 million for their water power values claim.² The lump sum payment was made from the U.S. Treasury, and the cost of the annual payments is shared between the Bonneville Power Administration (Bonneville), which markets the power generated at the dam, and Treasury.

The Spokane tribe is currently pursuing similar claims. S. 1438, introduced in July 2003, is a proposed legislative settlement for the Spokane tribe's claims. While settlement proposals introduced in the 106th and 107th

¹Pub. L. No. 76-690, 54 Stat. 703 (1940), an act for the acquisition of Indian lands for the Grand Coulee Dam and Reservoir, and for other purposes, granted the United States title to Indian lands the Secretary of the Interior designated as necessary for the Grand Coulee Dam project and authorized the Secretary to determine the appropriate amount to be paid to the tribes for lands so designated.

²Pub. L. No. 103-436, 108 Stat. 4577 (1994).

Congresses directed the settlement costs to be split between Bonneville and the U.S. Treasury, S. 1438 provides that the settlement be paid entirely out of the U.S. Treasury.³ In this context, you asked us to address the (1) impact of a settlement on Bonneville if the costs were split between Bonneville and the U.S. Treasury and (2) possible allocation of settlement costs between Bonneville and the U.S. Treasury. To meet these objectives, we relied on information developed for a preliminary GAO report to the Subcommittee on Energy and Water Development, House Committee on Appropriations;⁴ interviewed officials at Bonneville and representatives of the Spokane tribe; and reviewed numerous documents on the Colville and Spokane tribes' claims for additional compensation. Our work for the Appropriations Subcommittee on Bonneville's financial condition is continuing. We plan to issue our final report in June 2004. Also, as you know, we are continuing our review of Bonneville's obligations for tribal fish and wildlife programs for this Committee. See appendix I for a more detailed description of how we estimated the impact of a settlement on Bonneville. We performed our work in September 2003, according to generally accepted government auditing standards. We provided a draft of this statement to Bonneville for comment but did not receive a response in time to include in this statement.

In summary, we found the following:

- A settlement with the Spokane tribe along the lines provided to the Colville tribes would likely necessitate a small increase in Bonneville's rates for power. While the rate increase would amount to less than 20 cents per month per household, it comes at a time when Bonneville's customers have already absorbed rate increases, including those announced on October 1, 2003, of over 40 percent and when the region's economy is experiencing difficulties. However, the bulk of Bonneville's obligations in any settlement similar to the Colville settlement will occur in the future, when the conditions causing Bonneville's current financial difficulties will probably have abated. Therefore, Bonneville's current

³The legislative settlement proposals introduced in the 106th Congress were S. 1525 and H.R. 2664. In the 107th Congress, the proposals were S. 2567 and H.R. 4859. The proposals pending in the 108th Congress are S. 1438 and H.R. 1753. Under S. 1438 the settlement costs would all be paid out of the U.S. Treasury, while under H.R. 1753, the settlement costs would be split between Bonneville and the Treasury.

⁴U.S. General Accounting Office, *Bonneville Power Administration: Long-Term Fiscal Challenges*, [GAO-03-918R](#) (Washington, D.C.: July 1, 2003).

financial difficulties should not unduly influence current discussions about how to compensate the Spokane tribe.

- A reasonable case can be made to settle the Spokane tribe's case along the lines of the Colville settlement—a one-time payment from the U.S. Treasury for past lost payments for water power values and annual payments primarily from Bonneville. Bonneville continues to earn revenues from the Spokane Reservation lands used to generate hydropower. However, unlike the Colville tribes, the Spokane tribe does not benefit from these revenues. The Spokane tribe does not benefit because it missed its filing opportunity before the Indian Claims Commission. At that time it was pursuing other avenues to win payments for the value of its land for hydropower. These efforts would ultimately fail. Without congressional action, it seems unlikely that a settlement for the Spokane tribe will occur.

Background

The Colville and Spokane Indian reservations were established in 1872 and 1877, respectively, on land that was later included in the state of Washington. The Colville Reservation, of approximately 1.4 million acres, was created on July 2, 1872, through an executive order issued by President Grant. The Spokane Reservation, of approximately 155,000 acres, was created by an agreement between agents of the federal government and certain Spokane chiefs on August 18, 1877. President Hayes' executive order of January 18, 1881, confirmed the 1877 agreement. In 2001, the Colville and Spokane tribes had enrolled populations of 8,842 and 2,305, respectively.

The Indian Claim Commission was created on August 13, 1946, to adjudicate Indian claims, including "claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity."⁵ Under section 12 of the act that created the Commission, all claims had to be filed within 5 years. Ultimately 370 petitions, which were eventually separated into 617 dockets, were filed with the Commission. The great majority of the claims were land claims. Settlements awards were paid out of the U.S. Treasury.

⁵Pub. L. No. 79-726, § 2, 60 Stat. 1049, 1050 (1946).

The Colville tribes filed a number of claims with the Indian Claims Commission within the 5-year window—on July 31, August 1, and August 8, 1951. Their fisheries claim and water power values claim became part of Indian Claims Commission Docket No. 181, which was originally filed on July 31, 1951. The original petition for Docket No. 181 included broad language seeking damages for unlawful trespass on reservation lands and for compensation or other benefits from the use of the tribes' land and other property. The tribes' original petition did not specifically mention the Grand Coulee Dam. In 1956, Docket No. 181 was divided into four separate claims. The tribes' fisheries claim became part of Docket No. 181-C. In November 1976, over 25 years after the original filing of Docket No. 181, the Indian Claims Commission allowed the Colville tribes to file an amended petition seeking just and equitable compensation for the water power values of certain riverbed and upstream lands that had been taken by the United States as part of the Grand Coulee Dam development. This amended water power value claim was designated as Docket No. 181-D, and it was settled in 1994 by Public Law 103-436.

The Spokane tribe filed one claim with the Indian Claims Commission, Docket No. 331, on August 10, 1951, just days before the August 13, 1951, deadline. The claim sought additional compensation for land ceded to the United States by an agreement of March 18, 1887. Furthermore, the Spokane tribe asserted a general accounting claim. These two claims were separated into Docket No. 331 for the land claim and Docket No. 331-A for the accounting claim. Both claims were jointly settled in 1967 for \$6.7 million. That is, the Spokane tribe settled all of its claims before the Indian Claims Commission almost 10 years before the Colville tribes were allowed to amend their claim to include a water power values claim. In doing so, the Spokane tribe missed its opportunity to make a legal claim with the Indian Claims Commission for its water power values as well as its fisheries. At that time, the Spokane tribe, as well as the Colville tribes, were pursuing other avenues for compensation of water power values.

The Bonneville Power Administration was formed in 1937 to market electric power produced by the Bonneville Dam.⁶ Bonneville's marketing responsibilities have expanded since then to include power from 31 federally owned hydroelectric projects, including the Grand Coulee Dam. Under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Northwest Power Act), Bonneville is responsible for providing

⁶Pub. L. No. 75-329, § 2, 50 Stat. 731, 732 (1937).

the Pacific Northwest with an adequate, efficient, economical, and reliable power supply.⁷ Bonneville currently provides about 45 percent of all electric power consumed in Idaho, Montana, Oregon, and Washington and owns about 75 percent of the region's transmission lines.

Bonneville Would Have to Recover Settlement Costs from Ratepayers, but Magnitude of Rate Increase Would Be Small

A settlement requiring Bonneville to pay the Spokane tribe would add to its costs of operation, and it therefore would probably pass these costs to Bonneville's customers in the form of higher rates for power. Bonneville is a self-financing agency, which means that it must cover its costs through the revenue generated by selling power and transmission services. Bonneville typically sets its rates for 5-year periods in order to generate enough revenue to cover the costs of operating the federal power system and to make its debt payments.

Assuming that the settlement with the Spokane tribe is similar in nature to the settlement with the Colville tribe in 1994, the impact on Bonneville's rates would be small. Under the settlement with the Colville tribe, Bonneville has made annual payments since 1996 that have ranged from about \$14 million to \$21 million. Currently, Bonneville estimates that it will pay about \$17 million per year over the next 5 years.⁸ In its negotiations with Bonneville, the Spokane tribe has asked for about 40 percent of the Colville tribe's settlement, which would amount to about \$7 million annually from Bonneville. Bonneville uses a rule of thumb to determine rate increases: between \$40 million and \$50 million in additional annual costs will lead to a rate increase of 1/10th of a cent per kilowatt hour (kWh). Using this rule, we estimate that a settlement with Spokane that is equivalent to 40 percent of the Colville settlement would lead to an increase in rates of less than 20 cents per month per household for a typical household relying solely on power from Bonneville, or a 0.5 percent increase in rates over current levels.⁹

⁷Pub. L. No. 96-501, § 2, 94 Stat. 2697 (1980).

⁸The payments are to be made in perpetuity, but Bonneville gave us an annual estimate for the next five years that conforms to its 5-year rate case planning horizon. While Bonneville will make these payments to the Colville tribes, it will receive interest credits in the amount of \$4.6 million per year from the U.S. Treasury—also in perpetuity—effectively reducing its payments by about 27 percent.

⁹This estimate also assumes that Bonneville pays the entire \$7 million per year. If Bonneville receives interest credits from Treasury for part of the amount, the impact would be proportionally smaller.

Although the magnitude of the rate increase necessary to fund a settlement with the Spokane tribe would be small, it comes at a time when Bonneville's customers have recently faced large rate increases. From 2000 through early 2003, Bonneville experienced a substantial deterioration in its financial condition because of rising costs and lower-than-projected revenues. As a result, Bonneville's cash reserves of \$811 million at the end of fiscal year 2000 had fallen to \$188 million by the end of fiscal year 2002. To cope with its financial difficulties, Bonneville raised its power rates for 2002 by more than 40 percent over 2001 levels. On October 1, 2003, Bonneville raised its rates a further 2.2 percent. Despite Bonneville's current financial difficulties, Bonneville predicts the conditions that led to the financial problems—namely, consecutive years of low water conditions, extreme market price volatility, and long-term contracts Bonneville signed to buy power from other suppliers at a high cost, which are due to expire in 2006—will abate. Therefore, because the bulk of Bonneville's obligations in any settlement similar to the Colville settlement will occur in the future, Bonneville's current financial difficulties should not unduly influence current discussions about how to compensate the Spokane tribe.

A Reasonable Case Can Be Made for Adopting the Colville Model in Allocating Any Costs Associated with a Settlement for the Spokane Tribe

A reasonable case can be made for having Bonneville and the U.S. Treasury allocate any costs for the Spokane tribe's claims along the lines agreed to for the Colville tribes. Any settlement would attempt to re-institute a commitment the federal government made to the tribes in the 1930s. Under the Federal Water Power Act of 1920, licenses for the development of privately owned hydropower projects should include a "reasonable annual charge" for the use of Indian lands.¹⁰ Originally, the Grand Coulee site was licensed, and the Spokane tribe expected to receive annual payments for its lands used for the project. However, the license was cancelled when the federal government took over the project (federalized the project). Since the federal government is not subject to the Federal Water Power Act, it was not required to make annual payments to the tribes. Nevertheless, the federal government made a commitment in the 1930s to make annual payments to the Colville and Spokane tribes as if the project had remained a nonfederal project. However, the federal government did not follow through on this commitment after the project was completed and started generating revenues from electricity sales in the 1940s. In pursuing this

¹⁰Pub. L. No. 66-280, §10(e), 41 Stat. 1063, 1069 (1920).

matter, the tribes weathered various administrations and changes in the federal government's Indian policy. In the 1950s and 1960s, the federal government actively sought to terminate its relationship with a number of tribes, including the Spokane tribe.

In the early 1970s, when it became clear that the federal government was not going to make these payments, the Colville tribes were able to amend their claim with the Indian Claims Commission to pursue this matter. After agreeing to the overall legitimacy of the Colville tribes' claims, the Congress ultimately approved a settlement that primarily required Bonneville to provide annual payments for water power values. This settlement was a compromise to split the costs between Bonneville and the U.S. Treasury. Bonneville is primarily paying the recurring annual payments, and the U.S. Treasury's Judgment Fund provided the one-time lump sum payment in settlement of the past annual payments—\$53 million.¹¹ The Spokane tribe, however, had already settled its claim years earlier and therefore could not file an amended claim with the commission. Nevertheless, since Bonneville collects the annual revenues for the electricity generated by the dam, it could be argued that Bonneville should make annual payments to the Spokane tribe out of those revenues, as it does for the Colville tribes; the U.S. Treasury would then pay a lump sum to settle any claims for past years. The current House settlement proposal, H.R. 1753, and previous House and Senate settlement proposals introduced in the 106th and 107th Congresses directed the settlement costs to be split between Bonneville and the U.S. Treasury.

It could also be argued that the U.S. Treasury should pay the Spokane tribe's claim, as it does for most claim settlements against the federal government. S. 1438 provides for the settlement of the tribe's claim from the U.S. Treasury. However, we do not believe a compelling case can be made to have the nation's taxpayers fully absorb an additional cost of doing business associated with Bonneville's production of power in one region of the country.

In conclusion, since the Spokane tribe missed its opportunity to file claims with the Indian Claims Commission for its fisheries and water power values, it is unlikely that the tribe's claims and any associated settlement or

¹¹The Judgment Fund is a permanent indefinite appropriation available to pay certain settlements and judgments against the federal government.

final resolution will move forward in any meaningful way without some form of congressional intervention. If the Congress is satisfied with the merits of the tribe's claims, settlement legislation, such as the current House and Senate bills, could be used as a method to resolve the tribe's claims. A reasonable case can be made for adopting the model established in the Colville settlement to allocate the settlement costs between Bonneville and the U.S. Treasury. Another option would be to enact legislation providing for some form of dispute resolution, such as mediation or binding arbitration. If the Congress has any doubts about the merits of the claim, it could enact legislation to allow the tribe to file its claim in the U.S. Federal Court of Claims.¹² The merits of the claims could then be decided in court. Such an action was discussed in 1994 when the Colville settlement was reached.

Contacts and Acknowledgments

For further information, please contact Robert A. Robinson on (202) 512-3841. Individuals making key contributions to this testimony included Jill Berman, Brad Dobbins, Samantha Gross, Jason Holliday, Jeffery Malcolm, Frank Rusco, Rebecca Sandulli, and Carol Herrnstadt Shulman.

¹²See, e.g., Pub. L. No. 95-280, § 2, 92 Stat. 244 (1978), Pub. L. No. 96-251, 94 Stat. 372 (1980), Pub. L. No. 96-404, 94 Stat. 1711 (1980), or Pub. L. No. 104-198, 110 Stat. 2418 (1996).

Methodology for Estimating the Impact of a Settlement on the Bonneville Power Administration

Because a settlement has not yet been negotiated, we used the terms of the Colville settlement to estimate the potential effect of the Spokane settlement on electricity rates in the Pacific Northwest. Assumptions used in this calculation are designed to provide a conservative (high-end) estimate of the impact of the settlement on Bonneville's rate payers. For planning purposes, Bonneville estimates that payments to the Colville tribes total \$17 million annually.¹ The Spokane tribe is requesting as much as 40 percent of the Colville settlement, or approximately \$7 million annually. To estimate the impact of increasing costs on power rates, Bonneville uses a rule of thumb that \$40 million to \$50 million in increased costs over a year necessitate a rate increase of approximately \$0.001 per kilowatt-hour (kWh). Using this rule of thumb, a \$7 million per year cost increase would raise Bonneville's wholesale power rates by approximately \$0.00016 per kWh.

According to the Oregon Department of Energy, the average household in Oregon uses approximately 1,000 kWh of electricity per month. An average household in Washington uses 1,170 kWh of electricity per month, according to the Washington Utilities and Transportation Commission. Using the approximate rate increase calculated above, the electricity bills for average households in Oregon and Washington would increase approximately 16 cents and 19 cents, respectively. These calculations assume that the household receives all its electricity from Bonneville and that its retail utility passes through the wholesale rate increase. The impact on the region as a whole would be smaller because Bonneville provides only about 45 percent of the region's power. Our calculations also assume that Bonneville would not be permitted to deduct any portion of its payment to the Spokane tribe from its debt payment to the U.S. Treasury. Public Law 103-436 enables Bonneville to deduct a portion of its annual payment to the Colville tribes as an interest credit on its Treasury debt payments. If a similar provision were included for any payments for the Spokane tribe, the impact on ratepayers would be reduced.

¹From fiscal year 2000 onward, Bonneville receives a \$4.6 million interest credit on its Treasury debt payment to offset some of the cost of the Colville settlement. Therefore, Bonneville's share of the Colville payments total \$12.4 million net of the credit. This calculation conservatively assumes that Bonneville will be responsible for the entire Spokane payment.

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