

aggressive schedule for completing this process, we believe it will require several years before bearing fruit.

Mr. Speaker, some VA hospitals, health care and research facilities need additional maintenance, repair and improvements to address immediate dangers and hazards, to promote safety and to sustain a reasonable standard of care for our Nation's veterans. In addition to reports from outside consultants and VA about the serious risk of seismic damage, VA has also identified \$57 million in improvements needed to address women's health care; another report concluded that VA should be spending (at a minimum) from 2 percent to 4 percent of its "plant replacement value" on upkeep and replacement of its health care facilities. This value in VA is at least \$35 billion; thus, VA should be spending from \$700 million to \$1.4 billion each year to keep pace with its capital needs. In fact, in fiscal year 2003, VA will spend \$137 million for these purposes.

While Congress authorized a number of major VA medical construction projects over the past three fiscal years, very few have received funding through the appropriations process. I understand that some of the more recent deferrals of major VA construction were intended to permit CARES to proceed in an orderly way, avoiding unnecessary spending on VA health care facilities that might not be needed by veterans in the future. I agree with this policy in general, especially for those larger facility projects, ones that ordinarily would be considered under our regular annual construction authorization measure. We need to resist wasteful spending, especially when overall funds are so precious. But I believe that I have a better plan.

Mr. Speaker, when I assumed the Chairmanship of the Veterans' Subcommittee on Health earlier this year, I asked what steps my colleagues and I might take immediately that could help veterans. The legislation that I am introducing today is part of this answer. This bill sets up a three-year program of delegated authorizations that would update, improve, establish, restore or replace VA health care facilities where needed. The Secretary would be given this authority to approve the individual facility projects, based on recommendations of an independent capital investments board and on criteria detailed in our bill that place a premium on projects to protect patient safety and privacy, improve seismic protection, provide barrier-free accommodations, and improve VA patient care facilities in several specialized areas of concern, such as privacy needs, specialized care programs and other high priorities of Congress, in order to meet the contemporary standard of care our veterans deserve and need.

The bill would require the Secretary at the end of the process to report his actions to this Committee and to the Committee on Appropriations as well. The bill would also mandate a review of this delegated-project approach by the General Accounting Office, to ensure this is an effective mechanism to advance some VA medical construction during and after the CARES process.

Mr. Speaker, our bill would authorize appropriations of \$500 million in fiscal year 2004, \$600 million in fiscal year 2005, and \$700 million in fiscal year 2006, to accommodate construction projects under the authority provided. The total amount authorized matches that rec-

ommended by the Committee on Veterans' Affairs to the Committee on the Budget earlier this year in our views and estimates for fiscal year 2004. I believe we can make the case for this approach by doing something urgently needed by veterans, in the best traditions of our commitment to them, while staying consistent with the intent of the CARES process. I want our work to assure all our veterans, that in as many situations as possible, their health care and research facilities, and the critical maintenance and repair needs of these facilities, will not go unnoticed and unfunded by this Congress.

Mr. Speaker, I trust that my colleagues will agree with me that this is a worthy bill. Last year, VA quickly identified 20 projects that would be appropriate for consideration under terms much like those contained in this bill. I am certain that in all sectors of the VA health care system there are more meritorious projects that need funding, and enactment of this bill would give the Secretary an opportunity to identify, consider, approve and develop them appropriately, with the authority and funds to do so. Many VA facilities need funds right now, on an emergency basis, for major construction and repair projects; other facilities have more chronic needs for restoration and capital improvements that have lingered unfunded for years. New VA health care and research facilities are also needed. In my judgment, we cannot afford to wait several years before beginning to meet these needs, when these projects confront the VA system, veterans, and Congress today.

I strongly urge my colleagues to support this bill and help enact it as a high priority early this year.

#### PERSONAL EXPLANATION

##### HON. LUIS V. GUTIERREZ

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 10, 2003

Mr. GUTIERREZ. Mr. Speaker, I was absent from this chamber on January 27, 2003 and missed voting on rollcall vote Nos. 13 and 14. I want the RECORD to show that had I been present in this chamber, I would have voted "yea" on rollcall vote Nos. 13 and 14. Also, I was briefly absent from this chamber on January 28, 2003 and I would like the RECORD to show that had I been present in this chamber, I would have voted "yea" on rollcall vote No. 15. Also, I was absent from this chamber on February 25, 2003 and I would like the RECORD to show that had I been present in this chamber, I would have voted "yea" on rollcall vote Nos. 33 and 34. I was also absent from this chamber on March 4, 2003 and I would like the RECORD to show that had I been present in this chamber, I would have voted "yea" on rollcall vote Nos. 40, 41 and 42.

On March 18, 2003 I was absent from this chamber and I would like the RECORD to show that had I been present in this chamber, I would have voted "yea" on rollcall vote Nos. 65, 66 and 67. On April 3, 2003 I was briefly absent from this chamber and I would like the RECORD to show that had I been present in this chamber, I would have voted "no" on rollcall vote No. 105. On April 7, 2003 I was absent from this chamber and missed voting on

rollcall vote Nos. 109, 110 and 111. I want the RECORD to show that had I been present in this chamber, I would have voted "yea" on rollcall vote Nos. 109, 110 and 111.

#### INTRODUCTION OF THE SPOKANE TRIBE OF INDIANS SETTLEMENT ACT

##### HON. GEORGE R. NETHERCUTT, JR.

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 10, 2003

Mr. NETHERCUTT. Mr. Speaker, I am honored today to introduce legislation with my colleague from Washington [Mr. DICKS] that will provide an equitable settlement of the meritorious claims of the Spokane Tribe of Indians concerning its contribution to the production of hydropower by the Grand Coulee Dam.

Similar settlement legislation was enacted in 1994 to compensate the neighboring Confederated Colville Tribes as a consequence of the Grand Coulee Dam. That legislation, P.L. 103-436, provided for a \$53 million lump sum payment for past damages and roughly \$15 million annually from the ongoing proceeds from the sale of hydropower by the Bonneville Power Administration. The Spokane settlement legislation, which I am introducing today, would provide a settlement of the Spokane Tribe of Indians claims directly proportional to the settlement afforded the Colville Tribes based upon the percentage of lands appropriated from the respective tribes for the Grand Coulee Project, or approximately 39.4 percent of the past and future compensation awarded the Colville Tribes pursuant to the 1994 legislation. Though the proposed Spokane settlement is proportionately less, the losses sustained by the Spokane Tribe are substantially the same as those sustained by the Colville Tribes and arise from the same actions of the United States Government. The difference being that the Spokane Tribe lost its entire salmon fishery, the base of its economy.

Grand Coulee Dam is the largest concrete dam in the world, the largest electricity producer in the United States, and the third largest electricity producer in the world. It produces four times more electricity than Hoover Dam on the Colorado River and is three times its size. Grand Coulee is one mile in width; its spillway is twice the height of Niagara Falls. It provides electricity and water to one of the world's largest irrigation projects, the one million acre Columbia Basin Project. The Grand Coulee Project is the backbone of the Northwest's federal power grid and agricultural economy.

For more than half a century, the Grand Coulee Project has produced enormous revenues for the United States Government and brought prosperity to the Pacific Northwest. The construction of the dam and the electricity it produced, helped pull the Northwest out of the Great Depression. It provided electricity to the aluminum plants that built the air force that helped to defeat Germany and Japan in World War II.

To the Spokane Tribe of Indians, however, the dam is a monument to the destruction of their way of life. The Dam flooded their reservation on two sides. The Spokane River—the ancestral umbilical cord to Spokane existence and the heart of their reservation—was changed from a free flowing waterway that

supported plentiful salmon runs, to barren slack water that now erodes away the southern lands of the Reservation with every change in the reservoir level. The enormous benefits that accrued to the Nation and the Northwest were made possible by uncompensated and irreparable injury to the Native Americans of the Columbia and Spokane Rivers.

From 1927 to 1931, at the direction of Congress, the U.S. Army Corps of Engineers investigated the Columbia River and its tributaries. In its report to Congress, the Corps identified a number of potential sites and recommended the Grand Coulee site for hydroelectric development by either the State of Washington or private concerns. Shortly thereafter, the Columbia River Commission, an agency of the State of Washington applied for and, in August 1933, was granted a preliminary permit from the Federal Power Commission for the water power development of the Grand Coulee site. However, on November 1, 1933, Harold Ickes, Secretary of the Interior and Director of Public Works Administration, federalized the project under the National Industrial Recovery Act of 1933. Excavation for the dam commenced on December 13, 1933. However, its legal authorization was in question and Congress reauthorized the Dam in the Rivers and Harbors Act of 1935. As pointed out in 1980 in the Final Report of a Federal interdepartmental Colville/Spokane Task Force: In spite of the fact that the Act authorized the project for the purposes, among others, of reclamation of public lands and Indian reservations. . . . no hydroelectric or reclamation benefits flow to the Indians. The irrigation benefits of the project all flowed south of the Reservation. In 1940, very belatedly and inadequately (at the urging of the Department of the Interior), Congress did enact a statute to authorize the Secretary of the Interior to designate whichever Indian lands he deemed necessary for Grand Coulee construction and to receive all rights, title and interest the Indians had in them in return for his appraisal of its value and payment of compensation by the Secretary. The only land that was appraised and supposedly compensated for was the newly flooded lands. Pursuant to this legislation, 54 Stat. 703 (1940), the Spokane Tribe received the grand total of \$4,700. There is no evidence that the Department advised or that Congress knew that the Tribes' water rights were not extinguished. Nor had the Indian title and trust status of the Tribal land underlying the river beds been extinguished. No compensation was included for the power value contributed by the use of the Tribal resources nor the loss of the Tribal fisheries or other damages to tribal resources.

Although the Department of the Interior and other federal officials were well aware of the flooding of Indian trust lands and other severe impacts the Grand Coulee Project would have on the fishery and other critical resources of the Spokane and Colville Tribes, no mention was made of these impacts or the need to compensate the Tribes in either the 1933 or 1935 authorizations. Federal inter-departmental and intra-office correspondence of the Department of the Interior from September 1933 through October 1934 clearly demonstrate that the Federal government knew that the Colville and Spokane Tribes should be compensated for the flooding of their lands, destruction of their fishery and other re-

sources, destruction of their property and annual compensation from power production for the use of the Tribes' land and water resources contributing to such power production. As pointed out in a 1976 Opinion of Lawrence Aschenbrenner, the Acting Associate Solicitor, Division of Indian Affairs, Department of the Interior:

The 1940 act followed seven years of construction during which farm lands, and timber lands were flooded, and a fishery destroyed, and during which Congress was silent as to the Indian interests affected by the construction. Both the Congress and the Department of the Interior appeared to proceed with the Grand Coulee project as if there were no Indians involved there.

The Department correspondence and memoranda on the subject of Indian rights apparently came to an abrupt halt [after 1934]. There is no tangible evidence, currently available, to indicate that the Department ever consulted with the tribes during the 1933-1940 period concerning the ongoing destruction of their land and resources and proposed compensation therefore.

The Opinion goes on to point out:

It is our conclusion that the location of the dams on tribal land and the use of the water for power production, without compensation, violated the Government's fiduciary duty toward the Tribes.

The situation at hand involves a conflict-of-interest on the part of the Department of the Interior. . . . The Department of the Interior has responsibility for protecting the Tribes' Winters Right [water rights] as well as its property rights in the bed of the river. Recognizing the value of the river as a power production and irrigation site, the Department of the Interior . . . has used this land and the water for its own purposes, without ensuring that consideration and benefit from the development of those resources flowed to the Tribes who own part of them. The case fits squarely into the reasoning of Manchester Band, Navajo Tribe and Pyramid Lake cases, where . . . a fiduciary who learns of an opportunity, prevents the beneficiary from getting it, and seizes it for himself." (Citations omitted)

Throughout the construction, the Department's apparent failure to communicate with the Tribes concerning their land and water rights is appalling. No case law grants executive agencies authority to unilaterally abrogate Indian rights. [T]he posture of the Department can be described not as . . . an exercise of guardianship, but an act of confiscation." (Citations omitted).

The Colville settlement legislation ratified a settlement agreement reached between the United States and the Colville Tribes to settle the claims of the Tribes to a share of the hydropower revenues from the Grand Coulee Dam. This claim was among the claims which the Colville Tribes filed with the Indian Claims Commission (ICC) under the Act of August 13, 1946 (60 Stat. 1049) and later transferred to the U.S. Court of Claims. Pursuant to that Act, there was a five year statute of limitations to file claims before the Commission which expired August 13, 1951. Why did the 1994 Colville settlement legislation not also include a settlement of the claims of the Spokane Tribe of Indians?

Although the Indian Claims Commission statute of limitations expired August 1951 neither the Colville Confederated Tribes nor the Spokane Tribe knew then or for many years

thereafter that there would be a need to even file claims related to the use of their tribal land and water resources for the construction and operation of the Grand Coulee Dam for power production and reclamation. After all, beginning in the 1930s through the 1970s, the historical and legal record is replete with high level agency correspondence, Solicitor Opinions, inter-agency proposals/memoranda, Congressional findings and directives and ongoing negotiations with the affected Tribes to come to agreements upon the share of revenue generated by Grand Coulee which should go to the Tribes for their use of their respective resources. The Tribes had every reason to believe that their Trustee, the United States, was, although belatedly, going to act in good faith to provide fair and honorable compensation to the Tribes for the United States' proportionate use of their Tribal resources for revenue generated by the Grand Coulee Dam.

In 1974 the Solicitor of the Department of the Interior issued an Opinion which concluded, among other things, that the Spokane and Colville Tribes each retained ownership of the lands underlying the Columbia River and, in the case of the Spokane Tribe, the lands underlying the Spokane River. The Opinion suggested that the resource interests of the Tribes were being utilized in the production of hydroelectric power at Grand Coulee.

In 1975, in response to this Opinion, the Senate Appropriations Committee directed the Secretary of the Interior and the Secretary of the Army and the Bonneville Power Administration to "open discussions with the Tribes to determine what, if any, interest the Tribes have in such production of power, and to explore ways in which the Tribes might benefit from any interest so determined." (S. Rept. 94-505 at 79). A Colville/Spokane Task Force was subsequently composed of representatives of various federal agencies, BPA and the Tribes.

By this time, it was becoming apparent to the Tribes that the U.S. was beginning to consider possible legal defenses such as navigational servitude and the 1951 Indian Claims Commission statute of limitations to severely limit and/or entirely eliminate any obligation by the federal government as fiduciary to compensate the Tribes for the conversion of Tribal resources by the U.S.

In response to the newly expressed suggestion of the U.S. to attempt to severely limit or entirely eliminate any obligations to provide compensation for its breach of its trust responsibility and conversion of Tribal resources, the Colville Confederate Tribes filed a petition with the Indian Claims Commission on August 5, 1976 to amend its original claim petition (filed on July 31, 1951), which was then still pending and to include a claim for "compensation and damages arising out of the taking and use of its lands, including the resources . . . in connection with the construction . . . operation by defendant [United States of America] of the Grand Coulee Dam, including the reservoir area created by the Dam." The U.S. then, for the first time, argued that the Colville Tribes' attempt to amend their 1951 petition in 1976 should be denied because it was barred by the 1951 statute of limitations of the Indian Claims Commission Act.

On November 18, 1976, the Indian Claims Commission held that the original land claim filed in 1951 . . . was broad enough to support a claim for damages arising from the construction and operation of the Grand Coulee

Dam. Therefore [the Colville Tribes] amended claim relates back and is not barred by the statute of limitations." 39 Ind. Cl. Comm. 159. As a consequence, the Colville Tribes, in 1976, were able to effectively respond to the U.S.' belated strategy to raise the 1951 statute of limitations.

The Spokane Tribe, however, was not similarly situated. While the Spokane Tribe, like the Colville Tribes, had timely filed its land claims before the Indian Claims Commission in 1951, the Spokane Tribe had already entered into a settlement agreement concerning its original claims on February 21, 1967, approximately nine years prior to any indication that the U.S. might suggest or attempt to limit or eliminate its obligations to the Tribes regarding Grand Coulee Dam. As a consequence, the Spokane Tribe did not have a pending Indian Claims Commission claim to amend in 1976 as did the Colville Tribes. As evidenced by the U.S.' attempt in 1976 to defeat the Colvilles' motion to amend their petition, the U.S. apparently hoped to prevent both the Colvilles and the Spokane from bringing Grand Coulee Claims.

While neither the Colville Confederate Tribes nor the Spokane Tribe knew in 1951 or in 1967 that they needed to file claims for damages and compensation for the construction and operation of Grand Coulee, it was mere happenstance that the Colville Tribes still had an Indian Claims Commission case pending and capable of being amended in the mid-1970's and the Spokane Tribe did not.

Up until the mid-1970's, neither the Colville Tribes nor the Spokane Tribe had any reason to distrust that the U.S. would not attempt to negotiate a fair and honorable compensation settlement given the past Federal agency pronouncements, legal opinions, on-going negotiations and Congressional directives.

When the Colville settlement legislation was moving forward in 1994, the Spokane Tribe pressed for an amendment to waive the statute of limitations and allow the Spokane Tribe to seek just and equitable compensation resulting from the construction of the Grand Coulee Dam. Fearful that the Spokane Tribe's efforts might delay and jeopardize final enactment of the Colville settlement legislation, the Colville Tribes and others requested that the Spokane Tribe defer its efforts to seek settlement of its claims. The Spokane Tribe honored that request. During the joint House and Senate hearings on the Colville legislation, the Assistant Secretary for Indian Affairs did commit in her testimony that she would study the merits of the Spokane claim. The day after the hearings, the Solicitor of the Department committed the Department to examine, independent of the Colville Bill, the Spokane Tribe's claims. The House Resources Committee Report accompanying the Colville legislation stated that the Spokane claim was "identical in many respects" to the harm suffered by the Colville Tribes. The Committee noted "that the Spokane Tribe has a moral claim and requests that the Department of the Interior and the Department of Justice work with the Spokane Tribe to develop a means to address the Spokane's claim." In the Senate, Senators INOUE, Bradley, MURRAY, MCCAIN and Hatfield joined in a colloquy expressing their concern that the claims of the Spokane Tribe should be addressed and urged the Administrative agencies to work with the Spokane Tribe to resolve the Tribe's claims.

Following a subsequent commitment from Associate Attorney General, John R. Schmidt, that the Department and other federal agencies would undertake an "earnest" and "fair evaluation" of the Tribe's claims, the Tribe committed a great deal of time, resources and funding to fully research and document its claims. By late 1995, the Tribe was prepared to formally request that the Interior and Justice Departments establish a federal "negotiating team." In a meeting with Interior Department officials in December 1995, Tribal representatives were astounded when they were advised that the Tribe should return to Congress and renew the Tribe's request for a waiver of the statute of limitations.

On July 9, 1996, Senators MURRAY, MCCAIN, INOUE, Bradley and I sent a letter to Secretary Bruce Babbitt stating the Federal/tribal negotiations urged by Congress in 1994 were not predicated on the Tribe's first obtaining a waiver of the statute of limitations, that the requirement for such an undertaking was "totally contrary to the understanding of the Tribe and to the direction of Congress," and urged that the Interior Department "proceed as soon as possible to negotiate with the Tribe on its power value and fishing claims as previously directed by Congress." Unfortunately, viable and equitable settlement negotiations have not materialized.

Enactment of settlement legislation addressing the meritorious claims of a Tribe, claims otherwise barred by a statute of limitations, is neither new or precedent setting. There is ample precedent for Congressional recognition of the moral claims of Indian tribes and provision of appropriate compensation. Several tribes within the Missouri River Basin suffered very significant damage because of inundation of reservation bottom lands through construction of the Pick-Sloan Project dams. In recognition of these damages, Congress has provided substantial compensation to the Affiliated Tribes of the Fort Berthold Reservation and the Standing Rock Sioux Tribe (P.L. 102-575), the Crow Creek Sioux Tribe (P.L. 104-233), and the Lower Brule Sioux Tribe (P.L. 105-132). Compensatory legislation for the Cheyenne River Sioux Tribe (S. 964) and the Santee Sioux and Yankton Sioux Tribes (S. 1148) are currently pending before this Congress and are expected to move through the Senate Commission on Indian Affairs shortly.

The Federal Government, by its own admission, had a conflict of interest and blatantly breached its fiduciary trust responsibility to the Spokane Tribe. Having breached that trust by converting the Tribe's resources to its own benefit, it led the Tribe to believe it would receive fair and honorable compensation. The United States then changed its position and belatedly asserted new legal defenses against compensation for the Tribe. Now, the U.S. seeks to avoid fair and honorable negotiations with the Tribe it betrayed because the Tribe failed to timely file its claims before the expiration of the statute of limitations. As quoted by the Assistant Secretary for Indian Affairs in her testimony on the Colville settlement legislation:

... I am reminded of the words of Justice Black . . . in litigation about another dam flooding the lands of another tribe's territory: "Great nations, like great men, should keep their word." When the Congress enacts and the President signs this legislation, we can all be proud that we are, at last, acting as a great nation should.

I urge my colleagues to keep the word of our Nation and act expeditiously and favorably

on this legislation as it proceeds through the Congress.

RECOGNIZING GARNER E. SHRIVER

**HON. TODD TIAHRT**

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 10, 2003

Mr. TIAHRT. Mr. Speaker, I rise today to pay tribute to a great Kansan and a great American.

Garner E. Shriver was born July 6, 1912 in the small Butler County town of Towanda. He attended public schools in Towanda and Wichita, and started an illustrious career of service to our nation by enlisting in the United States Navy following graduation from the University of Wichita and Washburn School of Law.

Honorably discharged as an officer after three years in the Navy, Mr. Shriver served in the Kansas Legislature in both the House of Representatives and the State Senate. In 1960, he was elected to the U.S. House of Representatives by the people of the 4th District of Kansas, who re-elected him seven times. Congressman Shriver was a relentless advocate for the 4th District of Kansas, and worked tirelessly as a senior member of the powerful House Appropriations Committee on behalf of his constituents. During his 16 years in Congress, Garner became an influential voice on significant issues of the day, including health and education benefits for our Nation's veterans, and landmark civil rights legislation. He served on the committee that drafted the Civil Rights Act of 1964.

Although Mr. Shriver left the House in 1977, he didn't leave Congress. He moved over to the Senate and served as minority staff director and general counsel for the Senate Veterans' Affairs Committee from 1977 to 1982, where he made a significant impact on his fellow veterans' lives. Mr. Shriver returned home to Wichita where he practiced law until his death, March 1, 1998. Garner Shriver is survived by his wife, Martha Jane, and three children David, Kay, and Linda. He also has seven grandchildren and two great-grandchildren.

Garner E. Shriver was a noble public servant and served the people of the 4th District with distinction. I am honored to succeed him as the current 4th District Representative, and I am pleased to have an opportunity to honor his service to our nation by introducing legislation today that will designate the facility of the United States Postal Service at 9350 East Corporate Hill Drive in Wichita, KS as the "Garner E. Shriver Post Office Building."

EXPRESSING SUPPORT FOR RE-NEWED EFFORT TO FIND PEACEFUL, JUST, AND LASTING SETTLEMENT TO CYPRUS PROBLEM

SPEECH OF

**HON. CHRISTOPHER H. SMITH**

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 9, 2003

Mr. SMITH of New Jersey. Mr. Speaker, I rise in support of H. Res. 165, a resolution that calls for the rights of Greek Cypriots and