

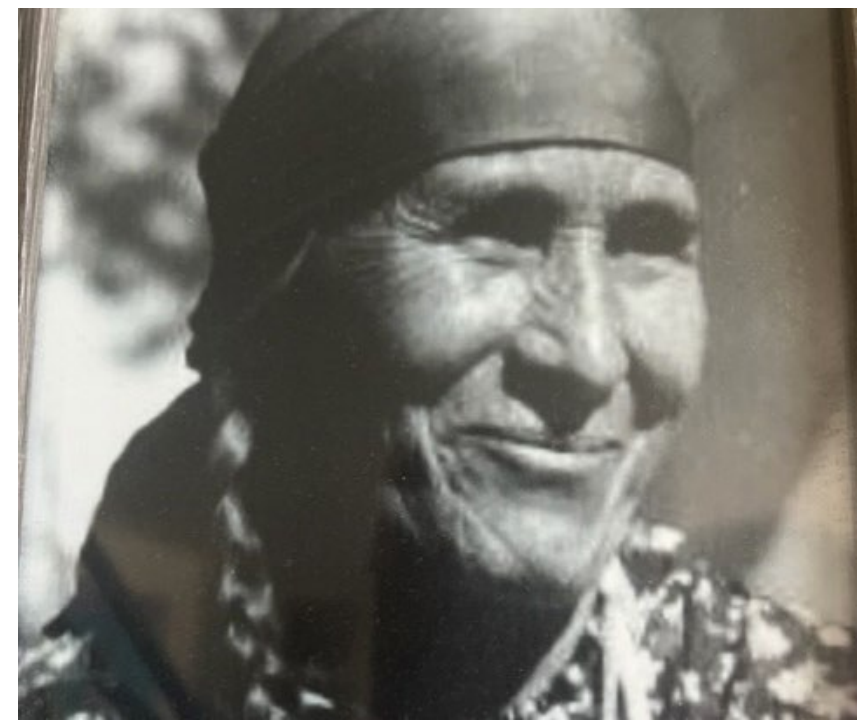
3rd Annual Water Law
in Eastern Washington
Conference

“Sqahetkw” Place of
Fast Moving Water

Water law within the context of the
knowledge, history, and lived experiences of
Tribal Nations, whose relationships with
rivers and waters predate the modern legal
frameworks.

Margo Hill-Ferguson, Eastern Washington University

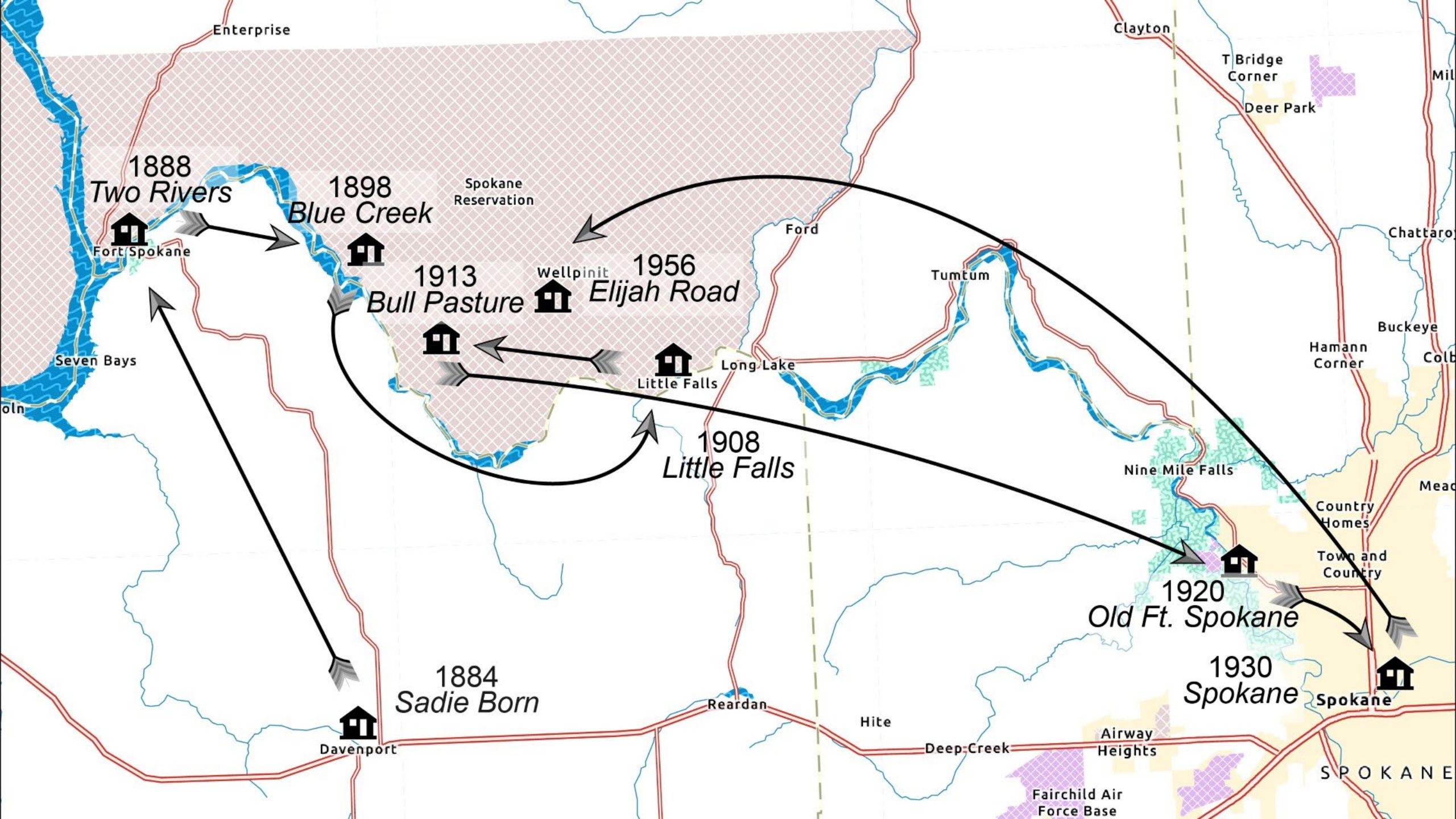
May 28, 2026









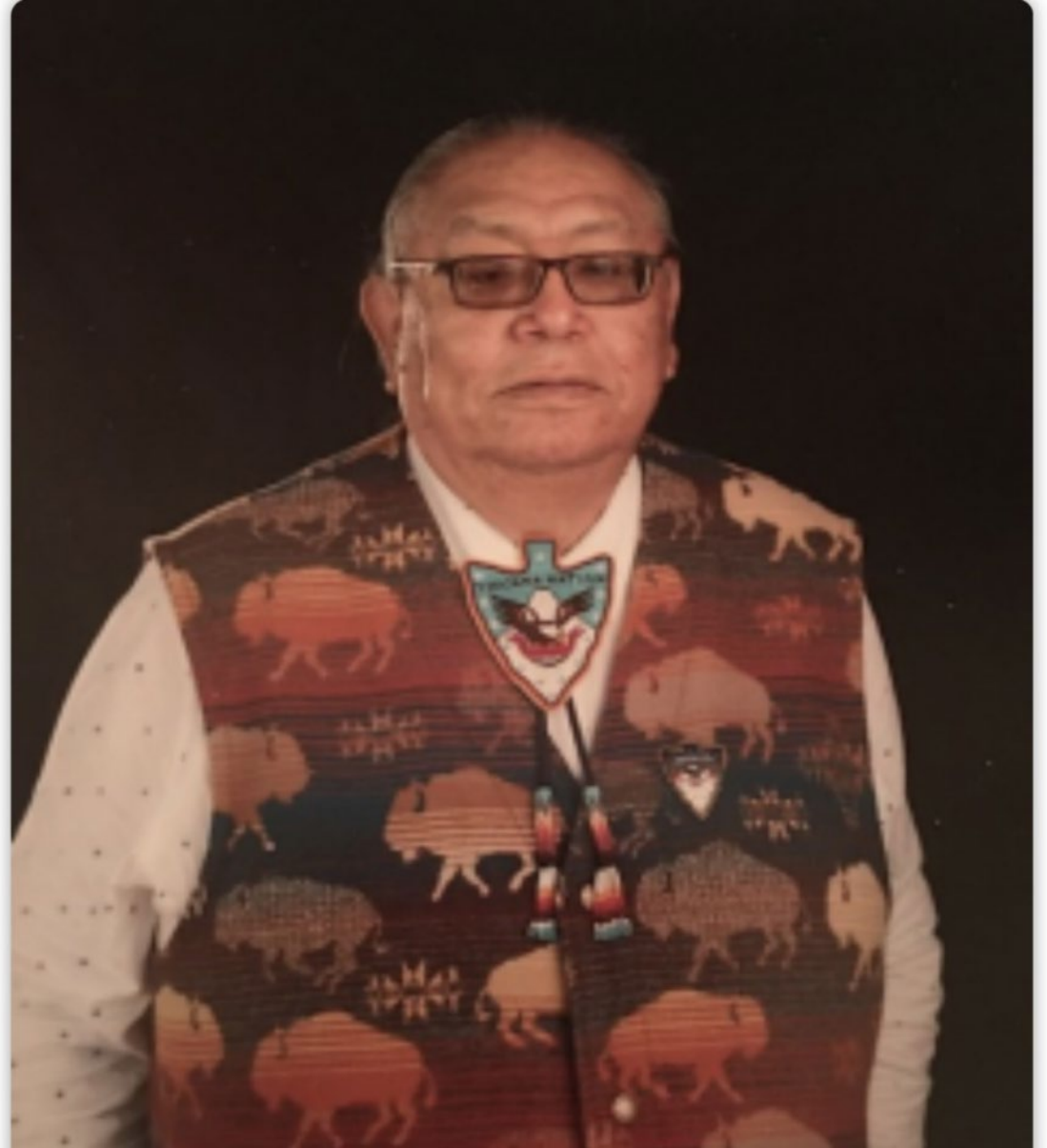


Alex Sherwood,
sacred sites all
along the
river..

- "Speaking to the Importance of Chamokane Creek to the Spokane Indians. It's where we get our food supply, camas, bitterroots, a place where we winter." It gave us salmon that fed our people. We had our camp sites along the Chamokane Creek. The springs that feed into the creek, they don't freeze, and the water, it's pure. They can fish during the winter for fresh fish and the Chamokane empties into the Spokane River. They [Spokanes] weren't worried about the value of the land, in dollars. They didn't care whether they got a rock pile, or scrub timber. All they worried about was how they were going to survive from the Chamokane and Spokane River.









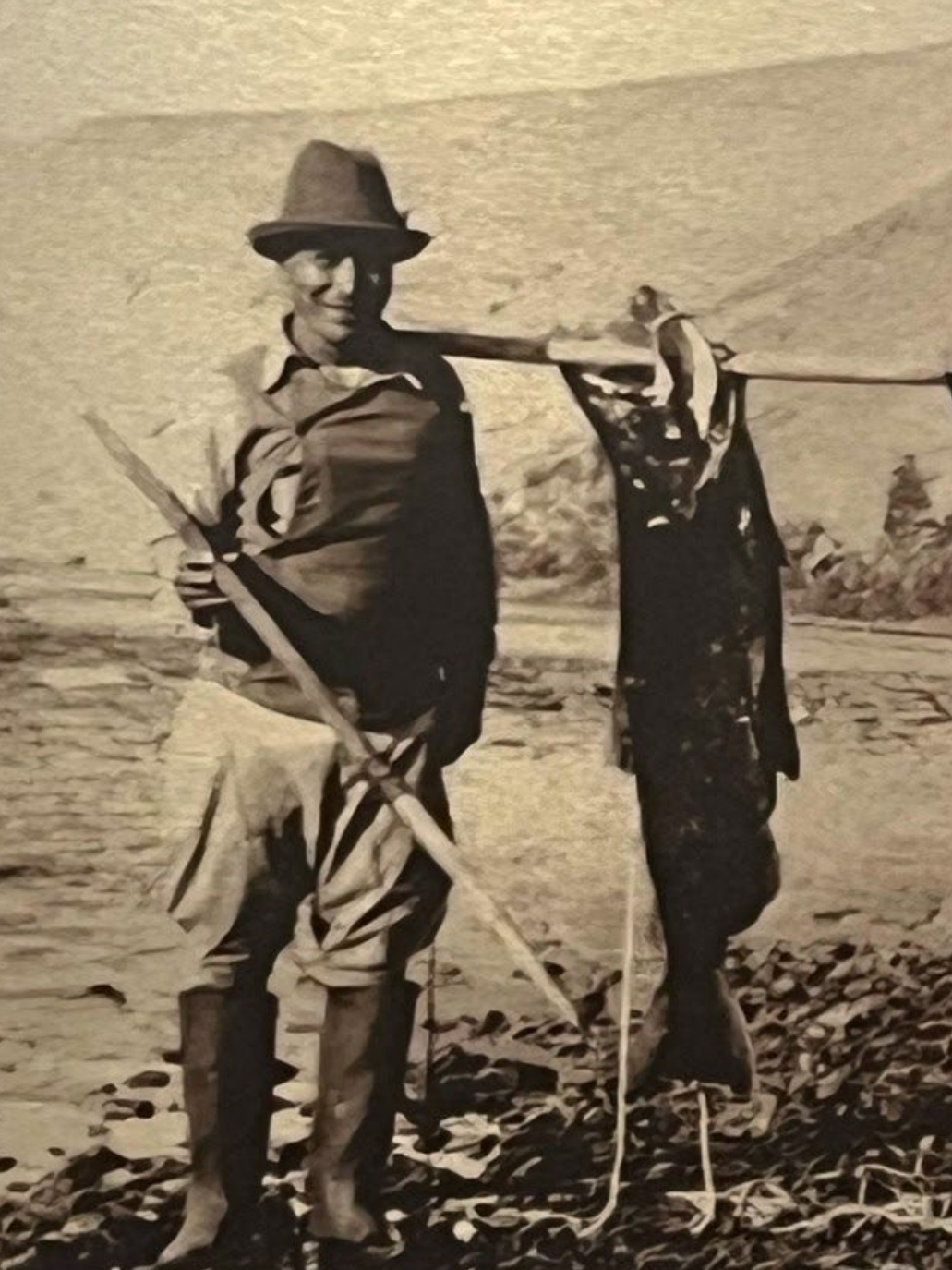


Story from John B.
Flett
about Edward Boyd,
Sadie's son.

"I saw Edward Boyd spear salmon there. This spearing place was on the other side of the river. Ed Boyd would swim his horse a short distance of about 12 feet and would get on the other side of the river and fish there. I saw him spear quite a few fish in that area."



4/16/13



Walter K. Boyd

BIRTH 25 Feb 1904

DEATH 8 Apr 1955 (aged 51)

BURIAL Chief Lot Cemetery
Wellpinit, Stevens County, Washington

MEMORIAL ID 23767848 · [View Source](#)

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SUGGEST EDITS

MEMORIAL

1910 United States Federal Census

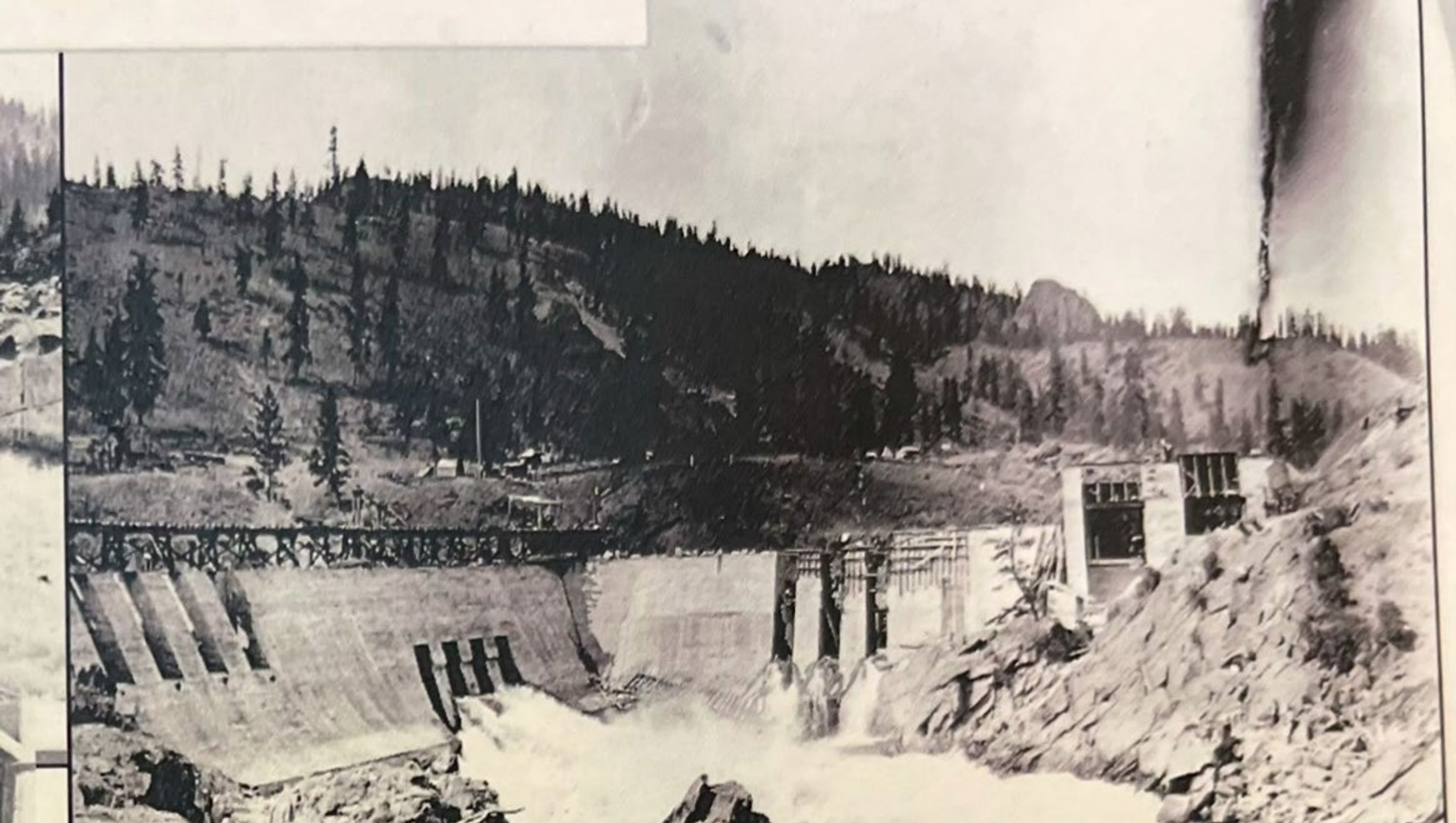
Name: Walter Boyd

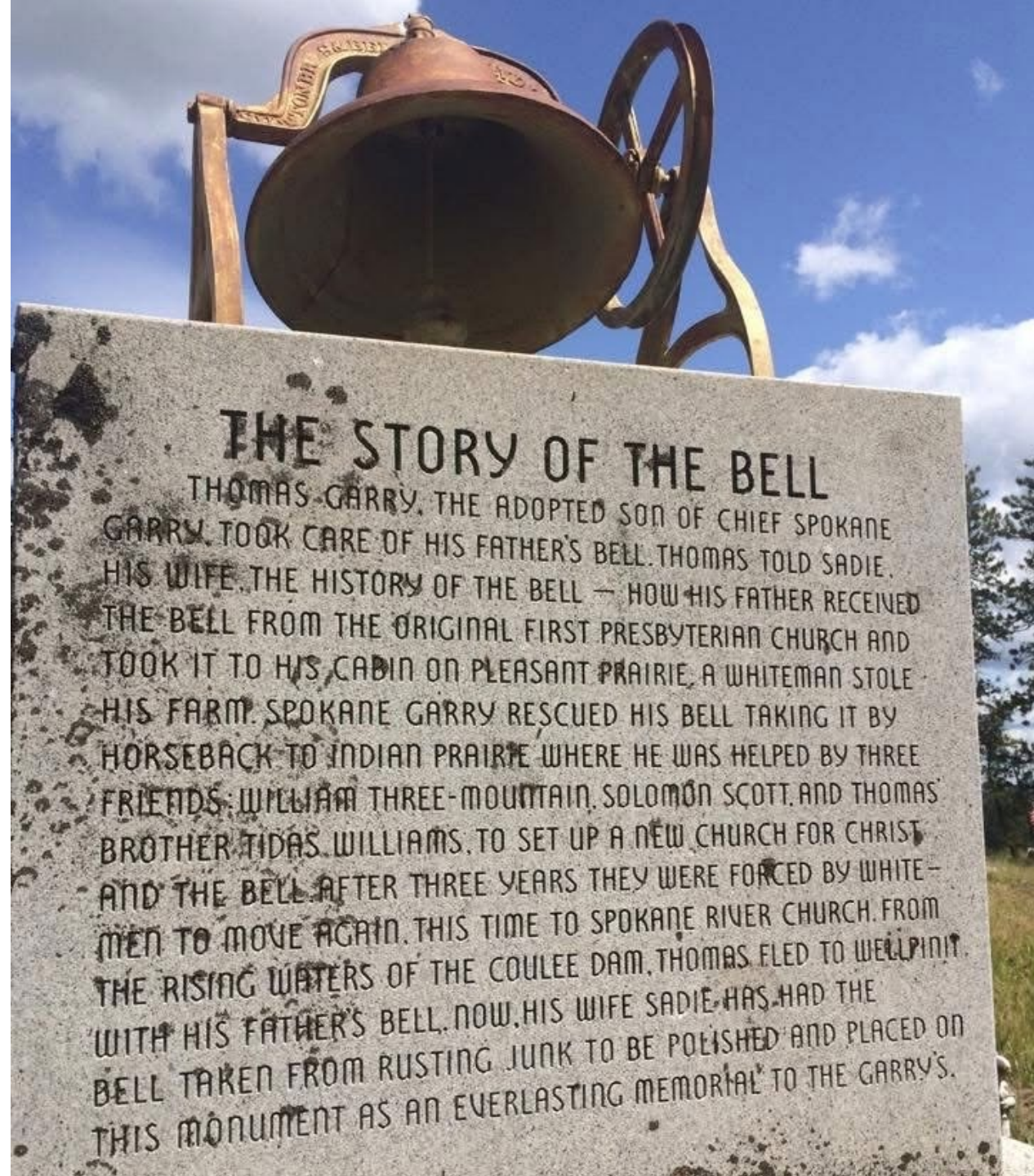
Age in 1910: 7

Birthplace: Washington









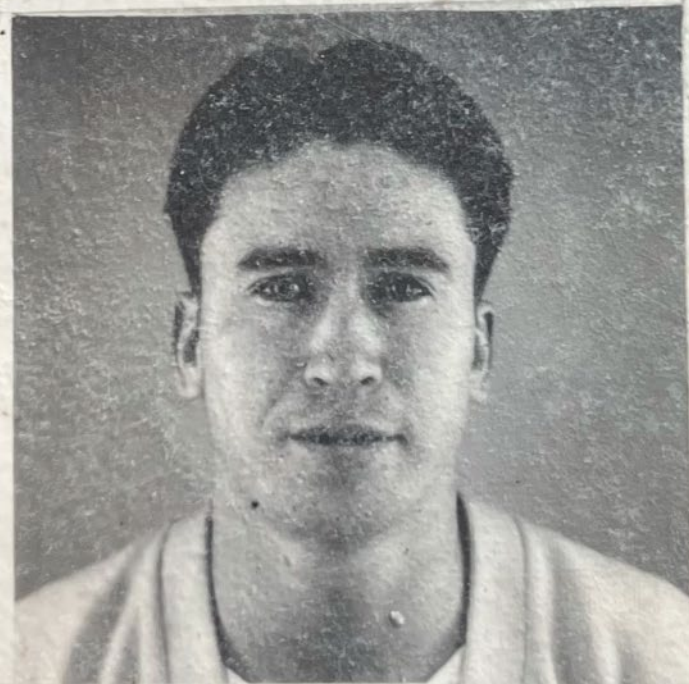


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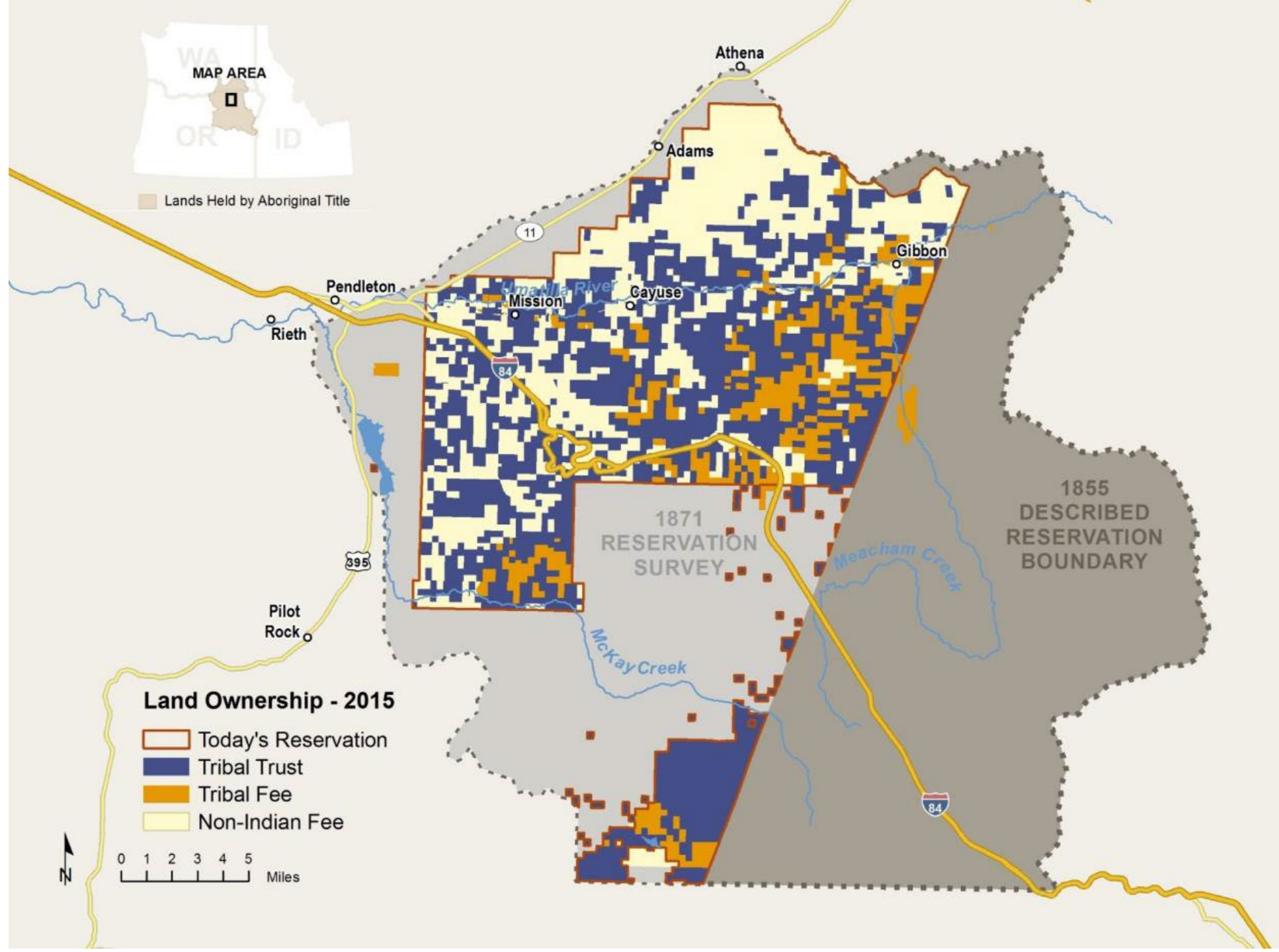
Gordon J. Steele
VICE PRESIDENT

Tribal lands - land tenure

- As population increases and climate change affect the distribution of water in many ways, the potential for conflict over water use and quality protection will rise.
- 1887, Congress passed the Dawes Act, or General Allotment Act, allowed for large scale loss of tribal land.
- The so called surplus lands were open to homesteading to non-natives and created "checkerboard" patterns of landownership within our reservations.
- Indian lands were reduced from 140 million acres to 48 million acres.



Lands Held by Aboriginal Title



Land Ownership - 2015

- Today's Reservation
- Tribal Trust
- Tribal Fee
- Non-Indian Fee



Indian Water Rights established under Federal Law

- Indian Water rights generally have a superior legal standing in relation to state rights based on original tribal ownership of what is now the United States.
- State Water Law in the Western United States
 - Water law in the Western United states is governed primarily by the law of "prior appropriation,"
 - Prior appropriation doctrine - rewards the first party who physically removes water from a stream for beneficial use by granting that party a senior right to divert that amount of water - first in time is first in right.
 - When there's a shortage, the date of initial diversion determines priority of among competing use rights.

Winters v. United States – Indian Water Rights, 1908

In *Winters*, the tribe had ceded to the United States a large tract of land to be opened up for settlement.

- The tribes reserved land which became the Fort Belknap Reservation in Montana.
- The settlers argued that the land ceded for settlement should also come with water for them to become fruitful.
- The United States argued that the lands would not have been reserved for tribes unless water also had been reserved to make the Reservation productive.



The *Winters* Holding:

- The Court chose to construe the agreement from the standpoint of the Indians and to resolve the conflict in their favor. The resulting decision has become the foundation of all Indian water law.
- Interpretation of treaties as the Indians understood them has also preserved extremely important fishing rights.
 - Treaties here in the Pacific Northwest that guaranteed Indians the right of "taking fish" at customary stations off-reservation "in common with all citizens of the Territory" were held to guarantee up to half of the harvestable fish; they did not merely guarantee the same rights as those enjoyed by non-Indians. See *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658/(1979).

Indian Water Rights Recognized

- Water rights come from
 - 1. out of original Indian ownership of their territories; and
 - 2. From federal actions in the form of treaties, statutes, and Executive Orders setting aside Indian reservations.
- These reservations of land included implied promises of sufficient water for many uses - including irrigations, fish and wildlife protection, and permanent homelands.

Indian Reserved Water Rights

- Indian reserved rights do not depend on putting water to beneficial use - but are recognized as apart of a tribe's original ownership of reservation territory, or as established by federal actions setting aside tribal territory, or as a established by federal actions setting aside tribal territory.
- Tribal water rights generally are senior in priority to non-Indian uses established under state prior appropriation law as such rights are ranked by date of firs use.
- Indian aboriginal title includes the right of indigenous people to use and occupy their land, and is valid against all parties but United States.

Quantifying Indian Water Rights

- In 1963 in Arizona V. California - that the Supreme Court devised a methodology for fully quantifying Indian reserved rights to deal with open-ended decree problem.
- The United States intervened on behalf of several Colorado River Indian tribes and asserted claims for full and permanent allocations of water rights to the tribes.
- The claim went a step beyond the ruling of Winters, which had resulted in an injunction against certain uses but had left the tribes with an open-ended decree.

Water Quantification - Practicably irrigable acreage

- The Supreme Court agreed that a final quantification was desirable and endorsed the practicably irrigable acreage (PIA) method which allowed a quantification of reserved water rights for the present and future needs of the Indian reservations adjacent to or near the river.
- The PIA test evaluates tribal lands for their irrigation potential in an economically feasible manner to arrive at a final quantification for reservations with an agricultural purpose.
- Colville Tribes v. Walton (1981), The Ninth Circuit held - Tribes reserved water for both agricultural and fisheries purposes.
- The general purpose of the reservation, to provide a home for the Indians.
- Also the tribe's demonstrated traditional reliance on fisheries resources, the court found the water needed to support fisheries was reserved. Confederated Tribe's of Colville Indian Reservation.

Protecting Tribal Water Rights

- TAS/WQS

- Our tribal leaders, scientists and lawyers work to protect tribal water rights with
 - property rights concepts
 - Tribal Sovereignty - inherent governmental authority - Tribal Water Codes
 - Clean Water Act to protect water quality - Apply for Treatment as a State and set Water Quality Standards - Running roads across Tshimakain creek, blocking water flow,

"As competition for water resources grow and development pressures adversely affect water quality, Indian Nations and their neighbors face new challenges, in defining Indian water rights for instream habitat protection and traditional consumptive uses." Robert T. Anderson, NARF, Member of the Bois Forte Band of Objibwe.

Background of Navajo Supreme Court

- Heather Tanana, Dine' law professor at U of Utah: "We need water for everything," cook food, drink, paint, coffee, perfume, soda. Everything needs water.
- The average American uses roughly 100 gallons a day.
- On the Navajo Nation, they have water haulers that use 7 to 8 gallons of water a day. Rationing to 2-3
- Hauling water from a public source and filling up gallons to take home
- 5-gallon barrels
- Navajo Nation - covers 27,000 square miles - bigger than West Virginia
- Lack of Water - Arizona v. Navajo Nation

LACK OF WATER & SANITATION



Navajo
1 in 3



EASTERN
WASHINGTON UNIVERSITY

start something **big**

Reservations are to be permanent homelands

- Tribes were moved, displaced and confined to places
- Navajo nation included specific language to be their homeland and for purposes of agriculture
- Part of the Trust Responsibility is that the government will take action to protect your ability to prosper and thrive as a community and you need water to do that.
- There are federal agencies that help with this trust responsibility:
 - Indian Health Service, U.S. Dept of Agriculture, Environment Protection Agency - they all have programs that can help with water programs but these programs are historically underfunded and have closed the "water gap."

Water Negotiations - States v. Tribes

- States come to agreement and leaves tribes out of the discussion
- Santa Fe, Tucson, Phoenix have enough water to support their growth
- There was a concerted effort by federal government to invest in other communities outside of the reservation
- The U.S. has supported a thriving community in an arid environment, and we've done it as part of Urban Planning
- Phoenix and other cities require investment
- The government took the land, made the promises, and then didn't make the investment in tribal communities they needed.

Supreme Court rules 5-4 against Navajo Nation in water rights dispute

- Background: The lack of water and infrastructure to pipe it across the vast reaches of the more than 17-million-acre reservation – larger than the state of West Virginia – which straddles parts of Arizona, New Mexico and Utah, remains one of the biggest challenges facing Navajo leaders.
- The tribe says the federal government has failed to keep promises and left tribe members to suffer even as the Colorado River runs directly along the reservation's border and provides water for surrounding states.
- The case touches upon the complex array of agreements and court decisions that over the decades have dictated how the waters of the Colorado River, divided into upper and lower sections, are allocated among the states. Further complicating matters, the Colorado River system is already depleted due to long-term drought conditions, with the longer-term threat of climate change also looming.

U.S. Gov't not required to secure water access

- Writing for the majority, Justice Brett Kavanaugh said that an 1868 treaty with the Navajo Nation did not require the U.S. government to take active steps to secure water access.
- Conservative Justice Neil Gorsuch joined the three liberal justices in dissent.
- The tribe was merely asking the federal government to identify its water rights and was not seeking dramatic further steps, Gorsuch wrote.
- As tribal members have had to do throughout their difficult history, "they must fight again for themselves to secure their homeland and all that must necessarily come with it," he wrote.
- Buu Nygren, president of Navajo Nation, said in a statement that although the ruling was disappointing, he was encouraged that four justices sided with the tribe. He pledged to continue efforts to obtain water rights to the lower basin of the Colorado River in Arizona.

Historic Water crisis - No Affirmative duty

- Under a historic water crisis in the desert southwest, the Navajo Nation asked for a court order requiring the federal government to determine the Nation's water needs and to devise a plan to meet those needs. In a 5-4 decision on Thursday, the Supreme Court held that the United States owes no "affirmative duty" to the Navajo Nation to secure water, reversing a decision by the U.S. Court of Appeals for the 9th Circuit. The majority ruled that the 1868 Treaty of Bosque Redondo, known to the Nation as the Old Paper, or Naal Tsoos Sani, established no federal obligation to do so.

Neil Gorsuch – Considered historical context of 1868 treaty

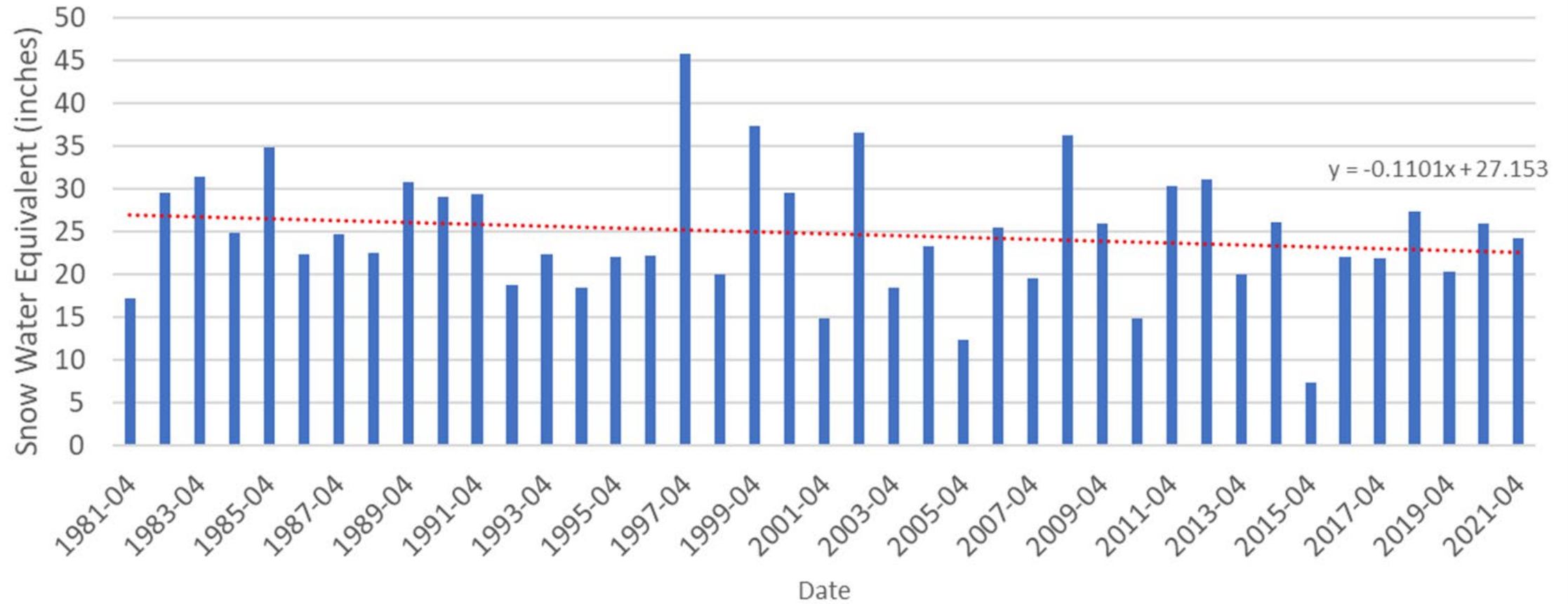
- Justice Neil Gorsuch dissented, his third extensive writing in the last two weeks on Indian law matters. Gorsuch would have framed the issue before the court as a matter of applying the canons of construing Indian treaties. He chastised the majority for ignoring the historical context of the 1868 treaty, which arose from “the Long Walk” in 1864, in which the federal government forcibly marched the bulk of Navajo Nation from its homelands to Bosque Redondo in what is now eastern New Mexico. Gorsuch emphasized that Bosque Redondo was a harsh, inhospitable area with little or no game and agricultural opportunities, largely due to a lack of water. The 1868 treaty allowed the Nation’s citizens to return to their homelands with the promise of adequate resources. Gorsuch applied that history in light of the canons, finding that the overall context of the treaty would require the government to take affirmative steps to secure the water needed to fulfill the treaty’s purposes. He pointed to language in the Supreme Court’s 1908 decision in *Winters v. United States*, in which the court named the federal government a “fiduciary” of reservation resources.

Climate Change

- The decision was released as worldwide climate change has begun to dramatically dry up the desert southwest.
- The court tread relatively lightly on the policy ramifications of its decision but did acknowledge that water allocation in the west is a zero-sum game, presuming that a Navajo Nation victory here might well lead to decreases in water for others.
- The majority also noted that Congress has already agreed to establish water infrastructure for the Nation, at the cost of billions of dollars.

Water Stored as Snow in the Spokane Basin

Snow Water Equivalent on April 1st, Water Years 1981-2021



Cayuse Mountain Fire

- Closing in within 1 mile of tribal governmental buildings the wildfire cut off electrical power and water to the locals and emergency responders.
- Tribal admin, shut down for a week due to power outage creating loss of revenues and hampering the progress of internal affairs.
- SIHA shut down for three days.
- 18,000 Acres lost to the fire
- impacted the tribe's timber sales.
- 14 homes lost to the wildfire. Due to evacuation notices no lives were lost.

(August 2016) – Spokane Indian Reservation

- In 2016 The Cayuse Mt. Fire left its devastating mark on the Spokane reservation causing much damage to local wildlife and land. In recent history this was the first time a fire of this scale had affected the Spokane tribal government, community and local first responders. The Cayuse wildfire awoke the consciousness of the Spokane tribe and (SIHA) that the severity of wildfires due to environmental change will not stop and we must be prepared for the worst scenario.





Climate Change -
Disproportionate
impact on tribe

2015 - Major Fires
across the Colville
Reservation

2016 - Major Wind
Storm through the
Keller District

2017 - Major
Flooding across the
Colville
Reservation,
including Ferry &
Okanogan Counties:

State Highways flow
through the Colville

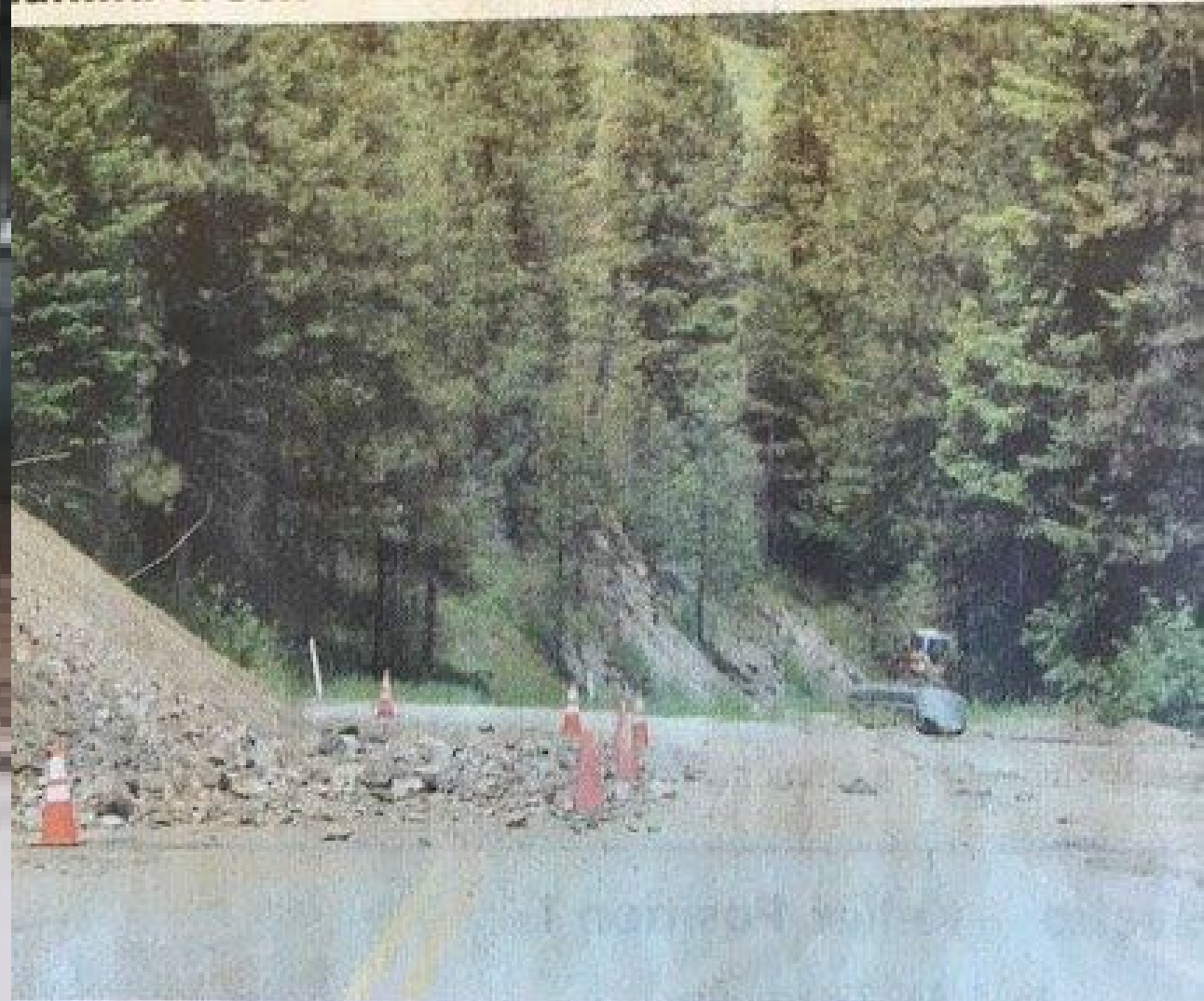




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Have a ne
Contact t
(509)634-
tribune@

Vanilla Creek





Native Women as Healer



ew plants as me

2003-04	Summer	RC	gallons of huckleberries at West Fisher it was over 90 maybe 98
2007	Summer	RC	We had a tornado during our powwow and it wiped out a lot of trees, houses, etc. hail the wind was strong, knocking down camps at pow wow grounds. Tornado went thru Flathead Lake. Knocked all the Berries off trees, bushes
2010	Summer	RC	Hot over 90 huge thunder storm during our Standing Arrow Pow Wow, knocked off the Kapalil (Foam Berries) off of a bush I was watching at Turtle Lake. Third week of July our powwow is held each year.
2011	Summer	RC	Weather beginning to get hot over 90 degree of weather usually we get this hot weather in August when the berries ripen overnight.
2014	Summer	RC	Had Berries this year
2017	Summer	RC	Had Berries this year, we also had snow for a few weeks to a month.
2018	W/S	RC	Had snow but very little huckleberries this year.
2019	Winter	RC	We had snow and below Zero weather this year, our lake froze. I was around 9 or 10 (1969 or 1970) when our lake froze, we used to skate and have ice skating parties on the lake by our house. We used to also build tunnels in the snow piles Vic Lefthand who worked for the office and we (us kids) would build tunnels in the snow piles. My mom and dad would tell stories of when my great grandmother would walk across the lake in the winter. They would take a short cut instead of using the trails across the lake. My brother Jr told us stories when they would ice fish in Elmo Bay and Masus Bay they would ice fish and catch fish and they would not catch any fish. My brothers would wonder what kind of fish she would use after she finished, they would fish at her spot and catch no fish. My sister Loraine used to ice fish for our supper also and she would not get any fish.



Cannons of Construction

1. Ambiguities in treaties must be resolved in favor of the Indians.
2. Treaties must be interpreted as the Indians would have understood them.
3. Treaties must be construed liberally in favor of the Indians.

Unfairness of Treaty-Making

- The cannons of construction benefit treaty tribes, as the United States Supreme Court intended they would, in order to help compensate for the fact that the tribes were at a significant disadvantage in the treaty-making process.
- As mentioned the treaties were always written in English and thus the Indians could not be certain what they were signing. Tribes were dependent upon government interpreters to explain these treaties to them.
- Almost all treaties were signed under threat of force and therefore were inherently unfair.



Standing Rock - Dakota Access Pipeline

- <https://www.youtube.com/watch?v=RPVdTSpC4b8>

9:17

5G



www.spokesman.com
Facebook



Newmont Mining asks to relax radiation cleanup standards at Midnite Mine on Spokane Indian Reservation

March 9, 2019 | Updated Mon., March 11, 2019 at 11:38 p.m.







Warm Springs Indian
Reservation, Oregon 2019

For the first time in 111 years, summer chinook are swimming in the Little Spokane River

For the first time in 111 years, summer chinook are swimming in the Little Spokane River.

Sat., Aug. 7, 2021











Waikiki Springs Nature Preserve 2021 Trail Planning

Legend	
Waikiki Springs Nature Preserve	Purple Trail
30-foot Corridor	Green Trail
Existing Trails	Future Purple Trail
	Future Green Trail
	Blue Trail
	Future Blue Trail





Coeur d'Alene Tribe buys Latah Creek property, spares it from housing development

UPDATED: Thu., Sept. 16, 2021



Coeur d'Alene Tribe buys property - 48 acres

- The highly awaited decision on the fate of the Pilcher Property has finally come to a close this week, with the Coeur d'Alene Tribe finalizing on the purchase of this significant 48 acre parcel located on Hangman Creek, just inside Spokane city limits.
- What makes this property so notable is that it holds 48 of the last of 150 acres of zoned agricultural land within Spokane city limits. This particular stretch of Hangman Creek flows for nearly half a mile through the property before joining the Spokane River just a little over three miles downstream, and is one of the last undeveloped stretches of Hangman Creek within Spokane County.



Problems for Spokane Rathdrum Prairie Aquifer

- Permit exempt wells continue to be a problem
- We have a new tri county watershed management plan - Stevens,
- Pend Orielle and Spokane
- Truth is - Continued development - plan constantly modified
- High development - increased pressure on the aquifer
- The Little Spokane is not meeting its in-stream flows
- Putting too much pressure on the Spokane Rathdrum Prairie Aquifer.
- Selling water to Airway Heights, Cheney? Medical lake?

Spokane County Growth Rate

- Gain of about 27,000 between 2025 and 2020, or an average annual rate of 1.1%
- This is same growth rate as WA state over the same period.

- Gain of over 32,000 between 2015 & 2019, or average of 1.6%
- This, too, was the same rate as observed in the state.



Call To Action – Cho Sheem – I challenge you

- Conservation, Irrigation, watering lawns
- Track and meter all water uses,
- Track industry use
- If you damage your water (PFAS) then your community has to live within its water means (no green lawns).
- File a lawsuit against Idaho
- Moratorium on development
- Create a water bank for Spokane River





TREATY JUSTICE

The Northwest Tribes,
the Boldt Decision,
and the Recognition
of Fishing Rights

CHARLES WILKINSON

the Spokane River

edited by

PAUL LINDHOLDT



Shey ooh
hoy -
That is
all

