

Water Adjudication Report (Abridged) provided by the McCroskey Territorial Agrarian Society Prepared 5/7/26 with Citations and Elaborations of the

EXECUTION VERSION: COEUR D'ALENE TRIBE WATER RIGHTS SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES, COEUR D'ALENE TRIBE, STATE OF IDAHO AND OTHER WATER USERS

2/23/26 – Date signed by Governor

5/26/26 – Scheduled Date of Final Decree

Itemization of Objections:

While the Water Adjudication Agreement with the CDA Tribe may represent good faith efforts by the parties involved, and may in some particulars seem to protect the rights of state citizens, the net results are the following with unacceptable consequences, namely, that it

- 1) Permanently indentures Tribal members to a communal social and economic structure which is odious to the values of private property and a free society

[Citations: Currently a condition of the reservation system and a relic of 19th Century racism, it is magnified in the strictures and assumptions made in the Agreement 5.1.2; 5.1.3; 6.1; 6.2.1; 8.1.2; 10.5.1; “Allottees” *et al*]

[Elaboration: The Agreement and the Idaho Supreme Court decision upon which it relies for support both appear to represent an ongoing attempt to reverse the effects of the Dawes Act, to wit, the fragmentation and alienation of tribal territory. The land held in common by the Tribe was in part broken up into 160 acre parcels to be homesteaded and privately owned by Tribal members as state citizens under common law title of “fee simple” and were, in turn, bought and sold by their successors and heirs which included Tribal and non-Tribal citizens. The Agreement has the intended result of repatriating land and water rights held individually by Tribal members (i.e. “Allottees) and disallowing their status as “state citizens” to bring them under a presumed “tribal sovereignty” in a non-alienable collective of land tenure. By any other name, this is Communism and bears striking affinity to the Constitution of Communist China.]

- 2) Cedes by definition to the Tribe all private landholdings within the “external reservation boundaries”

[Citations: “The Reservation is all land within the external boundaries. . .” 4.11; 10.3; 12.4]

[Elaboration: Because a “Definitions” clause is controlling in all contracts, statutes, and agreements, the failure of this Agreement to distinguish between “privately-owned” lands from “tribally-owned” land represents an intentional admission of Tribal supremacy and an effective cessation to the Tribe of the land held in “fee simple” by state citizens.]

- 3) Creates a permanent income stream for the Tribe to continue land purchases inside and outside Reservation boundaries, thus enabling Tribal expansionism at the expense of state resources in Benewah County and surrounding counties;

[Citations: While compensation is promised, it will not be from the Tribe but rather from Congress in proposed legislation: 7.0; 8.1.1 (“consideration”); 10.3; 10.3.8; 10.5.1 10.5.2]

[Elaboration: By ceding valuable water rights to the Tribe, the use of those rights by others will be subjected to fees, leases, taxes, and other revenue-generating schemes.]

- 4) Guarantees the primacy of Stone Age cultural values for land use by placing “hunting, fishing, and gathering” over the necessities of a modern economy;

[Citations: 5.3.2.1; 5.3.2.2; 5.3.3.1; 8.2.4]

[Elaboration: Historically, “the bounty of nature” was only true of the Garden of Eden. Mankind has found it necessary to “farm” or otherwise augment the productivity of nature in order to meet human needs. Societies which are “hunter-gatherer” are primitive and remain so. They frequently “die out” and require survivors to move-on to other territories which have more resources. Hence, the story of the American Indian has been one of frequent famine, deprivation, and migration which has led to cruel wars of genocide between competing tribes and even the normalizing of cannibalism.]

- 5) Places claims of Tribal antiquity over rights guaranteed by natural law, common law and Constitutional law;

[Citations: 5.2.2; 5.3.1.2; 5.3.3.2]

[Elaboration: In reference specifically to water rights, mankind has generally held that it is a human right to gather the water that falls down overhead and which exists under one's feet. To preserve whatever one might collect in pots and pans, or buckets and cisterns and to protect the "fruit of one's labor" in which one who has dug a well, for example, is entitled to be sustained from the water of that well - to the exclusion of others - the Common Law was devised to attach and sequester those rights in parcels of land. "Ownership" became a prerequisite to the enjoyment of property rights. These rights were further elucidated in constitutions, and in the case of Idaho's Constitution, precedence in time and proximity has served its citizens well. Tribal claims to water rights should not be based upon "since time immemorial" but rather upon property rights secured on their behalf as 14th Amendment citizens of the United States. Claims of "tribal antiquity" are an attack upon the sovereignty of the United States and its citizens.]

- 6) Establishes the Tribe with a *rentier's* status over state citizens and creates legal precedence for the Tribe to use existing concessions by the State of Idaho in turn to seize more, if not eventually all, private and public water rights within reservation boundaries;

[Citations: 5.4.3; 5.5.1.3; 12.8]

[Elaboration: "Rentier" not "renter" is a reference to the exploitation of a monopoly upon a valuable resource. The legal precedence is now clearly established that no one as a state citizen can "own" anything on the Reservation. All property and rights have become privileges of tenancy based upon an implied hazardous contract with the Tribal government: it having exclusive jurisdiction to set and change the terms without the benefit of a severability clause requiring judicial review in a state court of competent jurisdiction.]

- 7) The State of Idaho explicitly endorses the Tribal agenda of what appears to be a form of apartheid and ethnic cleansing by enabling "buy-out" and "relocation" programs for non-Tribal members;

[Citations: 10.5]

[Elaboration: This Agreement now sets firmly in place a public policy in which the Tribe is expected to become the exclusive "owner" of all land and resources within the Reservation by expelling non-Tribal citizens either through lawfare, economic coercion or by reducing them to a state of tenancy.]

- 8) Enforcement will require metered wells and other invasive measures by the Tribe on non-Tribal properties;

[Citations: 5.6.1, *et al*]

[Elaboration: Future litigation is now guaranteed every time the Tribe “complains” that non-Tribal water users are “depleting” the water resources of the Reservation. Non-Tribal water users will be compelled to provide continuous self-monitoring and documentation to prove that they are not “cheating” the Tribe out of its water rights.]

Conclusion: This Agreement may be binding upon the participating parties, but is not upon free landholders who were not parties to the Agreement. Since the sum effect of the Agreement is that of unlawful takings without due process or just compensation, its provisions are null and void. The Benewah County Board of Commissioners does not have the authority – implied or explicit – to surrender or otherwise impair the property rights of free land holders. The county commissioners must either rescind this agreement or they must submit it to the voters in a referendum. It is an egregious abuse of power as it now stands.

Summary & Review with Historical Context

The Coeur d’ Alene Reservation is currently a land-area of approximately 540,000 acres in Idaho’s panhandle. Situated mainly in the western half of Benewah County and the southern half of Kootenai County, it is the home of 2,190 enrolled tribal members in a total population of 8,051 state citizens. With Benewah County representing a population of 10,142 at the last census, the ratio holds true that total tribal membership, at best, constitutes 1 in 4 of the total population.

A Path to Ruin

It can be argued that in terms of demographic and geographical reality, a “tail wagging the dog” situation exists, in which these 2000 Tribal members are dictating the land use of a territory the size of the State of Rhode Island. This tiny minority is imposing its will on the majority population, many of which subsist from agriculture and the logging industry. Tribal claims of the supremacy of Stone Age values – to wit, “fishing, hunting, and gathering” – as a pretext for their rights of hegemony, is a hollow claim when these activities do not constitute even 1% of total regional economic gain. Even if these activities somehow can be classified as “tourism,” they still do not exceed the 1% threshold of revenues generated by, in comparison, the Tribal casino and its golf course.

Indeed, a long policy of taking large tracts of land out of economic production continues unabated. Vast acreages used previously for agricultural purposes lie idle and recent land purchases involving tens of thousands of acres of timber land have resulted in the same. A direct consequence has been the closing of an important timber mill in Plummer which has resulted in Depression like economic conditions. It appears to be the goal of the Tribe to bring economic ruin to everyone except for Tribal members in an on-going quest to depopulate the Reservation.

The CDA Tribe as Wards of the Federal Government

The Coeur d' Alene Tribe, as is true of all tribes, is under the guardianship of the Federal government, the Department of Interior specifically, which represents the Tribe as a trustee in all legal proceedings and conveyances. This fact makes it difficult to comprehend the meaning of the Tribal claim of "sovereignty" when such a state of vassalage exists.

To illustrate this vassalage, consider that legal guardians are appointed to represent minors in court proceedings and are appointed as trustees by the respective courts to collect on a child's behalf the monies and benefits which may be awarded.

However, when minors reach their majority, the condition of guardianship is removed and the child, now an adult, is free to conduct his own affairs unencumbered.

Reservations as Military Detention Zones

A review of the history of the CDA Tribe, as was the case with most Indian tribes subjugated by the United States, reveals that, at the beginning, they had little to no knowledge of the legal customs of civilized societies. This was a condition much discussed among European jurists going all the way back to Hugo Grotius (who is considered the father of international law) through the times of the American Founding Fathers (as evidenced by the Declaration of Independence: "merciless savages") until the time of the 14th Amendment, in which "Indians, not taxed" were not considered "subject to the jurisdiction" of the United States.

However, the Indian Wars of the Great Plains during the 1860s through the 1880s created a level of hostilities which required subjugation and pacification. It was during this time that the "Reservation system" was pursued with earnest, and in

the case of the CDA Tribe, President Grant established the current Reservation in 1873.

“Reservations” – sometimes euphemistically called “Indian homelands” – were places of military detention and Indians who “wandered off the Reservation” were usually returned to preserve the peace. Reservations were governed by officers of the Federal government who were instructed to let the Indian tribes practice their customs.

While the legal impact of this fact is disputed, even in the recent minority opinion of the Idaho Supreme Court in 2019 (**Docket Nos. 45381, 45382, 45383, 45384**) on the Water Adjudication issue, nevertheless, the majority opinion prevailed: Grant’s executive order is considered the point of beginning for the Tribe’s current legal existence.

From Wards to Citizens

The major point of contention in that Decision is that the CDA Tribe lost much of its territory when it was inundated by the dams which produced the current water level of the CDA Lake. The Courts have agreed that the Tribe is entitled to perpetual remuneration for this loss, either by some kind of reparations (hence, the proposed Congressional legislation awarding the Tribe \$500 million) or other proceeds which may be derived from the hydroelectric power generated by the dams, or other fees generated by controlled access to the lake.

Be that as it may, it should be argued to the contrary that the Reservation system itself is obsolete, since now virtually all Indians are citizens of the United States and are protected by the “equal protection” clause of the 14th Amendment. Indians are no longer “children” requiring guardianship. The historical reality is that Indian reservations continue to exist as a legal fiction in an archaic and sentimental attachment for a reality which no longer exists.

What ought to have followed from this outcome is that the Bureau of Indian Affairs should have been removed from the Department of Interior and placed under the Department of Health and Human Services, with Federal assistance to Indians administered individually as a minority group, not collectively through a tribal government.

The land of the reservations should have been relegated to the ownership of tribes organized as corporate persons, with its management brought within the

normal classification of corporate law subjoined within the jurisdictions of the respective states where these tribal lands existed.

Indian Homesteaders under the Dawes Act

An attempt was made under the Dawes Act (1887) to do precisely that when many tribal members acquired “homesteads” just like state citizens. It was also known as the General Allotment Act which aimed to assimilate Natives by breaking up communal tribal lands into individual plots to heads of families and forcing a transition to farming. But many sold their lands to non-tribal state citizens and that is a point of contention today. It has been argued that privatizing tribal land has had the effect of dissolving the reservations, as tribal members sold out to achieve an economic benefit.

At the time this happened, it was argued that Indian landholders were “taken advantage of” without any sense of the real economic value of their land. This assessment is clouded by the general hardships which occurred for all Americans during the Great Depression. Unless coercion was involved, that is hardly a valid argument. Long Island, New York, for example, was purchased centuries earlier from the Indians for “beads and trinkets” which scarcely compares to its value today.

But considering that the value of Long Island could only be assessed at the time according to its utility (to the Indians as former hunting grounds replaced by the vast American interior, but to the Dutch as a harbor for maritime trade), it would appear that both parties achieved commensurate “consideration.” Under the Dawes Act, tribal homesteaders uninterested in agriculture found the opportunities of employment in the city to be the better choice. Consequently, the “value” of the land is only represented by how it is used and its utility is decided by the parties in the exchange.

In the very document which the Idaho Supreme Court based its 2018/2019 Decision, it acknowledged the inherent right of the CDA Tribe to alienate the lands of the Reservation, either collectively or individually:

“[i]n consideration of the foregoing cession and agreements . . . the Coeur d’Alene Reservation shall be held forever as Indian land and as homes for the Coeur d’Alene Indians . . . and no part of said reservation shall ever be sold, occupied, open to white settlement, or otherwise disposed of without the consent of the Indians residing on said reservation.” (1883) P. 7 (emphasis added)

The process for obtaining that consent was devised by the Dawes Act (1887) for Indian homesteading.

“Savage” as a Legal Classification under American Organic Law

There is a darker side to this situation.

The Reservation system is a relic of 19th Century racism founded upon the Social Darwinism of the time. The legal profession - long cut-off from a theistic foundation and contrary to the American Declaration of Independence (legally identified as the “Statute of 1776” *1 Stat. 1* cf. *govinfo.gov*) – became entirely secular. Universal imperatives based upon a theological understanding of human relations were forbidden in courtroom discourse. Citing the Bible or invoking “Nature and Nature’s God” was an offensive form of legal argument and invited “contempt of court” reaction from judges. The Reservation system was not the fruit of Christian doctrine, but rather the pretended humanitarianism of Social Darwinists who were convinced of the racial inferiority of indigenous tribes around the world.

In stark contrast, the Declaration of Independence, solidly founded upon Grotius’ view of the American Indian, classified him as a “savage” – not used in a pejorative sense, but in a legal sense. “Savages” demonstrate themselves as such by lacking the self-control required by an agrarian way of life. This disdain for agriculture was driven by base or “wild” instincts and a rage that made them unfit for civilized society. According to both Grotius (*De Indis*, 1609, *et al*) and the Founding Fathers, “savages” were not entitled to the right of dominion or to the ownership of land “with metes and bounds.” Indians had no respect for survey markers. The Indian tribes “roamed” the earth – never settling it - and in every encounter with rival tribes, practiced a brutality beyond the tolerance of European nations which had been disciplined by the Christian religion.

But such early jurists did not consider this as a racial defect; rather, it was one which could be remedied under the influence of the Christian religion. They knew that Europeans themselves were the descendants of “savagery” and had become civilized from the centuries-long influence of Christian missionaries.

By the late 20th Century, after generations had passed beyond the living memory of the era of Indian predations, Rousseau’s notion of the “noble savage” began to dominate the thinking of popular culture and eventually American jurists. A

reverse racism began to be practiced in which Indian tribes – still revering their Stone Age heritage and animistic superstitions - were given increasingly greater power over land use within the reservations to the detriment of tribal and non-tribal private landholders. The recent Water Adjudication Decision is just such an example of this reverse discrimination.

Membership in an Indian tribe was established by Congress according to a level of racial purity without the consideration of any moral qualities.

Water Adjudication: Turning Back the Clock

In addition to this racial component, tribal members who were individual landholders were forced to comply with a new “communal” land use plan in which they were forbidden to sell land to non-tribal citizens. The tribal governmental bureaucracy remained in charge. This, combined with the various tribal businesses, in any other context, would be called economic fascism. As for the CDA Tribe, it has combined its various corporate ventures and mingled it with its claims of “sovereignty” in classical fascist form.

Consequently, the specious reasonings of the Courts - motivated by a fuzzy sentimentalism that somehow views the Tribe as entitled to a “homeland” and to presumably roam as did their ancestors – persistently indulge an invitation to barbarism. 2000 people cannot hope to sustain themselves by “fishing, hunting, and gathering” unless it also includes stealing from their more prosperous neighbors.

As 14th Amendment citizens of the United States, Tribal members already enjoy a homeland as do all citizens of the United States. Their “homeland” is the “United States of America” and any place that they purchase to live. That they are required to enforce a “racial purity” or a unique autonomy of self-government does not serve the best interests of Tribal members trying to live in a modern society.

Indeed, many Native Americans have become celebrated Americans in defense of the country and are offended by the attempt to sequester them from the larger life of American society.

The Courts, also, are indulging a dalliance with sedition with its radical misreading of history. The notion of “tribal government” and “tribal

sovereignty” did not exist among the indigenous peoples. And they do not want it today, except for a small cadre of activists.

The trappings of a nation-state were unknown to the Indians and were acquired from the tutelage of missionaries (e.g. Father DeSmet). It also arose from the necessities of war. U.S. military commanders found it necessary to appoint and prop-up tribal leaders in order to prevent tribal factions from “escaping” the reservation and visiting acts of predation and terrorism on the surrounding non-tribal settlements.

Regardless of how we might want to view the Indian reservation system from the past, it does not alter or abrogate America’s organic law found in **1 Statute 1 of 1776**, in which it was declared that the indigenous tribes were, at the time, “savages” and not capable or entitled to “sovereignty.” Such was the legal doctrine of the time and cannot be abrogated without defining away America’s legal heritage as so eloquently stated in its founding document.

Indian Reservations: A Temporary Military Arrangement

Only by becoming 14th Amendment citizens did Indians become entitled to citizenship. The Reservation system was exactly what the word meant, something held in “reserve” as a temporary provision until something better materialized. From Black’s Law Dictionary:

[A reservation]: *The establishment of a limiting condition or qualification; esp., a nations’ formal declaration, upon signing or ratifying a treaty; that its willingness to become a party to the treaty is conditioned on the modification or amendment of one or more provisions of the treaty as applied in its relations with other parties to the treaty.* (p. 1422)

That legal understanding of the word became the basis of the notion of Indian “reservations.” **The reservations were asylums until tribal members acquired the capacity to become citizens.**

We are past tinkering with conflicting claims of sovereignty. Either the People of the State of Idaho are sovereign or the indigenous tribes are. It is unlikely that even Tribal members would prefer the latter. The American Indian Movement has always been and remains to this day a radically leftist movement to destroy the United States and its free institutions.

Where Does This Stop?

In court documents, the CDA Tribe lays claim to “aboriginal title” of “more than 3.5 million acres in what is now northern Idaho and northeastern Washington, including the area of Lake Coeur d’ Alene and the St. Joe River” to the boundary of Montana. It is simply absurd to believe the State of Idaho has now provided an exact mechanism by which these 2000 Tribal members shall become the sole proprietors of such a vast area of land and reduce to tenancy the current non-Tribal population.

Would the adults please enter to the room?