AN ABSTRACT OF THE THESIS OF

Leroy Bennie Selam for the degree Master of Arts in

Interdisciplinary Studies presented on December 20, 1974

Title: The Yakima Indians: Study and Analysis of the Yakima

Water Rights

Abstract approved: ____________________________
(Signature)
John Dunn

This thesis is an ethnohistoric study of the water rights
of the Yakima Confederated Tribes. The study considers the water
rights issues of the Yakimas from the cultural viewpoint at the
time of European contact to the present legal and political
situation. It traces the many obstacles the Yakimas have
encountered in the retention, preservation, and utilization of
their historic water rights.
THE YAKIMA INDIANS: STUDY AND
ANALYSIS OF THE YAKIMA WATER RIGHTS

by

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A THESIS
submitted to
Oregon State University

in partial fulfillment of
the requirements for the
degree of
Master of Arts
Completed December 20, 1974
Commencement June 1975
APPROVED:

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Date thesis is presented December 20, 1974

Typed by Karen Benson for Leroy B. Selam
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>II</td>
<td>CULTURAL POSITION OF THE YAKIMA PEOPLE IN RELATION TO WATER</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Introduction</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Washaat – Interpretation of the Universe</td>
<td>5</td>
</tr>
<tr>
<td>III</td>
<td>HOMELAND OF THE PEOPLE WHO WERE TO BECOME THE YAKIMA CONFEDERATED TRIBES AND BANDS.</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>Introduction</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>Territory of the Yakimas</td>
<td>17</td>
</tr>
<tr>
<td>IV</td>
<td>THE TREATY OF THE YAKIMA CONFEDERATED TRIBES</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>Introduction</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>Treaty Between the United States and the Yakima Indian</td>
<td>25</td>
</tr>
<tr>
<td>V</td>
<td>THE YAKIMAS' WATER RIGHTS</td>
<td>38</td>
</tr>
<tr>
<td></td>
<td>Introduction</td>
<td>38</td>
</tr>
<tr>
<td></td>
<td>Part I: Status of the Yakima Treaty of 1855</td>
<td>38</td>
</tr>
<tr>
<td></td>
<td>Part II: Dimensions of the Yakima Water Rights.</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Part III: Erosion of the Yakimas' Water Rights.</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td>Summary</td>
<td>59</td>
</tr>
<tr>
<td>VI</td>
<td>THE ROLE OF SPECIFIC INDIVIDUALS IN ESTABLISHING THE SCOPE AND POWER OF THE YAKIMAS' WATER RIGHTS</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>Introduction</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>Part I: Louis Mann</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>Part II</td>
<td>67</td>
</tr>
<tr>
<td></td>
<td>Part III</td>
<td>69</td>
</tr>
<tr>
<td></td>
<td>Part IV</td>
<td>69</td>
</tr>
<tr>
<td></td>
<td>Part V: William Veeder</td>
<td>71</td>
</tr>
<tr>
<td>VII</td>
<td>POLITICAL PRESSURE, INTRA-GOVERNMENTAL CONFLICT AND INTER-TRIBAL CONFLICT.</td>
<td>72</td>
</tr>
<tr>
<td>VIII</td>
<td>SUMMARY AND RECOMMENDATIONS</td>
<td>78</td>
</tr>
<tr>
<td></td>
<td>Summary</td>
<td>78</td>
</tr>
<tr>
<td></td>
<td>Recommendations</td>
<td>78</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>80</td>
</tr>
<tr>
<td></td>
<td>BIBLIOGRAPHY</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Source Material</td>
<td>80</td>
</tr>
<tr>
<td></td>
<td>Secondary Material</td>
<td>85</td>
</tr>
<tr>
<td>FIGURE</td>
<td>Description</td>
<td>Page</td>
</tr>
<tr>
<td>--------</td>
<td>--------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>FIGURE 1</td>
<td>HEREDITARY LINE OF THE HEAD FAMILY OF THE WANAPAMS</td>
<td>9</td>
</tr>
<tr>
<td>FIGURE 2</td>
<td>FRANK SOHAPPY</td>
<td>13</td>
</tr>
<tr>
<td>FIGURE 3</td>
<td>TREATY MAP</td>
<td>32</td>
</tr>
<tr>
<td>FIGURE 4</td>
<td>PRESENT DAY MAP</td>
<td>33</td>
</tr>
</tbody>
</table>
THE YAKIMA INDIANS: STUDY AND ANALYSIS OF THE YAKIMA WATER RIGHTS

CHAPTER I

INTRODUCTION

Since it is now impossible to precisely reconstruct the past cultures of those groups making up the contemporary Native Americans, the use of recall ethnography is no longer completely feasible. Other patterns of data collecting must emerge, since solutions to problems in the present lives of Native Americans depend on data from past lives of Native Americans for both pre-European status and cultural change since European contact.

Today, specialists on data about Native Americans must consider data from international, as well as national, historical documents; archeological artifacts; data from geologists about the earth; and the life style of the members of the particular Native Americans in contemporary times.

Culture change seems to have been the focus of ethnohistorians. In the emphasis on cultural change, ethnohistorians have been able to make some impact on the traditional anthropological view of pre-reservation Native American culture. This is to mean the ethnohistorian has emphasized cultural change rather than cultural exchange. The notion of culture change is far larger than the traditional notion of replacing Native American culture traits by European culture traits.

The settling of North America by Europeans brought profound changes in many aspects of Native American life. This rebuilding and restructuring of a way of life is still very much in process in Native
American communities, today. European contact produced much more than simple quantitative changes involving one cultural object in exchange for another cultural object.

No where is this more evident than in the understanding of the treaties made between the various Native Americans and the United States. The treaties are made predominantly on an exchange basis of a concession of land by the Native Americans for whatever rights, privileges, and goods negotiated in the treaty.

Previous, ethnohistorical studies have emphasized the horse,¹ the fur traders, and the missionaries² as cultural change agents for all of the Native Americans. There seems to have been little effort to present the treaty as a change agent for both quantitatively and qualitatively.

This present study is concerned with the effects, both direct and indirect of European contact upon the Yakima Confederated Tribes and Bands in their pursuit for their water rights under their aboriginal and treaty rights.

It is proposed in this study:

First, to describe the cultural context in which the Yakima Confederated Tribes and Bands have traditionally placed water. This chapter is to present what the Yakimas thought about water and what place water had in their interpretation of the universe.

¹ Carl Wissler, "The Influence of the Horse in the Development of Plains Culture," American Anthropologist, N.S.,

Second, to trace the aboriginal title the Yakima Confederated Tribes have to the territory supporting their way of life. Archeological data is looked at for what support it might be to the Yakima position.

Third, to describe the treaty negotiated by the representatives of the United States of America and the representatives of the bands and groups to become the Yakima Confederated Tribes.

Fourth, to consider the water rights of the Yakimas historically and presently.

Fifth, to present some of the specific individuals in their roles in the fight for the prevention of exploitation of the water rights of the Yakimas.

Sixth, to describe some of the areas of conflict encountered by the Yakimas in the defense of their right to their water right as they understand the terms of their treaty.

Seventh, to summarize the data about the Yakimas' water rights.

There were several facets to the research for this study. Information on the cultural background on the Yakimas was obtained from members of the Yakima tribe, as well as from secondary sources about the way of life of the Yakimas.

Historical facts are presented as precisely as possible. For this reason, names, dates, cases, and places are referred to specifically. The concept of precedence is important in establishing a treaty right and in the rules of evidence there is not much status given to data based on hearsay and guessing.

Primary sources such as government reports, government treaties, early anthropological work, unpublished miscellaneous manuscript materials, court records, and private papers have also been used to trace the events
pertinent to the water rights of the Yakima Confederated Tribes and Bands. Interviews with water specialists in the Bureau of Indian Affairs have also been sources of information.
CHAPTER II

CULTURAL POSITION OF THE YAKIMA PEOPLE
IN RELATION TO WATER

INTRODUCTION

This chapter is to present what the Yakimas thought about water and what place water had in their interpretations of the universe. It is to consider the cultural context of water for a group of people who hunted roots on high and dry plateaus, who wintered in dry desert-like valleys, who hunted game and fruits on the sides of mountains, and who fished for their food in the powerful rivers cutting across their territory.

In this chapter, consideration will be given to the fact that ethnocentrism often allows for observers of other cultures to label these cultures as primitive and not bother to secure data on differences of use of objects and materials, as well as differences of interpretations about the universe. For too long, labels such as "root diggers" applied to the people of the Plateau and the Great Basin have conveyed the notion of "primitive" in all of its negative value connotations.

WASHAAT - INTERPRETATION OF THE UNIVERSE

As the sun comes up, the sunlight falls upon the Longhouse entrance way. This is so, because the position of the Longhouse within the universe is important. It is not by chance that the doorway faces the East, but by design. The orbit of the sun in casting its light is represented in the position of the Longhouse. The four cardinal
directions of North, East, South, and West are also important in the placement of the Longhouse.

When the tribal person arrives for the Kaūi ye sha, he also has his definite orbital pattern for these special observances to the creator. The light from the East casts his shadow before him as he travels down the north side, which is the men's side of the Longhouse. As he passes before the Aa La She, he makes a complete circle to show himself completely to these interpreters of the universe. Next, in the orbit is to pass by the south side of the Longhouse, which is the women's side. As he completes his orbit, he again makes a full circular disclosure of himself to the light for he then is thanking the creator for having created life. After this, he takes his position within the Longhouse.

It is not long before the seven drummers of the seven drums are sending out their heartbeat sounds to the universe and to the creator. It is time to come together, to thank the creator for allowing the being - with the drum, the song, the eagle feather, and the vision - the cycle of life. This cycle of life is made possible by the creator's wisdom in making the earth, the salmon, the deer, the roots, and the fruit.

Seven different songs are sung for the creator, as the women of the Longhouse place the food for eating the symbolic bites of salmon, deer, roots and berries. The drums and singers sound more intense as the time draws closer for the food ritual. And then, the spokesman begins the ritual of thanking the creator for the salmon, first food; for the deer,

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3 Feasts thanking the creator for the foods given to the people. There are special feasts for fish, meat, roots, and fruits.

4 Religious leaders standing in the West in the longhouse.
the first meat; for the celery, the earliest root; and for the choke-
cherries, the earliest fruit. All people take a bite of these in a
prescribed order; and then the Spokesman speaks the word, Chuish,\(^5\) which
is the signal for all of the people to take a drink of clear pure water.
This ritual drink is a drink of water. Not wine, symbolizing blood for
man's life; but water is drunk, which symbolizes the substance necessary
for all life, the substance sustaining all life, and the substance of
the creation of all life.

That which has been described is but only a small part of the ritual
system of the Washaat beliefs of the ancient people of the Northwest
Plateau. Long, before the coming of the Europeans, these beliefs formed
the ideological basis of action of the northwest tribes and bands, as
surely did the Christian doctrine form the ideological basis for the
European cultural concept of Manifest destiny.

It is sometimes difficult to write in the third person about some-
thing which is lived in the first person. The name of this writer is
Swaptsa.\(^6\) It was owned by Frank Sohappy,\(^7\) the writer's grandfather, and
was given to the writer as the life cycle went from boyhood to manhood.
The boyhood name was Ta-me-xaush-xwai, which means a sacred pile of
rocks or a cairn that resembles a bird form. The name of Swaptsa is a
hereditary name of the head family of the Wanapams of Priest Rapids.

\(^5\) Chuish is the religious word for the drinking of the water. It is
the dialect of the Wanapams. Chiish is the word used by the people of
the now Yakima valley.

\(^6\) The name of Swaptsa is spelled by A. J. Splawn as - S-wap-so.

\(^7\) Frank Sohappy's name was Shtlauw Suxapi. The Suxapi was
phonetically spelled Sohappy. The Frank is an anglicized name.
According to family history this is only the second time the name has been used since Splawn wrote about the first Swapso.

According to A. J. Splawn, So-wap-so, was the leader of the Wanapams at the time the man who was to be the father of Kamiakin traveled west. Splawn says that Ja-ya-yah-e-ha, to be father of Kamiakin, was the guest of Sowapso. The interest in So-wap-so and the Wanapams, for this study, lies in the many references made to the connection between the Wanapams and the religion of the plateau group. This makes it necessary to try to retrace the steps of some of the Wanapams. A. J. Splawn indicates that So-wap-so was the originator of the religion and passed what he knew on to his son, So-happy (Suxapi).

The names of Swapso and Smohalla were not given by Frank Sohappy until his grandchildren were born. The writer is the oldest male grandchild of full tribal descent and received the hereditary headman name of Swaptsa. The writer's first cousin, who is the second oldest grandchild of full tribal descent, received the hereditary name of Smohalla.

Around 1861, a member of Qualchan's warring party shot and killed Sohappy (Suxapi), because he didn't allow them to take his horses unchallenged. He was the writer's maternal great-great-grandfather. From there the headman position passed to Smiskin. Smiskin has two sons who where given anglicized names as well as their hereditary names. The two sons were Harry Smiskin and Frank Sohappy. The two brothers were full brothers having the same mother and father. Frank Sohappy was the writer's maternal grandfather.

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9 Ibid., p. 351.
10 Audi Yallup is the name of the cousin.
FIGURE 1
HEREDITARY LINE OF THE HEAD FAMILY OF THE WANAPAMS

WANAPAMS
SWAPTS

SUXAPI

(SOHAPPY)

SMISKIN

HARRY SMISKIN

FRANK SOHAPPY

LENA SOHAPPY SELAM

LARITTA SOHAPPY YALLUP

LEROY B. SELAM
(SWAPTS)

AUDI YALLUP
(SMOHALLA)
These data are in the oral history of the people, since the official Yakima Confederated Tribes do not have accurate enrollment records before 1946. The date of birth of Frank Sohappy was listed at 1887, but the enrollment clerk says this is an estimate of birth date. The enrollment records also show another spelling for Sohappy as Souiehappay. In the enrollment record on Sohappy, his father is listed as Smiskin, and his mother is listed as Chow Wespum.

After Smiskin, hereditary headman of the Wanapams, died, Smohalla enters the picture. Smohalla was the brother of Chowwespum, who was the mother of Frank Sohappy. Smohalla desired to be the leader of the Wanapams. He took over the religious leadership of the group and played an important role in the rearing of Frank Sohappy. Upon the death of Smohalla, Frank Sohappy, the writer's maternal grandfather inherited the right to own the name of Swaptsa and Smohalla, plus the use of the name of Sohappy (Suxapi). His brother owned the name of Smiskin.

"Smohalla is the chief of the Wa'napus, a small tribe in Washington numbering less than 200 souls. . . ."¹¹ James Mooney reported to the Bureau of Ethnology. He goes on to say that Smohalla began to " . . . preach his peculiar theology about the year 1850."¹² Since the Ghost Dance Movement was in process at this time, efforts were made by James Mooney to connect Smohalla with the Ghost Dance Religion in his report so entitled. None of this is true. Not only is there misinformation and confusion about the origin of the religion, but there is much confusion about the content of the belief system.

¹²Ibid., p. 718.
Click Relander,\textsuperscript{13} writing about the Washaat belief system, referred to the people as Drummers and Dreamers. The name of Drummers and Dreamers is no more a clue to the Washaat belief system than is the term Pianos and Prayers is a clue to what Christianity is about.

Relander interviewed the relatives of Smohalla. From the information obtained in these interviews, he states, "Smohalla... was not a chief nor did he claim to be one. He was what the Wanapams called a Yantcha, a leader and spiritual adviser."\textsuperscript{14}

Relander and Mooney both credit Smohalla with the forming of the Washaat belief system. These two men's statements are not supported by the oral history of the Wanapams, nor are they supported by two other men writing about this time period. McWhorter\textsuperscript{15} and A. J. Splawn\textsuperscript{16} both report in their findings that the religion predated Smohalla. There is no indication in their writings that the religion originated with the earliest Wanapum mentioned Swapso. There seems to be no definite data on the origin of the Washaat interpretation of the universe. There is general agreement among the writers and the remaining Wanapums that Smohalla was a powerful person whose medicine was special.

The Frank Sohappy that Click Relander lists as a narrator in his book, \textit{Drummers and Dreamers}, is the writer's grandfather. As a youngster, it was the duty of this writer to serve as interpreter between Frank Sohappy and Click Relander. Frank Sohappy did not believe in being an

\begin{itemize}
\item \textsuperscript{13} Click Relander, \textit{Drummers and Dreamers}, Caxton Printers, Ltd., 1956.
\item \textsuperscript{14} Ibid., p. 67.
\item \textsuperscript{15} Lucullus V. McWhorter, Letter to Mrs. Hedga, in 1935, see Appendix.
\item \textsuperscript{16} A. J. Splawn, Kamiakin, Caxton Printers, 1958, p. 351-352.
\end{itemize}
informant or poser for Click Relander. When Click Relander tried to take his picture, he turned his head so only the back showed. When Click Relander talked about topics Frank Sohappy did not want to talk about, he became deaf and unresponsive. Frank Sohappy was the headman of the Wapato Longhouse on the Yakima Reservation, and it was from him that the writer learned about the Washaat Religion.

The core of the Washaat religion that has got it named the "Drummers and Dreamers" religion is the use of the drum which symbolizes the heart-beat of man or the life of man and deep concentration which recognizes the importance and power of the mind in the learning and communication process.

Man's gift of life from the creator is the heartbeat. When the heart ceases to beat, the Washaat believers know that man has gone on to another phase of the cycle of existence.

Man's mind is so important and powerful that the barriers of time and space are as nothing to it. The mind can travel to any place in any time, but if the mind is cluttered up with the miscellany of western life, it is bound to a superficial existence that is far removed from its true powers or abilities. This is what is meant by Smohalla when he says that his young men should not work. He is saying that those young men who are going to be interpreters of the universe cannot be tied to an 8-to-5 job. Even today, the modern society produces few philosophers from the working ranks of welders, loggers, carpenters, factory workers, etc.

Since the mind knew no boundaries, the people of the plateau appreciated its power. For example, the mind could be used to make well
Son of last hereditary headman of the Wanapam. Owner of the name of Swaptsa and Smohalla. Taken from Lucullus McWhorter papers at Washington State University Library in Pullman, Washington. Identity confirmed by the living wife and the oldest living daughter of Frank Sohappy.
people sick and sick people well. But mostly, the mind was used to explain and interpret the various phenomena of the plateau people's universe.

The phenomenon of the universe with which this paper is concerned is water. What were the interpretations of the dimensions of water? Since the Washaat religion is a religion of life, its basic concerns were with the life cycle of their known universe. To the minds of the men of the Washaat, water seemed to be essential to their life and the life forms around. Without water, there were no salmon and the plants could not grow. To indicate their appreciation and respect for the importance of water from the creator, water became the sacrament for the rituals of the Washaat people. It was the elixir of life and the expression of "Chiish"17 is the expression of thanks to the Creator for this supreme liquid.

Water was observed in other dimensions. There was water for the flowing highways called later by the "Shuyapo",18 rivers and creeks and streams. Upon these highways man and other forms of life such as the salmon and eel could travel. All of the people knew their water highways for these waterways were the sites of their seasonal homes. These waters were the waters that must continue to flow. Sometimes, the mother of all, the earth, needed a cleansing and water would run where it had not run before. It was the earth mother's cleansing herself. It is in contemporary times called a flood. The necessity of the earth mother to cleanse herself was recognized as necessary and the dams of the beavers were no

17 Chiish or Chuish means water.

18 Shuyapo means whiteman.
real obstacle to fish, to man, or to earth mother. The European has never really understood why there is so much opposition to their dam building that prevents the ordinary fish from completing his life cycle, that prevents ordinary man from using the water highway, and that prevents earth mother from taking her cleansing baths.

Earth Mother needs to cleanse herself, because the dirt sometimes collects on her bones and sometimes the water collects on her in places that cannot be cleansed. These places are like the stinking lake on the Yakima Reservation. There the water collects and stays, unless the earth is washed; because the lake has no outlet.

There are other still water places on the land, but they are good to all animals and life because the water is constantly changing. These lakes have outlets that are not always visible to the eye.

Water for the life processes was recognized and appreciated. The water from the mountain streams and springs from the underground was good for drinking. There were the healing powers of the water, such as the water of Soap Lake. There was also the healing effects of the hot water springs such as the one on the Warm Springs Reservation. The people recognized the importance of the minerals in solution form in water.

The people knew water was for plants to grow. When the snows did not come, neither did the roots or berries, because the roots and berries needed the water that melted snow. They recognized the existence of ecosystems long before the ecologists. The people knew that elements of the universe were related. They knew the deer and plants, as well as man, were part of a basic part of the thank you of the Washaat people to the creator.
One of the most beautiful springs in the vicinity of Mt. Adams at the time of the writer's birth was Cold Springs. Springs, both hot and cold, were those things that proved to the people that water flowed under the ground as well as on and through the ground.

Finally, there are the waters with the special properties and special power. These are known by the people, but they are not to be written about or talked about with strangers. For this paper, an example can be given of another area.

In Southern Oregon, in Ashland, there are the Lithia mineral springs. The chemists say it is water with lithium salts in a dissolved form. That is all. The ancient people of that area and other areas knew the springs to have some special powers other than being a diuretic.

It is interesting to note, that today, the use of lithium compounds is being prescribed by psychiatrists for their patients who suffer from periods of extreme depression.

Water is more to the people, who are now known as the Yakimas, than the chemical formula of $\text{H}_2\text{O}$, It is one of the necessities of their way of life.

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19 Information on the use of lithium compounds in the treatment of depression was secured from Dr. David Brody, who is on the staff of Oregon College of Education and is also a clinical psychologist with the Polk County Mental Health Clinic.
CHAPTER III

HOMELAND OF THE PEOPLE WHO WERE TO BECOME
THE YAKIMA CONFEDERATED TRIBES AND BANDS

INTRODUCTION

For the Native American to establish and hold his claim to his territory, he must always be prepared to defend it. In the past the defense of the territory was mainly physical and not by a foreign legal code. This is conflict with other tribes and conflict natural forces such as earthquakes, floods, volcanic eruptions and other less catastrophic happenings, such as droughts and fires.

Today, that is not necessarily the way the Yakimas defend and define their homeland. Nature does not seem to deal the Yakimas the depth of trauma that "progressive man" does in his search for progress. It, therefore, remains for the Yakimas to seek evidence and data from their oral history, as well as data from disciplines that came with the European. All of this must be a continuous process to defend the homeland that was once a vast territory.

TERRITORY OF THE YAKIMAS

Just as effectively as did the Spanish priests in destroying the Mayan tablets, the dams along the Columbia River have destroyed the sites that hold clues to the history of the early human populations which occupied the common fishing grounds along the Columbia River.

The Columbia River was the storehouse of food for all of the plateau people, among whom were the various groups that were to become named for
history, "The Yakimas". All gathered at sites along the Columbia for the gathering of their first food, the salmon.

Grand Coulee Dam, Chief Joseph Dam, Rocky Reach, Rock Island, Wanapum, Priest Rapids, McNary, John Day, The Dalles, and Bonneville all have back water of lakes that now cover known sites of human occupancy.

The great ice dams of the Columbia River that broke and washed the land in the Northwest, as far east as Missoula, Montana, may have swept data about early man to the silt deposits of the ocean. The floods were so powerful that most of the land seen in the area is scab land, even today. The round hard lava lumps one sees, for example, in the area above Rock Creek; are the evidences in today's landscape of the power of the water. The power of the water is seen as it pushed back the tributaries of the Columbia River and carried objects and soil along to the Scherer's Bridge fishing place of the present day Warm Springs people on the Deschutes. "Proof of as many as seven separate cycles of lake formation, ice dam failure and flooding has been found both in Montana and in Washington."20

Floods and lava flows characterized the landscape history of the Columbia Plateau. Every lava flow that came buried the objects of the landscape before it and under it. The lava spilled into channels made by the water erosion and made intra-canyons of lava through which the rivers had to cut their way once more in their journey to the salt water. "Every eruption reset the clock; it buried the topographic irregularities and all the various sediments and organisms of the landscape. The top

of each new flow was virtually flat and utterly barren." 21 Sometimes wood is seen preserved as stone at the bottom of lava flows. This is especially true if there were some kind of soil sediments in which the trees could be deposited as the lava flowed.

The area around Vantage gives up much evidence of a long period of plateau life before another lava flow came. There seems to be little evidence of vertebrate fossils in Washington, but there is evidence of vertebrate fossils in Oregon. One geologist offers the explanation for the paucity of fossils in Washington as probably being due to the lack of sedimentary beds for fossil preservation during the Miocene Age. 22 This is the age period corresponding to the age of other fossil finds found in Oregon. He does not go on to indicate the lack of fossil beds may be related to the fact that Central Washington is closer to the impact of the force of the ice flooding process than is Oregon. The intensity of the flooding process may have made it very difficult to deposit a sedimentary bed.

As one travels the ancestral homeland of the "Yakimas", today, and looks at the evidences offered by the Yakima Basalt Formation and the Ellensberg formation, one cannot but see that maybe only by chance is the earth mother going to release clues about herself and the life she once supported.

It is really no wonder that present-day archeologists write, "Evidence of the earliest human population to occupy the lands of the

21 Ibid., p. 277.

"Yakima" has yet to be discovered."23 As man gouges the earth to build tunnels, dams, and bridges; he sometimes unearths a clue to life forms of the past.

In the Yakima Ridge, about 6.5 miles north of the city of Union Gap, elephant and camel bones were found. This find was in 1936. They were dated most favorably with the early Pliocene Age.24

In the legends of the men turned to stone, and in the particular legend and marker to the giant man of stone, the present day "Yakima" portrays his belief and his data that man has walked the "Yakima" ancestral home and surrounding areas long enough in the past to be present today in stone.

The stories in stones are one of the ways to get the facts about the oldest fossils of man and about the oldest artifacts of man. Geologists, anthropologists, and archeologists have many guesses25 about how ancient man of the Americas came to the Americas, but they have little hard data.

In 1965, Roald Fryxell, a geologist and anthropologist at Washington State University discovered an ancient site that yielded skeletal bones. The site was along the Palouse River near its junction with the Snake. Again, these areas that contain clues to man's prehistory in the Americas are going to be under water. This little southeastern corner of Washington has yielded evidence that has made it possible to document the


25 Guesses are contrasted to hard data by the scientific notion that enough confirmed empirical data makes scientific laws and not just theories. Courts have unique laws of evidence that apply in the use of data from geologists, anthropologists, and archeologists.
age of the remains between 11,000 and 13,000 years ago. The finders think they found both a campsite and a cremation hearth. The site yielded skeletal evidence of 23 human burials, "Ranging from 200 years to more than 11,000 years old." These remains of ancient life are called "Marmes Man" after Roland Marmes, who is the owner of the property that contains the site.

Richard Daugherty, who was one of the leaders of the expedition, dates Marmes Man about 10,000 years. He says that they may be one of the nomadic bands who walked the area after the melting Pleistocene glacier. In his material on the Yakima people, Richard Daugherty identifies this stage of life for man in the Northwest as the Early Period, which is 9,000 years ago and before. Marmes Man data come in the early period of prehistory because its age date is around 10,000 years.

In the archeologists time table, the prehistory of the people who are now Yakimas is divided into five periods. Marmes Man is catalogued in the early period which is before 9,000 years ago.

The next time period is referred to as the transitional period (from 9,000 to 4,500 years ago). From the material and data available, it seems as if there are no significant changes in the people's way of life, except adjustments to climate changes. Up to the time of the discovery of Marmes Man in Washington, there had been found in North America only three partial skeletons that might compare in age to Marmes Man.

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28 Ibid., p. 3.
Near Midland, Texas, parts of a skull, some broken ribs, and some metacarpale were unearthed. These were dated about 9,000 B.C., which would correspond to the early period of the early man of the northwest plateaus and rivers.

Archeologists have labeled the third period as the developmental period. There are more data from the sites and the patterns of social and cultural development can be better seen. During this period (4,500 B.C.-0 B.C./A.D.), the patterns of technology, the patterns of subsistence, the pattern of demography and the pattern of community were well formed and in evidence in the archeological data. The patterns of community settlements seemed to be changing significantly in size. The winter settlements were becoming large settlements.

In the Climax Period (0 B.C./A.D.-1805 A.D.) the people who were to become labeled the Yakimas are in full focus. It is, at this point, impossible to say Marmes Man is a "Yakima"; but there is no such difficulty about the people living during this time period. The end of the Climax Period is the meeting with Lewis and Clark in 1805.

The meeting with Lewis and Clark in 1805 marks the beginning of the Euro-American culture contact. Since that contact the period is now referred to as the Historic Period.

There are archeological sites in the North American area that are dated 30,000 to 40,000 years ago; but there are no actual bones of man connected with these sites. The data about man in the homeland of the "to be Yakimas" goes back to the oldest man known, the 11,000-13,000-year-old remains of man. The point that must be emphasized is that there is a continuous culture for 10,000 to 14,000 years in the Yakima territory.
Much of the literature about people of the Climax period and of the Historic Period is about the nomadic life of the people in the Columbia Plateau area. Early man was nomadic in the same way the jet set is nomadic. They too followed a regular cycle of movement that was governed by the seasons. The geography, geology, and climate of the area made the seasonal cycle of life that became the calendar and clock of the early man.

The people who were to become the Yakima Confederated Tribes claimed 10,800,000 acres of the Columbia Plateau as their homeland. The boundaries of these people were geographical and geological. On the north boundary, was the westward flowing Columbia beginning at the Methow River. The tremendous range of the Cascades was the boundary on the west. The Columbia River was the boundary on the South, just as it is today between Oregon and Washington. All of this was the land of life for the people who were to become the Yakimas. This was their homeland and the homeland dictated the living cycle.

In the Spring, the people came from their winter homes in the valleys and other places that offer the best shelter from the weather and offered the best location for socializing with relatives and friends. The Spring salmon came to the rivers and the people went to the rivers. Some of the people went to the foothills to begin to gather roots. All was activity for the people in the Spring.

In the Summers, there was the catching of the eels and salmon, then came the drying and other work in preparing the food for future use.

In the Fall, there was much movement to the berries in the mountains. Mushrooms, mooses, deer, and elk were obtained all through the fall season.

As Winter came, the people returned to their winter homes to repair the home for winter, to make the tools and other objects needed for life,
to prepare the skins for clothing, in reality; to do the things related to the quiet or sleeping time of the earth.

It was as Wa-tum-nah said in his predictions, "We are a happy people—but it would not always remain so." 29

CHAPTER IV

THE TREATY OF THE YAKIMA CONFEDERATED TRIBES

INTRODUCTION

The pattern developed by the United States government was to negotiate treaties with Native American groups based on the European notions of property and rights. The pattern had become well-defined under the presidency of Andrew Jackson. Indian Removal and Reservations had become a reality. Manifest Destiny was the guiding philosophy for the period of treaty making that was soon to affect groups that were to become the Yakima Confederated Tribes.

The interest in the treaty of the future Yakimas is based in the group's rights. Water rights are the focus of this study and they can only be considered in the context of the treaty.

TREATY BETWEEN THE UNITED STATES AND THE YAKIMA INDIAN

In the summer of 1854, Governor Isaac Stevens met with Ow-hi, leader of the Upper Yakimas. Governor Stevens told Ow-hi that he wanted to make a treaty with the Indians of Eastern Washington and Oregon concerning purchase of Indian lands. Ow-hi advanced the position of no sale lands. It was at this time that the threat of genocide was made by Governor Stevens. He asked that Ow-hi deliver a message to the leaders of the tribes indicating that a council be gathered and that if the tribes did not make a treaty, the white people would take the land, anyhow. He further stated that in addition to the land grab by the
European descendants, the soldiers would come and "wipe them off the face of the earth."30

In 1855, the tribes, bands, and groups held their own council in the Grande Ronde valley of eastern Oregon. At the Grande Ronde Council of 1854, there were three positions.

One position was to make a treaty and sell the land. This position was maintained by Nez Perce (Hal-halt-los-sot, the tribal name for Lawyer); Cayuses (Sticcas); and Spokanes (Garry).

The war position was taken by the Shoshones. They were not actually one of the groups directly concerned, but they indicated their position for what it was worth to the other groups.

For the majority of those groups present, the position was to state their land claims as a claim for the land base of their reservation. This, in fact, would leave no land to bargain for sale with Isaac Stevens. The claims were as follows:

Ow-hi, for the Yakimas, Klickitats, Wish-rams and So-kulks, should have the territory extending from the Cascade falls of the Columbia River north along the summit of the Cascade Range to the head of Cle-el-um, east by Mt. Stewart and the ridge of the We-nat-sha Mountains north of the Kittitas valley, to the Columbia River and across to Moses Lake, thence south to White Bluffs, crossing to the west side, and on down the Columbia to the point of beginning, including all of Klickitat, Yakima and Kittitas valleys.

To-qual-e-can, for the Wenatshas, that country north of Ow-hi's boundary to Lake Chelan and east as far as Grand Coulee.

In-no-mo-se-cba, for the Chelans, that country north as far as Methow, then east to Grand Coulee.

Su-cept-kain, for the Okanogans, all north of the Methow to the boundary of British Columbia with the Okanogan River for the east boundary. All of the above boundaries extended west to the summit of the Cascades.

To-nas-ket claimed for the Kettle Falls tribe of the Okanogans all that country between the Columbia River and the east bank of the Okanogan north to the boundary of British Columbia.

Chin-chin-no-wah, for the Colvilles, asked for the land east of To-nas-ket's boundary, including the Spokane and Colville valleys.

Lot, for his tribe of Spokanes, wanted the land east of that claimed by Chin-chin-no-wah to Spokane Falls.

Garry and Po-lat-kin, for their following of the same tribe, wanted that east of Lot's land from Spokane Falls to the summit of the Coeur d'Alene Mountains and about twenty miles south of Spokane Falls and east of the Palouse country.

Sal-tes, for the Coeur d'Alenes, claimed that part known as the eastern portion of the Palouse country south of Garry's and Po-lat-kin's holdings, with the Snake River at Pen-e-wa-wa for the southern boundary.

Three Eagles asked for his band of Nez Perces the land south and east of Sal-tes' claim to the summit of the Bitterroot Range and the north side of the Clearwater.

Looking Glass' and Lawyer's following the same tribe claimed all lying south of Three Eagles' land, including Kam-i-ah, Craig Mountain and Kamas prairie.

Joseph, for the Salmon River Nez Perces, spoke for the main Salmon and Little Salmon rivers and the headwaters of the Weiser, Payette and Wallowa valleys.

Five Crows, of the Cay-uses, wanted the Grande Ronde valley, Umatilla and as far down the Columbia as John Day River in Oregon.

The Warm Springs, Des Chutes, Was-co-pams and Tyhes asked for the land from John Day River to the Cascade falls of the Columbia and south along the summit of the Cascade Range to Mt. Jefferson, then east to the John Day River and down that stream to the Columbia. 31

For bargaining purposes, these groups claimed practically all of Eastern Washington and Eastern Oregon.

The plan of the majority never reached fruition, because Lawyer of the Nez Perce did not accept the decision of the majority and brought a

31 Ibid., p. 24-25.
large group of Nez Perce to enforce his own plan at the Walla Walla Council with Stevens in 1855.

Splawn\textsuperscript{32} states that Lawyer sought and succeeded in ingratiating himself with Stevens at the Walla Walla Council by the use of a trick. The trick was that Lawyer told Stevens that the other tribes were going to harm him and that he, Lawyer, and his Nez Perce would move into Stevens' camp and protect him from harm. In his own research, Splawn indicates that he never found any corroborating evidence of Lawyer's story that the other tribes intended to harm Stevens. Lawyer, was apparently only seeking to enhance his position in the bargaining related to making a treaty with Stevens.

Lawyer seemed to be the only leader present who was agreeable to the concession of territory. There was no evidence of enthusiasm for the council or for the purpose of the council among the other tribal and group leaders. The leaders representing the groups who were to become the Yakimas were suspicious of Stevens and did not think the government would be able to or even intended to keep their word. The leaders had come under the threat of genocide. They did not want to grant any land to the U.S. for the white settlers. This doubt was expressed very strongly by the fact that Ka-mi-a-kin, Peo-peo-mox-mox, Skloom, and Ow-hi refused to smoke with Governor Stevens and his party. The council at Walla Walla was certainly not characterized by positive rapport.

As the council proceeded, the time ran on for about two weeks. At the conclusion of the council, Governor Stevens stated that the council

\textsuperscript{32} Ibid., p. 30.
ended in a most satisfactory way. Whether this statement was made in ignorance, in egocentrism, in naivete, or in ethnocentrism, the governor certainly did not comprehend the situation. For soon after the council, physical conflicts arose in Eastern Washington and Eastern Oregon. The Yakimas, the Rogue Rivers, the Nez Perces, and the Spokanes all felt the taking of their ancestral homes was unjust and went to war to defend their homeland.

Even today, there are still conflicts resulting from the treaties made by Stevens and ratified by Congress. These conflicts are over fishing rights, land concessions, tribal misrepresentation, reservation boundaries, and treaty obligations. For example, the Wanapams of Priest Rapids, or Sokulks as they are sometimes called, never signed the treaty. The status of their tribal rights is still a matter for the courts. If Ow-hi, as in Kamiakin's original plan, were signing for them, he apparently did not know it.

There is some question about the respective roles of Looking Glass of the Nez Perce and Lawyer of the Nez Perce, since Looking Glass challenged Lawyer's right to sign for the Nez Perce, but Lawyer had brought his own segment from the Nez Perce Country to vote him the leader. As the conflict grew among the Nez Perce from the time at the Walla Walla Council, it became apparent Lawyer represented the Christian Nez Perce and Looking Glass represented the traditional native believer.

The treaty signed by tribes and bands which were to become the "Yakima" was signed by 14 signatures. The names of the 14 signers were

33 Governor Stevens letter of transmittal with the treaty is about the council proceedings.

Kamiakin, Skloom, Ow-hi, Te-cole-kum, La Hoom, Me-ni-nock, Elit Palmer, Wish-och-kimpets, Koo-lat-toose, Shee-ah-cotte, Tuck-quille, Ka-loo-as, Scha-noo-a, and Sla-kish. It is difficult to determine the group or groups the signers represented and to determine which groups who occupied the ceded territory were not signers of the treaty and were not represented by any signer of the treaty.

According to the record of the treaty, the tribes group and bands were the Palouse, Pisquouse, Wenatshapam, Klikatat, Linquit, Kow-was-say-see, Li-ay-was, Skin-pah, Wisham, Shyiks, Oche-chotes, Kah-milt-pah, and Se-ap-cat.

In Isaac Steven's letter of transmittal that accompanied the treaty, to the Honorable George Manypenny, Commissioner of Indian Affairs, Stevens listed only 10 groups which make the estimated 2,000 population of the Yakima Nation. In the treaty, itself, it is impossible to tell which signature goes with which group. There seems to be more signatures from Kam-ai-a-kin's blood family than there are from the other bands and groups.

Ka-mi-a-kin signed after two long weeks of discussion and talk that was interfering with the life process of food gathering for the winter. He was an unwilling participant in the council and unwilling to surrender any of his people's homeland. It is easy to understand his position in relation to the stranger on the land. The strangers were now claiming the land as theirs and telling him that he was the interloper.

The boundaries of the ancestral home of the "Yakima" were described in the treaty as follows:

"Commencing at Mount Ranier, thence northerly along the main ridge of the Cascade Mountains to the point where the northern Tributaries of Lake Che-lan and the Southern Tributaries of the Methow River
have their rise; thence Southeasterly on the Divide between the
waters of Lake Che-lan and the Methow River to the Columbia River;
thence, crossing the Columbia, on a true East course to a point
whose Longitude is One hundred and Nineteen Degrees and ten
minutes (119° 10'); which two latter lines separate the above
confederated Tribes and bands from the Oakinakane Tribe of Indians;
thence in a true South course to the Forty seventh (47°) Parallel
of Latitude; thence East on said Parallel to the main Palouse River
which two latter lines of Boundary separate the above confederated
Tribes and Bands from the Spokanes - thence down the Tributary of
the same; thence in a Southeasterly direction to the Snake River at
the mouth of the Tucannon River - separating the above confederated
Tribes from the Nez Perce Tribe of Indians, thence up the Columbia
River to the "White Banks" below the Priest's Rapids; thence
Westerly to a Lake called "Lac Lac"; thence Southerly to a point
on the Yakama River called Toh-mah-luke; thence in a Southwesterly
direction to the Columbia River at the western extremity of the
"Big Island" between the mouths of the Umatilla River and Butler
Creek; all which latter Boundaries separate the above confederated
Tribes and Bands from the Walla Walla, Cayuse, and Umatilla Tribes
and Bands of Indians, thence down the Columbia River to midway
between the mouths of White Salmon and Winds Rivers; thence along
the Divide between said Rivers to the main ridge of the Cascade
Mountains, and thence along said Ridge to the place of beginning.35

In Article II of the treaty of 1855, the "Yakamas" retained the land:

Commencing on the Yakama River at the mouth of the Attah-nam River;
then up said Attah-nam River to the Forks; thence
along the Southern Tributary to the Cascade Mountains; thence
Southerly along the main ridge of said mountains passing South
and East of Mt. Adams, to the Divide whence flows the Waters of the
Klicatat and Pisco Rivers; thence down said Divide to the Divide
between the waters of said Rivers; thence along said Divide to the
Divide separating the waters of the Satass River from those
flowing into the Columbia River; thence along said Divide to the
main Yakama eight miles below the mouth of the Satass River, and
then up the Yakama River to the place of beginning.36

In Steven's letter of transmittal regarding the treaty, he indicates
the "Yakamas" ceded 16,920 square miles which turns out to be 10,828,800
acres. He further states that the "Yakamas" retain one thousand two
hundred thirty-three square miles or 789,120 acres for their homeland.
The actual number of square miles are never mentioned in the treaty, the

35 Article I of the Treaty with the Yakima, 1855.
36 Article II of the Treaty with the Yakima, 1855.
Copy of map was obtained from the Office of Superintendent, William Schlick, of the Yakima Confederated Tribes Agency at Toppenish, Washington.
FIGURE 4

PRESENT DAY MAP
square miles reference comes from Steven's letter of transmittal explaining the treaty.

Already there are beginning to be discrepancies between what the treaty says and what others think it says. It was difficult in the research for this paper to determine accuracy. All references, including Dr. Richard D. Daugherty\(^{37}\) indicate that the "Yakimas" retained 1,875 square miles. There is no such numerical reference in the treaty itself and it contradicts the number indicated by Stevens in his letter of transmittal to the Commissioner of Indian Affairs.

Stevens' letter of transmittal also refers to an enclosed map. The map was lost for 80 years in some file. It is this map that was of value in establishing the Yakima land claims, which culminated in the return of the 21,000 acres of Gifford Pinchot National Forest to the Yakima. This land claim included Mt. Adams.

One of the problems that has contributed to the history of conflict between tribes and the United States government is that the government really never checked to see if a person marking a treaty had any real right to use the mark. The government really didn't proceed on data. It proceeded on the notion of obtaining marks that could be used to make documents official. This is never more apparent than in the letter of transmittal from Isaac Stevens to the Commissioner of Indian Affairs. Stevens estimates the population of the people making the treaty as 2,000. In his estimates he lists only ten groups, not fourteen groups as in the treaty, and further, he lists only four groups by name in his population estimate.

Whatever the discrepancies, Article II did establish the Indian Reservation for the "Yakima" Confederated Tribes and Bands for their exclusive use. There was to be compensation from the federal government for any improvements by the tribal people on the ceded land.

Article III speaks to the rights of transportation and to the rights of fishing, hunting, and other food gathering activities that have historically been the subsistence patterns of the Yakimas.

Article IV lists the material compensation to be made by the United States to the treaty people:

1. Goods and provisions given at the time of the signing of the treaty as to the actual content of the goods, data are lacking.
2. Two hundred thousand dollars was to be paid the "Yakamas" along the following time table.
   a. Sixty thousand the first year after ratification.
   b. Annuity for the first five years after ratification was to be 10,000 each year.
   c. Annuity for the second five years was to be 8,000 each year.
   d. Annuity for the third five years was to be six thousand dollars each year.
   e. Annuity for the fourth five years was to be four thousand dollars each year.

There was no tribal autonomy in the dispersal of the funds. The funds were to be expended under the direction and at the discretion of U.S. President. The only evidence of democracy was in the statement in the article that said the Superintendent was to inform the President of the tribal wishes.
Article V has diverse components to it. The first component is concerned with the establishment of certain building structures. The structures were:

1. Two schools were to be established, one, especially, for agricultural and industrial studies;
2. Two blacksmith shops were to be built;
3. One carpenter shop was to be built;
4. One wagon maker shop was to be built;
5. One ploughmaker shop was to be built;
6. One saw mill was to be built;
7. One flouring mill was to be built;
8. One hospital was to be built; and buildings to house employees were to be built.

All of this was to be accomplished and put into operation in twenty years.

There are further data related to the role of Kamiakin in Article V. The U.S. government was to pay the head man 500 dollars per year for 20 years. They were also going to build and furnish a house for the head man and plough and fence 10 acres of land for the head man. Kamiakin refused to accept the role and conditions of the head man.

All of these activities mentioned were not to be deducted from the annuities. The U.S. government was to defray these additional expenses.

Article VIII has the information in which the Yakima Confederated Tribes and Bands promised to be friendly with the United States.

In Article X, the Yakimas retained the 'Wenatshapam Fishery'. The actual rights in relation to fishing were in another article in the treaty.
The treaty was ratified in 1859 and proclaimed by President James Buchanan on April 18, 1859. Prior to the ratification, much happened that led to the distrust of the U.S. government by the Yakima Confederated Tribes and Bands. This distrust characterizes the relationship between the two groups, even today. It began with the tribal people not understanding why the U.S. did not keep the settlers off of the reservation as was said in the treaty. For the European descendants, it began with the killing of A. J. Bolen, who was assigned to the Yakima by Isaac Stevens.38

The ratification of the treaty meant the end of an era for the confederated bands and tribes as tribal people who knew land bounded by mountains and rivers, not land bound by invisible lines that made a reservation. The new era began the reservation period for the Yakima.


39 In the letter of transmittal by Stevens, there is a reference to charges against Bolen. I have been unable to discover the nature of the charges or to discover which party or parties made the charge.
CHAPTER V

THE YAKIMAS' WATER RIGHTS

INTRODUCTION

This chapter will be divided into three parts. The first part will be concerned with the status of the treaty of the Yakima Confederated Tribes with the United States. The emphasis of the second part of the chapter will be on the legal dimensions of the water rights of the Yakimas and the final part of the chapter will consider the erosion of the Yakimas' water rights.

PART I

STATUS OF THE YAKIMA TREATY OF 1855

Chapter III described the events related to the first treaty made by the Yakimas with the United States government. The Walla Walla Treaty of 1855 was reluctantly signed and accepted under duress of the conflict between the United States Army and the Northwest Tribes. These conflicts are often referred to as the Indian Wars of 1855-1858.

The status of the Yakima treaty is directly related to the time period in which it was signed. All treaties signed between 1850 and 1869 are of a different legal status than those negotiated and signed after 1871. The appropriations act by Congress in 1871 contained the following two clauses:

Provided, That hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty: Provided further, That nothing
herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe.  

This meant an end to sovereign status in treaty negotiating. This act was not made retroactive; therefore, it did not have any effect on treaties made prior to 1871. The basic difference was that treaty transactions with Indian tribes would now be under more direct control of Congress. Congress was beginning to want to be more involved than in the simple ratification of treaties made by men who were more directly responsible to the Department of War. This legislation had no negative effect on the status of the treaty, to the contrary, the legislation strengthened the status of the treaty.

Probably, the next major assault on the status of the treaty was the Dawes Act, which was passed by Congress in 1887. This act became law when President Cleveland signed the Dawes Act on February 8, 1887 (24 Stat. L 388). The pertinent provisions of the act are:

1. a grant of 160 acres to each family head, of 80 acres to each single person over 18 years of age and to each orphan under 18, and of 40 acres to each other single person under eighteen;

2. a patent in fee to be issued to every allottee but to be held in trust by the Government for 25 years, during which time the land could not be alienated to enumerated;

3. a period of 4 years to be allowed the Indians in which they should make their selections after allotment should be applied to any tribe-failure of the Indians to do so should result in selection for them at the order of the Secretary of the Interior;

4. citizenship to be conferred upon allottees and upon any other Indians who had abandoned their tribes and adopted "the habits of civilized life." 

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40 Felix Cohen, Federal Indian Law, Albuquerque, University of New Mexico, p. 66-67.

41 Ibid., p. 207-208.
The Dawes Act in the strictly legal sense did not impair the Yakima Treaty. That is to say, the Yakima Treaty was not assaulted in a court process or by a specific act of Congress. The effect of the Dawes Act was to weaken every article of the treaty without the due process of specific court action in an adversary relationship or by a specific act in relation to the Yakima Confederation.

This act was passed without any consideration or consultation with the tribes because of the ethnocentric feelings and beliefs of the European Americans. This feeling related to possession of superior culture and a desire for land led to the use of the Dawes Act is securing land.

Cohen in his work on the allotment system seems to think that the proponents of allotment act were inspired by the highest ethical motives. The following quotation from Cohen indicates an ambiguity about exactly what constitutes the "highest motive."

The supreme aim of the friends of the Indian was to substitute white civilization for his tribal culture, and they shrewdly sensed that the difference in the concepts of property was fundamental in the contrast between the two ways of life. That the white man's way was good and the Indian's way was bad, all agreed. So, on the one hand, allotment was counted on to break up tribal life. This blessing was dwelt upon at length.

. . . It must also be noted that while the advocates of allotment were primarily and sincerely concerned with the advancement of the Indian they at the same time regarded the scheme as promoting the best interest of the whites as well. For one thing, it was fondly but erroneously hoped that setting the Indian on his own feet would relieve the Government of a great expense. 42

A noticeable lack of enthusiasm was evidenced for the Dawes Act. The Yakimas were very suspicious of any Act that lessened their land base. A typical Yakima view was reported by the Yakima Herald.

42 Cohen, op. cit., p. 208.
These lands were given us by the Great Father of the Sun. They are ours. We will not give up another inch of them. We are weary of the pale face's treaties. Go! We never want to see you again. There is the way. Go!43

The suspicion and distrust of the Yakimas was well-placed. The high motives of the government in relation to the Yakima seem to lack documentation. On the other hand, the data are available concerning the questionable ethical use of the acts or the questionable ethics of the men passing the acts. One of the acts further establishing the deep distrust of the government is not written much about in the literature, but it is certainly a piece of important data to the people in the formulation of their attitudes toward the government.

The data to which I refer is in relation to the use of the terms of competent and incompetent. The act of March 1, 1907, provides:

That any noncompetent Indian to whom a patent containing restrictions against alienation has been issued for an allotment of land in severalty, under any law or treaty, or who may have an interest in any allotment by inheritance, may sell or convey all or any part of such allotment of such inherited interest on such terms and conditions and under such rules and regulations as the Secretary of the Interior may prescribe, and the proceeds derived therefrom shall be used for the benefit of the allottee or heir so disposing of his land or interest, under the supervision of the Commissioner of Indian Affairs; . . . 44

A typical case in point, even today, is the following information regarding the sale of the property of Mrs. Julia Pima Sohappy.45 This person is still alive, today. She objected to the disposition of her property. In trying to retrace the basis of the sale, a letter from the assistant area director, A. W. Galbraith, to William Schlick, Superintendent

43 Yakima Herald, February 8, 1894.


45 Mrs. Sohappy is the writer's maternal grandmother.
of the Yakima Indian Agency, states:

You have determined that the land is not prospectively valuable for minerals, in accordance with the policy stated in 54 IAM 2.2 ID, in which event it is not necessary to reserve 100 percent of the minerals because of the interests owned by incompetents.  

This letter and other data regarding this particular situation are data in relation to what is still resulting from the Dawes Allotment Act and the act of March, 1907. Being labeled as incompetent is not the way to build trust or rapport. Mrs. Sohappy feels she is as competent to conduct her business as any other person. She recognizes that she needs advice, information, and representation; but feels that the price she pays for these needs, in being termed and treated as an incompetent, is too high a price.

All of these acts really did little to test in court the legal status of the Yakima Treaty of 1855. What they did was to confirm in the minds of the members of the Yakima Confederation a deep distrust of the U.S. government. This distrust was never more evident than in the refusal of the Yakima Confederation to accept the Indian Reorganization Act of 18 June 1934.

John Collier was appointed Indian Commissioner by President Roosevelt on 21 April 1933. He was the commissioner from 1933-1945. No other person has ever been in the position for such a period of time.

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46 A. W. Galbraith letter to William T. Schlick, received on March 21, 1969.


48 Letter from Acting Superintendent, Robert Dunn, of Yakima Agency to Area Director Dale M. Baldwin on the real property of Allotment No. 973. No date.

The Indian Reorganization Act of 1934 was an effort at reform and was made federal Indian policy during the term of John Collier. It supposedly was to be the new deal for the native Americans. This Indian New Deal legislation also included the Johnson O'Malley Act and the Act creating the Indian Arts and Crafts. With the I.R.A., the Indians were consulted in six Indian Congresses before the act became law. Collier reported that most of the tribes present at the Congress were initially opposed to the act, but as they understood the provisions of the act, they became more accepting.

After the act became law, the tribes were again consulted and given the opportunity of either accepting the act or not. Acceptance was to be a matter for each tribal group to be decided by a vote. The act was considered to apply to the group if the act was approved by a simple majority of those members who were twenty-one years of age and over. Acceptance of the act meant receiving the full benefits of the act regarding all programs especially those relating to education and employment. Rejection of the act meant denial of the benefits of the act.

John Collier seemed to be truly interested in the tribes doing what they thought best. In all of the material regarding the act and, in the recorded behavior of Collier, there are no data of any discrimination or retaliatory behavior against those tribes not accepting the act. Collier's private belief was that any tribe not accepting the act would... "drift to the rear of the great advance open to the Indian race."50

50 Explanation an interpretation of the Wheeler-Howard Bill, Records of the Yakima Nation.
Against the opposition of C. R. Whitlock, the Superintendent of the Reservation, the Yakimas finally succeeded in their efforts to reject the act. The vote was 773 against the IRA and 361 for it. When the Yakimas voted to reject the IRA in 1935, eighty years had passed since the signing of the Walla Walla Treaty. In effect, the IRA rejection vote was a no confidence vote in the word or behavior of the United States government.

The Yakimas could not comprehend how the representatives of the U.S. government could mouth so many words and print so many papers and yet never do what they said or wrote.

I don't believe the Federal government has one penny to expend towards the benefit of Indians. I really believe all the money he has in the treasury now will be expended and for some other benefit of his own. I wish you would never falsify anything to us and convince us that you will tell us something that will really benefit us.\(^5\)

In relation to the status of the treaty of 1855, the Yakimas held it as a sacred promise they had not broken. They contended that this was not the position of the United States government. They further contended that their treaty was not a grant of rights to them, the Yakimas, but that the treaty was a grant of rights from them to the United States government. Unless a grant to the U.S. government was so stated in the treaty, the Yakimas reserved all other rights. The other factor in relation to the status of the treaty was that the Yakimas had promised to be friendly to the U.S. government.

\(^5\) General Council Meeting, 25 November 1934.
PART II

DIMENSIONS OF THE YAKIMA WATER RIGHTS

The water rights of the Yakima Confederated Tribes cannot be considered as separate from the 1855 Treaty of the Yakimas, since the Yakima Treaty came before the act of the Appropriations bill of 1871 that limited the concept of sovereignty and treaty making.

In two early decisions, Cherokee Nation and Worchester52 v. Georgia,53 the sovereignty of Native American Tribes was considered. The principle was established, that while not exactly being sovereign, the Native American tribes were characterized by many of the attributes of sovereign nations. The concept of domestic dependent nation came from Chief Justice Marshall of the Supreme Court.

The legal status of the treaty is further buttressed historically by the Papal Bull of Pope Paul III in 1537. The Bull Sublimis Deus sets the precedent for the title of the land being retained by the Native Americans.

With the precedent being set for near sovereign status and the title or right to the land established, the actual use and ownership of water can be considered.

Survival is not possible without water. Water has been a central part of the life patterns of Native Americans of the United States. It has been equally important to the Native Americans of both North and South America, but this paper is concerned only with these aspects of

52 Case: Cherokee Nation V. Georgia, 30 U.S (5 Peters) 3 (1831).
life that pertain to the Yakima Treaty of 1855. The concept of owning the water came with the Europeans, but the concept of use and purpose of water was a part of the cultures of the Native Americans.

With the coming of the European and the Europeans increasing need for water, doctrines, laws, and cases came into existence regarding Indian water rights. Prior to the consideration of Indian water rights, the European had two water theories that were usually applied in cases of conflict.

These two water theories of water rights are established through the notion of prior appropriation and riparian. Prior appropriation water theory probably has precedence over riparian water theory. The notion most characteristic about prior appropriation water theory is seniority in the use of water. Accordingly, the individuals who can prove the longest and first use of a specific water source for certain purposes, particularly food producing purposes, are likely to stand the best chance of continued first appropriation of the water over all other individuals. As long as there is enough water for all individual needs and purposes, there is little cause for concern. It is when the demands exceed the supply, that the notion of prior appropriation becomes significant.

Contrasted to prior appropriation water theory, riparian water theory has to do with geographical placement. That is to mean, a right to water use or use of products of water is related to living on the banks of water source such as a river or lake. This theory has to do with space and prior appropriation has to do with both time and space. In general, if an individual or entity can prove first access to the water by living at the flow or source points of the water, his riparian rights place him in an advantageous position for the retention of access
to the use of the water. Riparian rights have characterized the American West.

Nevertheless, it is not always possible, in practice, to divide water rights theory into such a neat dichotomy. There can be an overlap of the application of these two theories in one particular situation.

A third theory of water rights goes back to the time before the Yakima Treaty of June 9, 1855. In establishing the title to their land and its source, the Yakimas go back to the treaty between the United States and Great Britain. Their treaty dated 15 June 1846,\textsuperscript{54} passed Dominion to the United States over the people who were to become the Yakimas. Dominion and not title were exchanged in the treaty. The Yakimas, in establishing their water rights, contend that even before the exchange of dominion, they had invested in them aboriginal title to the land.

Proceeding from aboriginal treaty, to the 1846 treaty and to the 1855 treaty, the Yakimas contend they never gave up anything willingly and when they had to make grants to the United States under threats of genocide, they relinquished only what was so specifically granted in the records related to the treaty. They further contend that everything else was held in reserve for the future use of future Yakimas.

Since the Yakimas and other tribes in similar positions contend they granted or ceded only what is written, it seems reasonable that the water theory pertaining to Native Americans is reserved water theory.

This is different from prior appropriation in that the Indian does not have to appropriate his water to keep it, and different

\textsuperscript{54} In regard to the Rocky Mountain (9 stat-869).
from riparian in that it can flow on non-Indian land and still be subject to Indian ownership.55

In further determining the dimensions of the Yakima's water rights, consideration must be given to more contemporary times in the 1904 Winans Decision of the Supreme Court. The concern is in relation to the importance of the Supreme Court decision regarding the legal status of that treaty of 1855 as it determines the dimensions of the Yakima's title to their reservation. Even though the Winans Case is related to the attempted violation of the Yakima right of fishery, it is pertinent to water rights.

Water rights are necessary for survival in the same way food as fish in the Winan Case is necessary for survival. The Supreme Court said:

The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians upon the exercise of which there was not a shadow of impediment, and which were not much less necessary to the existence of the Indians than the atmosphere they breathed.56

The Supreme Court further said:

. . .The treaty was not a grant of rights to the Indians, but a grant of rights from them. . .a reservation of those not granted. And the form of the instrument and its language was adapted to that purpose.57

The precedent seems to be set regarding the title to the reservation and appurtenances embraced within its Treaty of 1855. The Yakimas retained the title. It seems fantastic the extent to which the Yakimas have had to go to establish title to their reservation in order to protect the rights that are associated with title to the land.

55 George Wynn Colbe, Yakima Indian Water Rights, College of Law, Willamette University, Salem, Oregon, February 1974, preface.

56 United States V. Winans, 198 U.S.

57 United States V. Winans, 198 U.S. 371, 381 (1904).
In the final analysis of the Yakima position regarding their waters, it is interesting to see the position of the Yakima under the prior appropriation and riparian water theory. In a memorandum to Robert Jim, past Yakima Tribal Council Chairman, from William H. Veeder, B.I.A. Water Conservation and Utilization Specialist, there are data regarding these two water theories.

"Historically the Yakimas were the first to irrigate their lands in the area which is now the state of Washington." In 1847, in the Ahtanum Valley, the Yakimas first used their water to raise their crops. This then makes this place the "cradle of irrigation" in the present state of Washington.

In relation to riparian water theory, the Yakimas village sites are along the rivers, streams, lakes and springs. Since they depended greatly on fish, the Yakimas have relied upon and sought to preserve and reserve their rights to the use of water and to preserve and reserve their rights to the access of the water. Thus, the Yakimas have both kinds of rights.

In addition to prior appropriation and riparian water rights, the Yakima's water rights position can be furthered strengthened by sovereign status and retention to title to the land and its resources.

PART III

EROSION OF THE YAKIMAS' WATER RIGHTS

The actual extent of the Yakima water rights is unknown. The known waters are those that flow under the reservation ground, the waters that flow through and border the Yakima reservation, and the waters that flow

58 Page 5 of Veeder Memo, July 9, 1969.
from the Yakima reservation. There is no specific quantifying mathematical symbol that can be used to designate the quantity of the water rights. There has never been a complete inventory of the Yakima water resources. There are, however, numerous estimates. The estimates are usually around 2,000,000 acre feet of water per year.\(^5^9\)

Sometimes, it is difficult to erase an errant statistic, and it is with some reluctance that this statistic is quoted. It cannot be taken as a limit precise measure, since the water right is always questioned and the Yakimas are in constant litigation regarding the water rights. Thus the water right statistic is not static because of other conditions other than climate and precipitation.

The drainage systems that make up the estimate are:

1. Ahtanum Creek Drainage - surface and ground water. This creek was the northern boundary of the Yakima Indian Reservation according to the 1855 Treaty.

2. Yakima River. This river was the eastern boundary of the Yakima Reservation.

3. Wapato-Satus Indian Irrigation Project.

4. Toppenish Creek Drainage - South of Ahtanum Ridge, north of Toppenish Ridge. Toppenish is a self-contained stream within the Yakima Reservation.

5. Satus Creek Drainage-Wapato-Satus Unit-Mabtan Project. The context of the land in the Satus Creek drainage is changing, more swamp land seems to be in evidence.\(^6^0\)

\(^5^9\) Estimate made by William H. Veeder.

\(^6^0\) The property of my uncle, James Selam, who lives in the Satus area on the eastern boundary of the reservation in the Yakima valley now has a slough for a front yard all year long.

7. Yakima Indian ground water-rights to the use of water.

8. Return flow from irrigation.

These are the principal drainage systems of the water resources comprising the water rights of the nearly 1,400,000 acres of the Yakima Reservation. They are mostly in a north-south direction. The Yakimas further contend they retained the water rights in the cessions of about 10 million acres when they were treated, even though there is no case law to support the contention.

There is one doctrine that the Yakimas, as well as other federal reservations, are depending on for the protection of these water rights. That doctrine is the Winter's Doctrine. The Winter's Doctrine Rights are based on the decisions of cases that began in 1888.

On May 1, 1888, the Gros Ventre and Assiniboine signed a treaty agreement that made their homeland the Fort Belknap Reservation. Under this treaty, the United States and Gros Ventre and the Assiniboine entered a trustee relationship.

On October 24, 1907, the United States honoring the trust relationship went to the Supreme Court in the case known as Winters v. United States. The particulars of the case are:

1. Defendant irrigator built dams and reservoirs on the Milk River in Montana.

2. Defendant irrigator lessened water flow to Fort Belknap Reservation by building dams and reservoirs up stream.

3. Defendant irrigator contend their claim to the water prime and paramount since the treaty of the Indians only went back to 1888.

61 207 U.S. 564 (1908).
4. Defendant irrigator obtained title to the land under the Desert Land Act of March 3, 1877. This act favored those who used the water first.

5. United States claimed continued water flow in the Milk River essential for life in Fort Belknap Reservation.

6. United States claims the Indians did not cede their water rights to the territory becoming the State of Montana.

7. United States claims the Indians would not agree to accepting a desert reservation without water sources.

The case was argued October 24, 1907, and decided January 6, 1908. The case was decided in favor of the water rights of the Gros Ventre and Assiniboine.

The rationale of Winters as enunciated by the Supreme Court is primarily based on simplistic principles of real property law concerning the private property of the Indian people held in trust for them by the United States. It is likewise predicated upon an equally fundamental premise: the arid and semi-arid lands of the United States comprising Western Indian Reservation are uninhabitable without water. This fact results in an unrelenting life and death struggle for rights to the use of water, the Indians' most valuable asset.62

From the Winters v. United States case, came the Winters Doctrine. The Winters Doctrine has been seen as the judicial guarantee to the Reservation Indian that the water right was reserved so that life would be possible and continue to be possible in the treatied reservation.

Winters Doctrine Rights are prior, paramount, and superior to all other rights to the use of water. They are rights owned and exercised exclusively for the benefit of the United States and the Indians.63

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Other cases involving the Winters Doctrine are:

1. United States v. Powers\textsuperscript{64}

This case was an injunction proceeding and not an adjudication proceeding. It did not decide the extent or nature of the rights there involved. It was decided under the Crow Treaty of \textit{1868} which is not the same as the Yakima treaty of \textit{1855}. Powers is only authority for the proposition that a Federal Irrigation Project is not entitled to enjoin non-project water users based upon a claim that the Secretary of the Interior has control of Reservation waters.

2. Arizona v. California\textsuperscript{65}

This case established irrigable acreage as one measure of the extent of the Indian rights, but did not limit those rights to agriculture. The court allowed the Indian rights to be calculated under each State's entitlement under the Colorado River Compact. Since the case was limited to the Lower Basin of the Colorado River and the Indians are specifically exempted from the compact, it was an error not to assess the Indian rights against the entire Colorado River; and not just to the Lower Basin. This position was further buttressed in Seneca Nation of Indians v. United States.\textsuperscript{66}

Even though Winters Doctrine came as a result of Supreme Court action, the courts have not always been just in relation to the Native American. The courts have upheld assault of the doctrine and have favored others who seek the Indian water right for their own use.

\textsuperscript{64} United States v. Powers, 305 U.S. 527 (1939).


Further erosion of the Winters Doctrine is evident in the McCarran Amendment\textsuperscript{67} regarding the cases of United States\textsuperscript{68} v. District Court. The interpretation by the court was that adjudication of Indian Water Rights can be made in state court without Supreme Court adjudicative standards and guidelines. The battle of state rights and state use over Indian rights and Indian use can be adjudicated in state courts. This is severe erosion of the doctrine, for "under this pattern review or \textit{certiorari} may be futile unless Supreme Court attitude can be directed once again to the original concept of the Winters Doctrine.\textsuperscript{69}

The cases involved with establishing and interpreting the Winters Doctrine show the constant assault on the Native American Water Right through the entire United States. This assault is very significant to the Yakimas as they work to maintain their water rights. The Winters Doctrine is the foundation of the data used to protect the Yakimas' Water Rights, even though none of the cases presented are actually cases in which the Yakimas are personally involved in the adjudication process.

Yakima involvement came in 1956, when they finally got their case to the Court of Appeals regarding their water rights on the Ahtanum Creek, a principal tributary of the Yakima River. The Yakimas had been making complaints about the stolen waters of the Ahtanum for sixty years before the case finally got to the court.\textsuperscript{70}

\textsuperscript{67} McCarran Amendment, 43 U.S.C. SS (1952).

\textsuperscript{68} U.S. v. District Court in and for County of Eagle and State of Colorado. 91 S. Ct. 988 (1971); U.S. v. the District in and for Water Division No. 5 State of Colorado, 915 Ct. 1003 (1971).

\textsuperscript{69} Colby, p. 14.

\textsuperscript{70} Lucullus McWhorter, \textit{Crime Against the Yakimas}, Republic Print, Yakima, 1913, p. 11-12.
The case has its roots in the agreement made by the Secretary of the Interior when he bargained with the non-Indians on the north side of Ahtanum Creek in regard to the water rights of the Yakimas on the Ahtanum drainage system. The Yakimas were permitted to retain 25 percent of the flow and the non-Indians were allowed to use 75 percent of the flow.

In the appeal of U.S. v. Ahtanum Irrigation the complaint regarding the water right is as follows:

In the spring of 1908 Chief Engineer Code of the Indian Irrigation Service was directed to go to the reservation to confer with a committee of white water users for the purpose of bringing about a settlement of the rights to the use of the Ahtanum water. The upshot of this was the execution of the agreement dated May 9, 1908 between the United States, acting through Code, and a large number of named white users of water from Ahtanum Creek on lands located outside the reservation. The gist of the agreement was in its article I reading as follows: 'The party of the first part agrees to limit and define its claim to the waters of Ahtanum Creek and its tributaries as twenty-five percent (25%) of the natural flow of said Creek, and the party of the second part agrees to limit and define its total and aggregate claim to the said waters as seventy-five percent (75) of the said natural flow of said stream, each party hereto surrendering and conceding to the other party all rights heretofore claimed in the said waters in excess of the amounts herein named.' The remainder of the agreement dealt with methods of measuring the water in the creek, the manner of diversion, the installation of a ditch master. It was signed by Code on behalf of the United States and by the attorneys in fact for the white landowners, and on June 30, 1908 it was approved by Frank Pierce, First Assistant Secretary of the Interior.71

In a footnote explaining the complaint, there is mention of the fact that individual Yakimas were writing to the Attorney General asking that a suit be undertaken to determine the rights in the Yakima River and Ahtanum Creek. The attorney general contacted the Secretary of the Interior for an opinion and advice. The Secretary of the Interior recommended that a suit not be undertaken because there was pending in

71United States v. Ahtanum Irrigation District, 236 F. 2d 329 and footnotes.
Congress a bill, wherefore; if passed, "will restore to the Yakima Indians the water rights to which they are entitled to under the treaty of 1859." 72

The act to which the Secretary must have been referring was the notorious Jones Bill of 1906. In this bill, the irrigable lands were to be cared for by the Reclamation Service. The bill was a harassment to the Indians, since it was never actually effective. It lacked 80 percent agreement of the tribe to become effective.

Judge Pope's 73 first Ahtanum decision indicated an upholding of the Winter Doctrine for the Yakimas. The Yakimas kept everything they did not actually grant, including their water rights. He said in his decision that there was enough evidence that further proceedings must be in trial court. He then required the parties by pleading on pre-trial agreements to frame the issues for trial.

In Judge Pope's second decision regarding Yakimas' water rights, the opinion has become the Winters' Doctrine of the Yakimas. It is known as Pope's decree on the Ahtanum. In addition to the case limiting the 1908 agreement 74 of 75 percent of the water to the non-Indian, the specific aspects of the decree are as follows:

a. To defendants, for use of their lands north of Ahtanum Creek, seventy-five percent of the natural flow of Ahtanum Creek, as measured at the north and south gauging stations, provided that the total diversion for this purpose shall not exceed 46.96 cubic feet per second defendants shall have no right to the excess, except in subordination to the higher rights of the plaintiff.

72 See reference to footnotes in number 32.

73 United States v. Ahtanum Irrigation, 236 F. 2d 340, 341.

74 U.S. Ahtanum Irrigation District, 330 F. 2d 897, 902-903.
b. To plaintiff, for use on Indian Reservation lands south of Ahtanum Creek, twenty-five per cent of the natural flow of Ahtanum Creek, as measured at the north and south gauging stations; provided that when that natural flow as so measured exceeds 62.59 cubic feet per second, all the excess over that figure is awarded to plaintiff, to the extent that the said water can be put to a beneficial use.

c. Plaintiff may divert such water from the south fork of Ahtanum Creek as can be beneficially used for the individual diversion into the Yakima Indian Reservation lying above the main Bureau of Indian Affairs diversion; provided, however, that the water diverted to such individual diversion shall be charged against and deducted from the overall award set forth in "b" above.

d. To the plaintiff, for the lower Bureau of Indian Affairs diversion, a daily diversion of water representing five per cent of the natural flow of Ahtanum Creek as measured at the north and south fork gauging stations. This award shall represent plaintiff’s interest in the return flow of the main stem of Ahtanum Creek, and the award to defendants shall be conditioned upon plaintiff receiving this flow of water at the lower Bureau of Indian Affairs diversion.

e. To defendants, all the rest of the return flow in the main stem of Ahtanum Creek, and all the return flow in Hatton and Batchelor Creeks.

f. Any water loss which may occur between the north and south fork gauging stations, and the defendants’ Hatton Creek diversion, is to be absorbed by defendants; plaintiff being entitled to its full stated percentage of the measured flow, and defendants taking the balance.

After the tenth day of July in each year, all the waters of Ahtanum Creek shall be available to, and subject to diversion by, the plaintiff for use on Indian Reservation lands south of Ahtanum Creek, to the extent that the said water can be put to a beneficial use.

The judgment is ordered modified further by adding thereto the following:

The court reserves jurisdiction to make such further orders as may be necessary to preserve and protect the rights herein declared and established, should a subsequent change in the situation or condition of the parties hereto so require.75

75 Ibid., 33 o F. 2d 897, 915.
And the efforts at erosion of the Yakima waters goes on today. The statement of Yakimas regarding the Kennewick Extension Project Authorization is as follows:

A key example within the last few years is the Kennewick Extension Project Authorization. This neighboring Bureau of Reclamation Project was recommended by Interior and received Congressional authorization in 1969. This project would irrigate only 6,000 acres and would cost $6,735,000.00. At the same time a project on the Yakima Reservation called Wapato Additional Works Project was laying dormant in the Department of Interior with no request for appropriations. This project in comparison would irrigate 5,000 acres for the expenditure of $500,000.00 or less than one tenth the cost per acre. Even worse the Kennewick Project would be dependent on the waters and tributaries on the Yakima Indian Reservation for which the Yakima Indian Nation had the water right. The Kennewick Project had no water right. Yet the Department of Interior proceeded to recommend the Kennewick Project Authorization without adequate recital of protection of the Yakima Indian Water Rights. There is one happy part of this sad recitation. When Assistant Secretary Harrison Loesch saw what had happened he delayed budgeting for the Kennewick Project and saw that the Interior budgeted the additional works on the Yakima Reservation. In spite of the happy ending the moral of the story was that the authorization bill for the Kennewick Project was passed on the Department of Interior's recommendation without Congress ever being informed of the conflict existing over the use of these waters between Bureau of Reclamation and Indian interests. It was true that the Indians' legal right to the water would not be destroyed by the construction of the Kennewick additional works project but let this fact be emphasized: If millions of dollars are spent to build the Kennewick Extension Project, the fact that the Yakimas had a better right to the waters in the Yakima River would be academic. As your report points out the Yakimas would not be permitted - except after contracted bitter litigation - if at all - to use these waters. And certainly Congress would be most reluctant to appropriate monies to build another project that would result in the abandonment of a previously constructed project even though the water legally belonged to the Indians.76

In addition to these efforts to erode the Yakimas' Water Rights, there were proposals made in the winter of 1974 regarding dams on the Ahtanum drainage system and the Satus drainage system. There never seems

to be a time in which vigilance can be relaxed by the Yakimas in protecting, using, and developing their water rights.

SUMMARY

The chapter was divided into three distinct parts of presentation purposes only. Actually, all three parts are interrelated. The treaty of 1855 sets the background against which the Yakimas struggle to maintain, develop, and use the water rights. If water and the benefits coming from water had been less important in the culture of the ancient Yakimas, the modern Yakima might be in an even more vulnerable position than he is.
CHAPTER VI

THE RULE OF SPECIFIC INDIVIDUALS IN ESTABLISHING
THE SCOPE AND POWER OF THE YAKIMAS' WATER RIGHTS

INTRODUCTION

In Chapter II, the cultural position of the "Yakima" was presented. It was not possible to account for the exact persons responsible for the origin of the ancient Washaat belief system in which water was the important ritual drink symbolizing the life force, but it was possible to account for some of the individuals involved in the belief system since the European contact period.

More data are available regarding the individual who actually participated in the long struggle for the prevention of the exploitation and loss of the Yakimas' water rights. Their part in the struggle will further document the great difficulty the Yakimas have had in their history to keep and use their water rights. This chapter will consider the contributions of both the Native American and the European American.

PART I

LOUIS MANN

Louis Mann was a full-blood Yakima, who was the son of Jack Mann and Tu-now-ty. He was born in 1862 and died February 17, 1928. He was the first corresponding secretary for the Yakima Indian Councils. He was a man who had become a Christian and had much difficulty in understanding the inconsistency that existed in most of white men's behavior and work that he encountered. He probably received his education in the Catholic Mission School in the Ahtanum.
In relation to Yakima water rights, Louis Mann is known only through his correspondence for the Indians' Councils and through his correspondence to his friend, Lucullus McWhorter. There is no way to approach the man except through his letters. Letters of Louis Mann will be presented in this part so that his character and purpose can be seen. All letters are typed from copies of the original letters.

The first letter presented is to be Secretary of the Interior regarding water rights and land rights. From this letter it can be precisely seen how the Yakimas find it so difficult to understand how the United States government never seems to keep its word. Louis Mann points out the government representatives as defrauders and grafters. He is the first Yakima to be in record regarding the erosion of the Yakimas' water rights.

Mr. Hon.1 Franklin K. Lane
Secretary of the Interior, Washington D.C.

Dear Mr. Lane I take my oppertunity to write you concerning my struggles in my living I am trying my best to follow the white man ways of living I am always behind in my ranch work I am in the loss of my crops every year why I am in this loss white man the Inherited Indian land holder and the white man Indian land rentor both of these men are a head of me on the Irrigation waters I have cried for help but no one care and where will I get help every concern on the Indian Service has long arms and long fingers for Dollars and dont care about my Tribes how we suffer I want to have a full understanding from your Office was my poor people been born dry and are not subject to water I have been studing all these subjects of a white man Grafting and all his Speculations about our reservation things it is a matter of fact. No Releif is given in every Administration now how can we be protected in our Rights as the government wants our Yakima Indian people be brought into a good Civilization yet and how can we be Civilized first by Defrauding us from our sole rights and from the Progress toward a good Civilization and how can we be brought in to right ways of

77 Washington State Library - Archives - Lucullus McWhorter paper. The original copies of Louis Mann that were used in the Ahtanum case have been misplaced. They are not back in the Federal Archives in Washington, D.C.
living like any other class of Civilized people are in America I have been studying all these wrongs done to our Yakima Indians to day and I realize all these wrongs done to us poor Yakima Indians and lack of safe guards Especially the rights of my Yakima Tribes of Indians we have suffered deprivation of our rights and while the law reads all human being was created Equal and the fact tis a shame where in every way white brother is sure about our lands and about our moneys and first of all He wants to Rob us in frong of the eyes of the law when he passes Legislation and do not recognize and consider what is an Indian the poor uneducated Indian can not go with the white man ways We want what is right to promote my people towards the Civilization bring them in a right way We want right let us not be learned to be theives dear Secretary I want right answer for this and every white man is watching with big eyes to see our reservation to be thrown open to a white settlement on which Senator Wesley L. Jones is working hard to rob us and there was three hundred names on application for an allotments time the allotment closed last July 1914 and it make me think this is entirely wrong this is my mistaken Oppinion and I ask you for your latest report sent me a Copy I am a poor farmer answer me Occationally at your earliest convenient time I reman yours Sincerely

friend

Louis Mann
North Yakima
Wash

corresponding Secretary for Indian Councils

The second letter is to the Reclamation Service regarding their trespassing on the Yakima reservation to interfere in the ditch irrigation.

Lucullus McWhorter, who sometimes typed important letters for Louis Mann, may have typed this one.

NORTH YAKIMA WASH.

March 3= § 1921.

To The Reclamation Service Notice is hereby given that you have transacting unlawful Deed against us land holders along this Neekass Ditch, or called Piute Ditch, which is our own Private Property, Now this Notice is that you are warned to leave our.
Property all alone, That you have to get our Consent before you give us any further Troubles this coming Summer this Piute Ditch Case is not Settled Yet, that Question is Pending in the head Quarters at Washington D.C. and Do not Bother us after this Notice is Served on you who ever is Employed to give us any further Troubles, Do not take us for the Dead Indians why do you not Consult us first, and We are not Dead logs that the Bussiness on Important matters have to be Settled Right first before takeing any unlawful Bussiness Rights is Right first, Let us not take any steps towards the Warpath you of course all Employed Under a Certain Sallory on this Reclamation Service work you of course all working for pay But do not be Bulls and think Injuns are no good in the Laws See things Ahead what is Right, and this matter is in Question Not Settled, Look out Freinds, Do not Trouble your selves Dont think I am Crazy You Done Us Dirtiest Trick $$ last Summer about our own Irregation Waters, Which is our own Property, Where I have seen Indians loose their Crops, on account of you Reclamation Service This coming Irregation Season do not bother us leave us all Alone we want money just the same from our Crops and when our Question is Settled Right first We have Been Useing this water for 42. years last Summer and Our Prior Riparian Rights to this water in this State of Washington, is ours in the Rulings of the Right Courts I write you this in my sober mind I am not Crazy

Louis Mann
R 4 box 233
Shepherd Peter took this notice

In the third letter, 79 data are presented that in 1890 the Yakimas were concerned about irrigation rights. It puts forth the high degree of responsibility the Yakimas had in relation to the use and administration of the use of the irrigation water. This Yakima code was eventually supplanted by a code from Bureau of Reclamation.

$$$ Neekass Ditch Laws. Reservation Wash.

May 23= $$$ 1890.

Ditch company meet this morning at 9.Oclock P.M. At Mr. Laurent Barlows house Said purpose to make Ditch Laws, or enforce the Ditch Laws and choose three Ditch Commissioners and one Treasurer.

79 Washington State University - Archives - Lucullus McWhorter papers.
Section 1st.
After all farming work has been done, or at any time that it becomes, necessary a meeting shall be called ten days previous to said meeting by any person, who being a resident at or near a ditch, and interested in the same, to be held at any place designated, in the settlement along said ditch, or at any place, at or near said ditch in any house.

Section 2nd.
It shall be the duty of all concerned to get together, as may be ordered by the meeting to work on said ditch, as such repairs as said ditch shall require in order to facilitate a good flow of water for the benefit of all concerned, whether it be a dam a break, except any time, after the regular time of working widening or deepening or lengthing of said ditch.

Section 3.
Any person whom after being duly notified to appear, at the scene of paration on said ditch willfully refuses, or neglects to perform his share of work or tap said ditch any time then after any one, so interested shall go to the Justice of the peace, and lodge complaint in said Court such Court shall apprehend such offender and on conviction shall be subject to a fine, not less than five five $5.00 nor more than twenty $20.00 and costs such fine to be paid into the Company Treasury, and account of such Payments to be made on the book of record by the Company Clerk.

Section 4th.
Any materials that may be needed for the purpose of repairing such ditch a meeting may be called, to determine the amount needed the ditch company commissioners shall be notified of the same, and at their next meeting of the ditch commissioners Court, order the Clerk of the ditch to issue in order to the ditch Treasurer to pay over to said ditch Clerk, said amount to pay of the necessary expenses of said repairs.

Section 5th.
The Treasurer shall receipt in full for the amount so paid into the Treasury, and record the same on his book of record, of all cash receipts of such fines in amount of such ditch offenses.

Section 6th.
After the regular work on the ditch shall have been accomplished, and break may occur thereafter any where within the limits of each person premises, shall forth with go to work, and repair such break in order to preserve the flow of water within the ditch, for the benefit of all interested in the ditch.

Section 7th.
All persons tapping said main ditch shall at the place of tapping shall have a box and slide hand gate provided so that when there is no more need of water for his fields, or gardens, shall close his gates and allow the water to flow on for the benefit of all concerned.
Section 8th.
Any person who willfully allows any waters of water with in his limits or premises, Opposite his premises on the opposite side of the ditch, shall be after due notification of the same shall on conviction be deemed fineable at the discretion of the Court.

Section 9th.
If there is a high banks on each side of the ditch, so that it is impossible to get water for irregation shall have the absolute rights to bring a water ditch through his neighbors premises, or he shall put in a gate strong enough to back water to such heights a as it is necessary to flow water out of his Tap ditch, But must Provide a water escape in the main ditch but in no wise shall the course of the water in the ditch be taken out or stoped alltogether thereby depriving all concerned below you of their shall in the same.

Ditch Commissioners
For the year 1891.

LOUIS C. MANN.

DICK SAH=YA=LILH.

JAMES LOGGIE.

BARLOW LAURENT.

JAMES LOGGIE.

INDIAN FARMERS THEM DAYS

1. WAH=LOT=KAI.
2. JAMES LOGGIE.
3. TOM CREE.
4. CHARLEY ROSS.
5. SHEPHERD PETER.
6. LOUIE LUKE.
7. OLD DICK.
8. CHARLEY SELISTAH.
9. STEPHEN ALLEN.
10. LOUIS C. MANN.
11. JOE PATRICK.
12. SAM HOMI.
13. LE=QUAL=LA MENINOOK.
14. JOHN LEO.
15. STANISLAUSE HALIRE.
16. SAME AMBROSE.
17. BARLOW LAURENT.
18. SIMON GOUDY.
19. MRS. SAH=YA=LILH.
20. WE=YA=LAP=TIT.
21. C. C. OLNEY.
22. JAKE SA=TAH=NAN.
23. GEORGE SAH=YA=LILH.
This is type written by Louis Mann recopied from the book of Louis Mann. This is the rules the Injuns farmer had which is taken away now by reclamation Service to day.

March 28 - 1921

The fourth letter is a letter that gives some insight into the philosophy of life of the man who was known as "The Wild Injun in Water Rights." 

North Yakima Wash.
March 5th 1917

L. V. McWhorter

My dearest white brother I am going to write you this morning as the world revolves we are dying away as from the reading on the newspaper I have noticed your daughter died from the operation in the hospital and our good friend A. J. Splawn died and it made me to think you and I some times go but let us do right while living so we can gain reward in good place if we are honest in this earth while living doing right as it make to think many old timers passed away and my life is like a flower some time day domes and I shall be gone to and I remember when I seen my poor father, crying every early mornings and he is dead to and I am nearing soon or late I shall be gone you shall die to and now it makes me to get made at a ridiculous whites who are hungry all times at an Indian things why not Change of the mind and to make right laws and give no discrimination against our poor Tribes Yakimas I have often think Great almighty God will put us to his right side for our right stand in this fight as I have seen in the papers Seuffert Brothers appeal the case to the Supreme Courts at Washington D.C. and in my mistaken Oppinion when you put our Case in Congress and in Senate for passage I have no doubt we shall win this fight because there are many good men who will give right ruling and what is law it is right living to be honest no Discrimination to no one in this United States this is my mistake and this morning wind blowing and it is cold all my whole family are in sick list little Senator is sick mother-in-law is sick and in a near future they may all get well again and I hope you will see one again when you return with a good tidings for our people Sha-wa-wai was to see me next day but he was to late to sign I told him it was all right and O.K. it was through you and this is all I am sick but I work just the same no more to write and when you there at the National Capital write to me I am yours

Truly red brother

Louis Mann

80 Washington State University - Archives - Lucullus McWhorter papers.
P.S.
Give my best regards to S... Brosius and I live it to you for our fight hope to end when passed at the house and in the Senate when come to the Indian Committee and our fight ends with Joy to the people who were found when whites landed here this is no Josh.

Louis Mann

These four letters are only a representative sample of the Louis Mann correspondence. His letters were significant sources of data on the Ahtanum case because they documented that the Yakimas did use the water for irrigation purposes and that the Yakimas had administered the use of the water. As was indicated in the footnote 77, these sources are from the Lucullus McWhorter collection. The writer has no exact knowledge of the dimension of Louis Mann papers referred in the Ahtanum, since they seem to have been misplaced after the Ahtanum Court case. The papers are not in the Federal Archives in Washington, D.C., as they should be. The writer, therefore, had to rely on what papers were available from McWhorter's papers. Perhaps, Louis Mann's papers will someday be available.

PART II

Lucullus V. McWhorter was born in 1860 and died in 1944. He, Louis Mann, and A. J. Splawn were contemporaries. McWhorter was adopted into the tribe. He was adopted by Chief Yoom-tee-bee. McWhorter's name was He-mene Kawan (old wolf).

It is to Lucullus V. McWhorter, that much credit must be given in this time for the preservation of the data about the water rights of the Yakimas, outside of case law and constitutional right. He never seemed to throw away any bit of information. He wrote on all kinds of material and all were seemingly preserved. His materials are housed in the archives of the Washington State Library in Pullman, Washington.
His book, *The Crime Against the Yakimas*, is the history of the struggle of the Yakimas for their rights. It is a chronicle of the men of the early 1900's who were trying to erode the Yakimas' rights and of the men who were trying to protect and maintain the rights. In this book and in his everyday life he did every thing possible to help the Yakimas present their side of the erosion of their water rights. He wrote letters to congressmen and bureau officials and administrators. He helped Louis Mann in his correspondence. He was particularly active in the defeat of the Jones bill which would have reduced each Yakima allotment to 20 acres and a water right, all to be paid for by the sale of 60 acres of land to non-Yakimas. He was somewhat like John Gardiner and his "Common Cause" in today's time.

He also wrote about other tribes of the area and these were resources in other parts of this paper. His most useful comments to the second chapter of this paper were on the Washaat belief system of the plateau and river people.

McWhorter did all of this in his own time and at his own expense. He was a farmer that had to work for his living, but he seemed to be politically active and was always interested in keeping an account for history.

The Yakimas know of McWhorter's contribution on their behalf and have great respect for his having existed. The writer's maternal grandmother, Julia Pims Sohappy, knew Lucullus McWhorter. She speaks of him as a rare good "shuyapo"\(^{81}\) who could hunt, speak the truth, endure hardship, and knew when it be quiet. These were the reasons for his tribal adoption.

\(^{81}\) Shuyapo means white man.
PART III

A. J. Splawn was born in Holt County, Missouri, on July 31, 1845. In 1851, his family came to Linn County, Oregon. In 1860, he started his travels into Washington Territory. His list of firsts is also most unbelievable. For this paper, the first that is crucial is that he wrote the book on Ka-mi-a-kin, the Last Hero of the Yakimas.

He talked with anyone and everyone about data about Ka-mi-a-kin. Splawn seemed to have some kind of hero worship in relation to Ka-mi-a-kin. For this, later people can be grateful, since he kept alive the information about a man and history that otherwise might have been lost.

In his preface to the book on Ka-mi-a-kin, he said that one of the main reasons he had undertaken the writing of the book was to present the Yakimas' side of the conflicts of 1855-58. He was a contemporary of a large percentage of individuals who could remember and who lived through their times of conflict. Splawn's works are of significance to the Yakimas' struggle for recognition of their water rights because he presents data about the individual Yakimas involved in the first treaty making. The same treaty which is still the basis for the contemporary Yakimas' interpretation of their water rights.

A. J. Splawn was also a friend of Louis Mann and Lucullus V. McWhorter.

PART IV

Antoine Skahan was born on the Ahtanum on 1 August 1902. He is a Yakima. He worked on the Wapato Irrigation project for 11 years. Antoine Skahan or Tony as he is known is still alive, today; but no longer active in the affairs of the tribal council. He is still vitally interested in the water rights of the Yakimas.
Tony Skahan was on the tribal council for 35 years. He was on the irrigation committee for a good share of these years. It fell to Tony Skahan to be responsible for the Yakimas' water rights during the U.S. V. Ahtanum case. He said that he has spent 30 years of his life fighting for water rights on the Ahtanum.

Skahan's work had only begun when the cases were decided in favor of the Yakimas. The next stage was to get Judge Pope's decree entered so that enforcement could begin. The entry of the decree as law was being thwarted by Fred Palmer, attorney for the appellees or the Northsiders as the Yakimas called the opposing group.

Contrary to the Pope's Decree, Fred Palmer was trying to get Ramsey Clark, the then assistant attorney general, to adjudicate the Ahtanum waters 50-50 for Indian and non-Indian. The Yakimas felt this was unjust and started the campaign that eventually resulted in Congress recognizing the Pope decree.

This writer's access to Mr. Skahan's papers have been invaluable in getting the contemporary view on Yakima water rights. This is particularly true since Mr. Skahan's family has been involved in the water rights fight from the beginning.

George Skahan, Antoine Skahan's father, was a contemporary of Louis Mann. George Skahan was a Puyallup Indian. He married a Yakima woman named Tul-myat. Tul-myat and George Skahan moved to the Ahtanum area and took all of their allotment there. Along with Louis Mann, George Skahan built an irrigation ditch called the Skahan ditch, which has now been changed to the Shriner ditch.

Antoine Skahan was all of his life a part of the fight to retain the Yakimas' water rights. He has said that it was not easy in those days
to obtain the funds to travel to Washington, D.C. There were no tribal projects with funds available. The way money was obtained was by soliciting the people on the reservation, both Indian and non-Indian. Money was given by the people for saving the water rights. Mr. Skahan still retains an interest in the water rights of the people.

PART V

WILLIAM VEEDER

Mr. Veede is an employee of the Bureau of Indian Affairs in the Department of the Interior. He is a water conservation and utilization specialist. At the time of the Yakima case, U.S. v. Ahtanum, Veede was the justice department lawyer representing the interests of the Yakimas under the jurisdiction of the Bureau of Indian Affairs. During that time, he was special assistant to Attorney General Ramsey Clark. Tony Skahan relied very much on Veede's advice and counsel in this case.
...The United States Government acts as a legal trustee for the
land and water rights of American Indians. These rights are
often of critical economic importance to the Indian people;
frequently they are also the subject of extensive legal dispute.
In many of these legal confrontations, the Federal government
is faced with an inherent conflict of interest. The Secretary
of the Interior and the Attorney General must at the same time
advance both the national interest in the use of land and water
rights and the private interests of Indians in land which the
government holds as trustee... Every trustee has a legal
obligation to advance the interests of the beneficiaries of
the trust without reservation and with the highest degree of
diligence and skill. Under present conditions, it is often
difficult for the Department of the Interior and the Department
of Justice to fulfill this obligation. No self-respecting law
firm would ever allow itself to represent two opposing clients
in one dispute; yet the Federal government has frequently found
itself in precisely that position. There is considerable
evidence that the Indians are the losers when such situations
arise.82

In 1912, Louis Mann wrote a letter to the attorney general regarding
the behavior of the Bureau of Reclamation. He received the following
reply:

DEPARTMENT OF JUSTICE
Washington, D.C.

September 25, 1912.

Louis Mann, Esq.,
Corresponding Secretary,
Yakima Indian Council Lodge,
North Yakima, Washington.

Sir:

I am in receipt of a letter dated the 15th instant signed
by you and five other allottees of the Yakima Confederated

82 President Richard M. Nixon, Message to Congress on Indian Affairs,
Tribes of Indians, stating that you are being robbed of your water rights by the Reclamation Service and requesting that I immediately institute suit in the proper courts of the United States to determine your rights to the waters of the Yakima and Ahtanum Rivers.

As your letter is the only information I have concerning the matter, I have to request that you send me a detailed statement of the facts relative to the action of which you complain.

Very respectfully,

Acting Attorney General

In 1932, John Collier wrote the following about the relationship between the Secretary of Interior and specific tribal groups:

April 6, 1932.

GIVE AND TAKE BETWEEN THE SECRETARY OF THE INTERIOR AND THE INDIAN TRIBES

1.

Indian tribes in a large number of states signed a petition dated February 26, 1932, reciting their complaints and desires. The facts in their petition were weighty; the tone was grave, even stern; the petition recited the details of a racial tragedy.

Secretary Wilbur replied, through the press. Among other things, he said that the "constant chorus of complaints" reminded him of "David Harum's observations on the need of some fleas for every dog." For his complete reply, and the analysis of it, see the Congressional Record for March 10th and 11th last.

2.

The secretary of the Council of All the New Mexico Pueblos and of the tribal council of Isleta Pueblo addressed Secretary Wilbur on March 14th, pointing out what these Indians believed to be errors of fact and of deduction in the Secretary's retort to the earlier tribal declaration, and protesting against the Interior Department's opposition to the Pueblo Relief Bill and against what these Indians think are injustices committed by the Pueblo Lands Board.
Secretary Wilbur thus replied to the official of the Pueblos:

"My dear Mr. Abeita:

This acknowledges your letter of March 14, 1932. It is of the same general tenor as other communications received supporting large and unauthorized legal fees and settling difficulties by attempting to raid the Federal Treasury.

Very truly yours,

(Signed) Ray Lyman Wilbur."

3.

The Yakima Indians of Washington petitioned Secretary Wilbur, through Commissioner Rhoads, on January 28th last. They recited their desperate need for irrigation water, due to a legally invalid agreement signed by the Interior Department in 1908 without Indian consent, which bestowed fifty per cent of the Indian-owned water-right on whites.

The petition bore fifty Indian signatures, including the signatures of the tribal chiefs and the officers of the Indian Water Users Association, and was certified by the Yakima Indian agent, Mr. C. R. Whitlock. After courteously reciting the history and the present facts, the Yakimas concluded:

"We therefore pray you:* * * * * That you cause to be introduced for consideration of Congress a bill establishing beyond future doubt and dispute a division of the water of the Ahtanum Creek whereby the Indians may enjoy no less than 50% of the water of that creek at any and all times.

"And further, that in event of failure of such legislation that you take the immediate and necessary steps to bring the matter of the division of the water of Ahtanum Creek into Federal Court for adjudication."

Secretary Wilbur's response to the Yakima petition and to the challenge of the Yakima facts has been dealt with in the news release of the American Indian Defense Association dated April 5th. He wrote a letter, March 23rd, to the Indian committees of Congress, stating that he had "no objection" to the pending bill S. 3998, H. R. 10473, which confiscates Yakima Indian water rights; which validates by Act of Congress the illegal and predatory agreement against which the Yakimas had courteously protested; which settles a question of title to real property by legislative enactment, thus violating the due-process-of-law clause of the Constitution; and which (unless defeated) condemns the Indian
farmers in the northern part of the Yakima reservation to a permanent water starvation through bestowing on whites, irrevocably and without compensation to the Indians, half of the Indian water-right.

The above examples are merely typical cases.

The Indian tribes are distressed and troubled as they have not been for a great many years.

Their complaints, petitions and recitals of fact are met by their supreme official guardian in the fashion above illustrated.

Citizens at large can imagine the state of mind of the Indians, under the circumstances.

JOHN COLLIER.

219 First St., N.E.
Washington, D.C.

A companion project was the San Juan-Chama diversion project that would take the San Juan drainage system water to Albuquerque for sale. Albuquerque is located in the Rio Grande drainage system. To build the San Juan-Chama project required an engineering feat. The water from the San Juan drainage system to Albuquerque required going through the continental divide. There is water now being sold in Albuquerque.

The Navajo Indian Irrigation Project that was to be built at the same time is still in bits and pieces over the forty miles of main canal to transport water to the 110,000 acres of land, to be irrigated in the Navajo Irrigation Project. The bits and pieces have never been connected and not one drop of water has ever come to the 110,000 acres of land, as a result of the project.

Since the project has never been completed, the Bureau of Reclamation wants to cut the 508,000 acre feet of water back to 375,000 acre feet of water. They also want put in a sprinkler system at the Navajo's expense. The expense of a sprinkler is not only questionable, but the use of a sprinkler system in such an arid land is questionable.
In 1970, a Compendium was published by Congress and released 18 January 1970. The title was *Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development*. This is a compendium outlining the conflicts within the Interior and Justice Department respecting Indian rights. In Volume II, William H. Veeder lists the examples where conflict of interests occurs, on the Missouri River, the Colorado River, the Columbia River, and the Rio Grande drainage basin. There seems to be no lack of data confirming the long history of political pressure and inter-governmental conflict.83

Inter-tribal conflict has always existed among the Yakimas since they are a confederation of diverse groups. These groups share a common culture and seem to be able to live in peace among themselves. On certain issues such as land rights, hunting rights, fishing rights, and water rights; there seems to be a kind of working agreement.

With the economic development of the tribe and with the political growth and power of the tribal council, efforts are being made to make the tribal council more responsive to the wishes and needs of the people.

One of the most recent groups formed is concerned about economic development. This group calls themselves the Concerned Yakimas. Baptist Lumley and Don Umtuch are two of the people involved. The Yakimas are concerned about the development of a fish cannery on the reservation and other developments that involve large amounts of resources such as water and money. These people want the council members to share information and consult the people.

This group is not made up of young militants. It is a group made up of mature people who have formerly served in the council or have been in responsible positions who have retired. They are being joined by the younger college-educated Yakima. There seems to be a political outlet in the tribe for this kind of exchange. There seems to be no evidence, at this time, that the conflicts are of the magnitude of the conflicts that were in evidence at Wounded Knee on the Pine Ridge Reservation.

The Yakimas have always lived in a rather benevolent ecology. They have not known, over known long periods of time, real deprivation in their environment. The ground has given roots, berries, and other plants and fruits. The forest has given deer and other animals. The water has given the fish. They have not been removed from their homelands as the Navajo and the Cherokee. The attitude of viewing the world as always potentially hostile has been long in coming to the Yakima, but the data in evidence says that the world is potentially hostile to the Yakimas. The data also says that the conditions of hostility are real and that the Yakimas are not suffering from the pathology of paranoia which is so often used in labeling Indians.
CHAPTER VIII

SUMMARY AND RECOMMENDATIONS

SUMMARY

From all of the data about the Yakimas' Water Rights, it seems that constant vigilance is necessary to maintain and protect the water rights that come as a result of the 1855 Treaty. The behavior of the community, the behavior of the U.S. government and the behavior of the courts indicate the Yakimas must never lack knowledge and leadership in the protection of their water rights.

RECOMMENDATIONS

The steps that are needed for the preservation and use of the Yakimas' water rights are of a varied nature. The recommendations are:

1. Establish that there are other uses for water than farming. A fishery is a use of water that is not agriculture. On the Lummi Reservation, aqua-culture is an accepted use of water. The Yakimas will need to use their water or lose it.

2. Publicly and legally proclaim the title to the land and water. There needs to be something done so that the constant attempts at the erosion of Yakima Water Rights will cease. The basis for this recommendation is the concept of Sovereignty. Sovereignty carries with it title to lands and resources, and the notion of granting rights to the United States and not being the grantee.

3. Establish a body of knowledge regarding the exact dimensions of the Yakima water rights as to soils, underground water, surface
water, precipitation, and minerals. A complete hydrological study and water inventory needs to be made. There needs to be data about the uses of water in wells, irrigation, recreation, domestic, and any other life uses.

4. Cooperate with other tribes in formulating action on the water rights situation regarding the inter-governmental conflicts among the various components of the Department of Interior and between the Department of Justice and the Department of Interior. Every case action against another tribe has the potential for negative future action against the Yakima.

5. Cooperate with other tribes in seeking a complete water inventory of all Indian Reservations.

6. Establish a water code for the uses and purpose of the water right.

7. Seek protection of sites of antiquity so that more can be learned and preserved about the history of man in North America. Full archeological surveys should be made about sites of antiquity in the United States before a dam is built, a lake is filled, or a highway is made.

The Yakimas will continue to need to buttress their position by educating their young to the tribe's problems and by educating their young to be engineers, hydrologists, lawyers, and scientists in order that they may carry forward their legacy of men like Ka-mi-a-kin, Louis Mann, and Antoine Skahan.
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