**Dams Down, Water Back . . . Salmon Back**

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**Abstract**

Dams constructed across the United States provided electricity and irrigation water, prevented floods, and created lakes for boating and fishing. Those same dams prevented anadromous fish from being able to return to their native streams to spawn, resulting in a steep decline in salmon and steelhead populations. Dam building also forced Native Americans off their lands, inundated sacred sites, and limited their ability to fish at usual and accustomed sites. This case study uses the “Land Back” movement as a springboard for the creation of a “Dams Down, Water Back . . . Salmon Back” movement to spur actions to remove dams, return rivers and streams to the stewardship of the tribes. It outlines some of the legal precedent for doing so but challenges the reader to build the case for one or more of the many dams that block the flow of U.S. waterways.

**Introduction**

Three Skookums had dammed the river to prevent salmon from travelling upstream and to ensure they had plenty of fish to eat. But that left people dwelling along the river with none. The Skookums saw Coyote lurking about the mouth of the Klamath River and tried to drive him away. But Coyote had other plans. The next morning when the Skookum went down to the dam, Coyote “jumped between Skookum's feet and tripped her up. Skookum fell and the key fell out of her hand. Then Coyote picked up the key, and went to the dam. Coyote opened the dam and let the fish through.”[[2]](#footnote-2)

Further to the north, at Celilo Falls along the Columbia, five sisters had created a dam to trap the salmon. They would dine on the best of the fish but save the bones and return them to the river so the salmon would be reborn again and again. Coyote transformed himself into a helpless baby floating down the river hoping to appeal to the maternal instincts of the sisters. They rescued him, fed him, and cared for him. Still, the youngest among them was wary because his eyes reminded her of Coyote and because he had a lot of teeth for such a little one! For ten days, while the sisters were out gathering, Coyote transformed into a man and collected implements he would need to destroy the salmon trap. When the sisters returned, they always found him sleeping in his cradle, but he seemed to be growing bigger and stronger, adding to their suspicions. On the morning of the eleventh day, Coyote gathered his tools, ran to the trap, and broke it apart. Although the sisters heard him and tried to stop him, they were too late. The salmon swam away.[[3]](#footnote-3)

Coyote the trickster. Coyote the shape-shifter. Coyote the wanderer. Perhaps there is more to Coyote than we realize. Could it be that these stories were not only about the origins of salmon in the rivers of the Pacific Northwest, but also a call to action, an appeal for us to gather our own tools to remove the dams now impeding the passage of fish along those rivers?

This case study explores the potential for addressing dam removal in the Pacific Northwest as part of a “Dams down, Water back” movement, akin to the Land Back movement already under way. It weaves together an overview of treaty rights (Part 1), a brief review of the rationale for dam construction (Part 2), and ideas generated in the Land Back movement (Part 3), with a summary of some key legal cases that have supported the sovereignty and fishing rights of Pacific Northwest Tribes (Part 4). Coyote relied on his wily nature, physical tools, keys, heavy rocks and sticks, to destroy the dams; this case focuses on framing new arguments to persuade people to remove the dams.

**Part 1: Secured Treaty Rights**

That the exclusive right of taking fish in the

streams running through and bordering said reservation *is hereby*

*secured* to said Indians, and *at all other usual and accustomed stations*

*in common with citizens of the United States*, and of erecting suitable

buildings for curing the same; the privilege of hunting, gathering

roots and berries and pasturing their stock on unclaimed lands in common

with citizens, is also secured to them.

Treaty with the Walla Walla, Cayuses, and Umatilla Tribes, 1855

(emphasis added)

The exclusive right of taking fish in all the streams, where running

through or bordering said reservation, *is further secured* to said confederated

tribes and bands of Indians, as also the right of taking fish

at all usual and accustomed places, *in common with the citizens of the*

*Territory*, and of erecting temporary buildings for curing them;

together with the privilege of hunting, gathering roots and berries,

and pasturing their horses and cattle upon open and unclaimed land.

Treaty of Medicine Creek (with the Nisqually, Puyallup,

and Squaxin Island Indian Tribes), 1854

Treaty of Point no Point (Port Gamble S’Klallam and the Jamestown S’Klallam Tribes, Sko-ko-mish, To-an-hooch, and Chem-a-kum Tribes), 1855

Treaty with the Yakima (Kah-milt-pah, Klickitat, Klinquit, Kow-was-say-ee, Li-ay-was, Oche-chotes, Palouse, Pisquose, Se-ap-cat, Shyiks, Skinpah, Wenatshapam, Wishram, and Yakama Confederated Tribes and bands), 1855

Treaty with the Nez Percés (sic), 1855

(emphasis added)

The right of taking fish at all usual and accustomed grounds and stations *is secured* to said Indians *in common with all citizens of the Territory*, and of erecting temporary houses for

the purpose of curing the same; together with the privilege of hunting, gathering roots and berries, and pasturing their horses on all open and unclaimed lands. Provided, however,

That they shall not take shell-fish from any beds staked or cultivated by citizens . . .

Treaty of Point Elliott (Duwamish, Suquamish, Sammamish, Smulkamish, Skopamish, Stkamish, Snoqualmie, Skykomish, Kwehtlamamishes, Snohomish, Lummi, Skagit, Swinomish, Squinamish, Sauk-Suiattle, Nookachamps, Noo-wha-ha, Mee-see-qua-guilch, Cho-bah-ah-bish bands and Tribes), 1855

Treaty with the Quinault and Quileute  
  
, 1856

(emphasis added)

The right of taking fish and of whaling or sealing at usual and accustomed grounds and

stations *is further secured* to said Indians *in common with all citizens of the United States*,

and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands: Provided, however,

That they shall not take shell-fish from any beds staked or cultivated by citizens.

Treaty of Neah Bay (Makah), 1855

Treaties between the representatives of the United States and Territories of America and tribes of Northwestern regions secured the right to take fish at usual and accustomed places. Indeed, only after receiving assurances that they would be able to fish and hunt as they had before the settlers came did the Tribal representatives sign the treaties. Yet those very places so dear to the life and culture of the tribes became increasingly encroached upon the white colonizers who pushed westward in search of farmland, ranchland, minerals, and the bounty of the seas.

**Part 2: Dams for Hydropower and Irrigation**

By the late 1800s, companies began to tap the energy of falling water to spin turbines and generate electricity to power machinery and the new-fangled electric lights. The hydroelectric dam on the Niagara River between New York and Canada opened in 1896, ushering in a new era by sending alternating current over wires to homes and businesses not in the immediate vicinity of that dam.[[4]](#footnote-4) The push to build dams on America’s waterways to supply its growing needs had begun, and it came into direct conflict with the rights reserved for tribes.

Dams also arose to manage water levels in rivers and prevent flooding in areas once vacant but now occupied by farms, towns, and cities. Dams created lakes for recreation and reservoirs for irrigation. Dams allowed for year ‘round navigation of rivers once plied by boats only during periods of maximum flow. The construction of dams at places along the Columbia River and its tributaries destroyed traditional fishing villages and submerged usual and accustomed fishing grounds under the waters behind the dam. Celilo Falls, pictured in Figure 1, disappeared in 1957. Tangible connections to gathering places, first fish ceremonies, and the roar of the water pouring over the rocks have disappeared but the memories and stories remained.



***Figure 1:*** *Celilo Falls Prior to Dam Construction (Source:* *WyEast Blog)*[[5]](#footnote-5)

As of July 2024, almost 92,000 dams dotted the landscape across the United States, 834 of them in the State of Washington.[[6]](#footnote-6) Seventy of those Washington dams are federally regulated, 41 are regulated by the state, while local governments control another 197. (See Figure 2.)

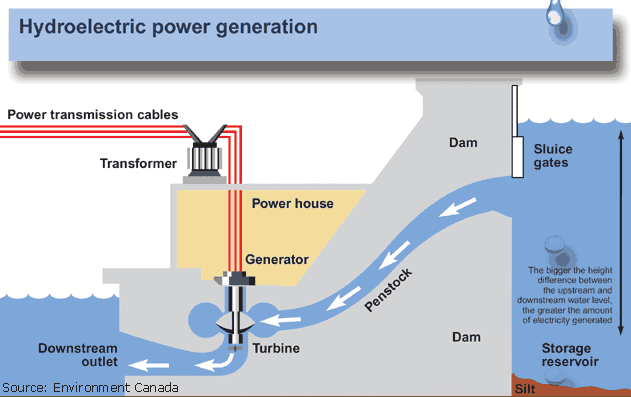
A map with many colored dots

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***Figure 2:*** *Dams in Washington State Categorized by the Body with Primary Oversight Responsibility* (Source: National Inventory of Dams, https://nid.sec.usace.army.mil/#/)

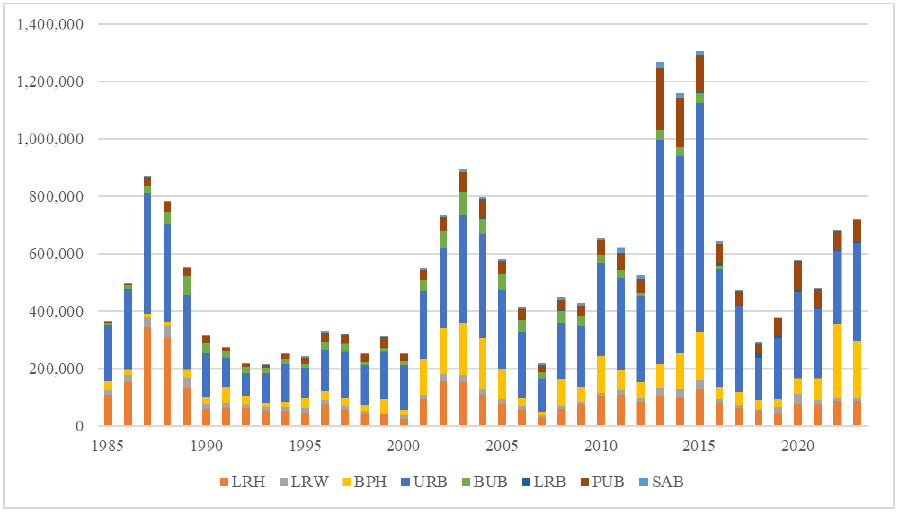
While run-of-the-river dams operate by rerouting a small portion of the flowing water into a side channel to serve electrical generation or irrigation purposes, most dams block the flow of the river and use the power of the falling water to spin a turbine, as shown in Figure 3 below. The greater the distance the water falls (the “head”), the more electricity can be generated. As a result, commercial scale hydropower dams tend to be hundreds of feet in height. Hydropower currently accounts for about 2/3 of the electricity consumed in Washington State.

Lake Roosevelt, created by the impoundment of the Columbia River behind the immense Grand Coulee Dam, turned the high desert of eastern Washington into a farming oasis by providing about 1 million acre-feet of water to 330 miles of main canals and 1,990 miles of smaller canals.[[7]](#footnote-7) The dams on the Columbia River and their reservoirs now provide about 2.5 million acre-feet of water to farmers each year.[[8]](#footnote-8)



***Figure 3:*** *Cut away view of a hydroelectric dam* (Source: https://www.usgs.gov/special-topics/water-science-school/science/hydroelectric-power-how-it-works)

While the system of dams may be beneficial for electricity generation or irrigation, they have decimated fish populations in the Pacific Northwest, preventing migrating salmonids from returning to their spawning grounds and keeping any smolt that do hatch from swimming their way to the ocean. Man-made “fish ladders” can reroute fish around the dams. However, many dams were constructed without fish ladders. Even with ladders in place and protocols in place to truck juvenile salmon around the dams, fish populations continue to plummet. In the early 1900s, an estimated 10 million adult fish swam in the Columbia River.[[9]](#footnote-9) Figure 4 below shows the recent counts of Fall Chinook Salmon returning to the that river. Note the different management components of the run: Lower River Hatchery (LRH), Lower River Natural-Origin (LRW), Select Area Bright (SAB), Bonneville Pool Hatchery (BPH), Upriver Bright (URB), Pool Upriver Brights (PUB), and Lower River Brights (LRB).



***Figure 4:*** *Minimum Adult Fall Chinook Run Entering the Columbia River* (Source: Joint Columbia River Management Staff, Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife. (5 July 2024) *2024 Joint Staff Report: Stock Status and Fisheries for Fall Chinook Salmon, Coho Salmon, Chum Salmon, and Summer Steelhead*. p. 8)

The large dams on major rivers like the Columbia and Snake get the most attention; however, smaller dams have been constructed state-wide to protect towns and cities from flooding, provide recreational opportunities, or create reservoirs for drinking water. Built primarily from soil and rock, many are less than 25 feet in height. Additionally, according to the Association of Dam Safety Officials, about 1/3 of the dams in Washington state receive a “Fair” or “Poor” condition assessment.[[10]](#footnote-10)

The damming of rivers in the Pacific Northwest has made it impossible for tribes to exercise their secured treaty right to fish in usual and accustomed places. For peoples whose souls are entwined with those of the salmon, that has amounted to cultural and spiritual genocide. How can we change that?

**Part 3: Land Back**

Indigenous peoples in the Americas have been fighting for the return of their lands since the first colonizers set foot on their shores. In recent decades, that fight has galvanized under the moniker of the “Land Back” movement. While the movement strives to recover lands taken from tribes under the treaties signed with those colonizers, it also asserts tribal sovereignty over those lands and their resources. Land Back also aims to dismantle colonial property ownership structures and challenge conceptualizations of land as a fungible commodity in a giant capitalist machine, and replace them with systems and world views that recognize relationships and the interdependence among the land and all creatures dwelling on it.[[11]](#footnote-11)

The colonization of what became the United States forced its original inhabitants onto reservations in accordance with Western understanding of land tenure and ownership. Tribes signed away their right to large swaths of land in exchange for money and the secured right to fish, hunt, and gather at all usual and accustomed places. As Governor Stevens remarked, “This paper secures your fish.”[[12]](#footnote-12) The treaties also designated specific tracts of land that would be used for dwellings, schools, mills, and blacksmith and carpenter’s shops. Other land was set aside for cultivation or grazing animals. Tribes could no longer move freely with the changing seasons or establish camps at different locations depending on their needs and the abundance of foodstuff. Instead, they were to fulfill the Jeffersonian ideal of a country based on self-sufficient agrarian communities. The stipulations of the treaties forced the Native Americans to adopt ways of living that were foreign to them and often not suited to the marginal lands to which they had been relegated.

In his 1831 and 1832 rulings (*Cherokee Nation v. Georgia and Worcester v. Georgia*), Supreme Court Justice John Marshall recognized tribes as sovereign nations and, as such, decreed that they were beyond the reach of state laws.[[13]](#footnote-13) States could not legislate a tribe out of existence and then take their lands. Despite those and other rulings, the Dawes Act (also known as the General Allotment Act) of 1887 imposed Western notions of property rights on land that had been “reserved” for tribes in earlier treaties, allotting

[t]o each head of a family, one-quarter of a section; To each single person over eighteen

years of age, one-eighth of a section; To each orphan child under eighteen years of age,

one-eighth of a section; and To each other single person under eighteen years now living,

or who may be born prior to the date of the order of the President directing an allotment

of the lands embraced in any reservation, one-sixteenth of a section.[[14]](#footnote-14)

Sales of some sections to non-natives and declaration of some land as “surplus” and thus available for sale to settlers resulted in further fragmentation of the land. The colonizers sought to capitalize on the market value of the land parcels rather than to appreciate the intrinsic value of the land, the adjacent waterways, and the gifts they had to offer.

In the mid-1950s, the U.S. Congress passed legislation to terminate tribes. Termination would, in effect, allow the government to sell reservation land, pay off the Tribal members, and destroy any vestiges of Tribal language, culture, or traditions. Proposals were drawn up to terminate 21 Puget Sound Tribes and the Colville Reservation in eastern Washington; none succeeded.[[15]](#footnote-15) While the fear of losing everything they had fought so hard to retain remained ever present, it also stoked the fires of resistance and resoluteness.

Patchy networks of ownership, complex legal systems, and rising land values have hindered the ability of tribes to regain their land. Things began to change in 1970 when President Richard Nixon sent a Special Message to the Congress endorsing legislation that would return 48,000 acres to the Taos Pueblo sacred lands at and near Blue Lake, Nevada.[[16]](#footnote-16) On February 12, 1974, Judge George Boldt, in his landmark ruling in favor of Tribal fishing rights in the Pacific Northwest, underscored the criticality of continued access to “usual and accustomed grounds and stations” outside of the reservation.[[17]](#footnote-17) In 1975, President Nixon signed the Indian Self-Determination and Education Assistance Act (ISDEAA), giving tribes administrative responsibility over federally funded programs designed for their benefit such as health clinics, education/schooling, social services, and housing. W. Ron Allon, chairman of the Jamestown S’Klallam Tribe in Washington State, stated in response: “We took charge of our own destinies . . . We know our people and are sensitive to their cultural traditions and realities. Our people take comfort in knowing that their governments—not the state or federal government—are making decisions on their behalf.”[[18]](#footnote-18)

Acknowledging Indian self-determination in writing at the federal level and putting the ideas into practice at the state level became a source of conflict. Many working for the State of Washington did not have a clear understanding of government-to-government relationships or the roles of Tribal citizens, agency staff, and elected officials in decision-making.[[19]](#footnote-19) Then, in 1985, Tribal leaders of the 26 federally recognized Washington tribes began working with members of Governor Booth Gardner’s administration on what ultimately became the 1989 “Centennial Accord.” The Accord recognized the sovereignty of the tribes and committed the tribes and state representatives to a government-to-government relationship as they addressed issues of mutual concern. The 1999 update to the Accord underscored those ideals and stressed the importance of education of future leaders, clear and ongoing communication, and consultation with Tribal governments.[[20]](#footnote-20)

During the latter half of the 20th century, parcels of land were indeed transferred from the U.S. government or private ownership to tribal trust status or tribal control, for the exercise of sovereignty, self-governance, hunting, fishing, and gathering, and to preserve sacred sites. Those included Olympic National Park Lands conveyed to the Quileute Indian Tribe in 1976 and the 3,630 acre reservation created by the Department of Interior for the Confederated Tribes of Siletz Indians in Oregon in 1980.[[21]](#footnote-21) In 2020, the oversight of the 15,000 acre National Bison Range, established in 1908 to conserve the iconic species, was restored to the Confederated Salish and Kootenai Tribes.[[22]](#footnote-22) In October of 2021, over 9,000 acres of ranch land in the Tunk Creek Valley were returned to the Confederated Tribes of the Colville Reservation.[[23]](#footnote-23) In 2023, the U.S. Department of the Interior announced the conclusion of its Land Buy-back program for Tribal Nations, an offshoot of the Settlement and Claims Resolution Act of 2010. Under the buy-back program “nearly 3 million acres in 15 states were consolidated and restored to Tribal trust ownership.”[[24]](#footnote-24) Yet, as Figure 5 makes clear, the acreage returned to tribal oversight falls far short of the land base of the original inhabitants of what is now the United States.

A map of the united states

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**Figure 5:** *Maps showing the aggregate land base for all tribes in the contiguous 48 states of the United States* (Source: Farrell, Burow, McConnell, Bayham, Whyte, and Koss, p. 3)[[25]](#footnote-25)

The Land Back movement affirms the sovereignty of tribes and their right to steward lands in the ways that had nurtured and protected them for millennia. It allows the tribes to determine what is in their own best interests--within the bounds set by the transfer statutes. Many of the parcels come encumbered grazing leases; easements; rights-of-way; mining, oil, and gas claims; non-native water rights; and hunting and fishing permits.[[26]](#footnote-26) Some expire within months or years of the transfer from the U.S. federal government to Indian trust status while others remain in perpetuity. The primacy given to colonist claims on the land prevents tribes from fully controlling decision-making about their lands.

The return of land to the tribes does allow for a reconnection to the places where their ancestors walked, hunted, and gathered. And, as Gregory Cajete so eloquently reminds us, because of the close connection between Native Americans and the natural world around them, “children are bestowed to a mother and her community through direct participation of earth spirits . . .”; they come “. . . from springs, lakes, mountains, or caves embedded in the Earth where they existed as spirits before birth.”[[27]](#footnote-27) Thus, the return of land ensures the preservation of sense of place, of relationship, of meaning.

**Part 4: Legal Precedent, Salmon and Water**

The tribes of the Pacific Northwest are Salmon People. The water coursing through the rivers and streams of the Pacific Northwest, and lapping against the pebbles of the ocean’s beaches, is sacred because of its role in sustaining salmon and life. Tribal cultures grew up around water and fish. Rivers also connect coastal people with inland tribes and tribes in the shadows of the mountains with those in semi-arid shrub-steppe of eastern Washington. Rivers link fishing and clamming locations with hunting, berry-picking, camas gathering, and trading sites.

Research indicates that historically, tribal members ate almost one pound per day of salmon.[[28]](#footnote-28) More importantly, salmon had been provided by the Creator as a first food, a gift to the people of the region to help them survive. The second gift was Water, the home for Salmon. Thus, every year, ceremonies and blessings honor the first salmon taken from the waterways. For example, in the Upper Skagit, every spring when the Chinook ran strong, two or three fish would be caught then smoked in the longhouse, presided over by the tribal elder. Everyone would eat a portion and give thanks for the return of the fish.[[29]](#footnote-29)

The 1823 *Johnson v. McIntosh* decision established the tribes as the rightful occupants of the lands in the Pacific Northwest.[[30]](#footnote-30) Therefore, before settlers could homestead, the U.S. government had to obtain title to the land either by war or through treaties. The government chose treaties.

According to the treaties signed in the mid-1800s, and as cited earlier in this case, tribes secured the right to fish in “all usual and accustomed grounds and stations . . . in common with all citizens of the Territory.” This provision seemed to ensure that tribes could continue to reap the benefits of the bountiful salmon runs to feed themselves and trade with other tribes. At the conclusion of the Treaty of Point Elliott, Washington Governor Isaac Stevens remarked that the tribes would be able to “pass canoes over the waters of the sound and catch fish.”[[31]](#footnote-31) They would also be able to venture into the mountains to get roots and berries. However, as white settlers moved into the Pacific Northwest and brought with them their Western ideas of land ownership and property rights, clashes with the Indians ensued.

As early as 1905, in *United States v. Winans*, Justice White argued that

There was a right outside of those boundaries reserved "in common with citizens of the territory." As a mere right, it was not exclusive in the Indians. Citizens might share it, but the Indians were secured in its enjoyment by a special provision of means for its exercise. They

were given "the right of taking fish at all usual and accustomed places," and the right "of erecting temporary buildings for curing them." The contingency of the future ownership of

the lands therefore was foreseen and provided for; in other words, *the Indians were given*

*a right in the land* -- the right of crossing it to the river -- *the right to occupy it to the extent*

*and for the purpose mentioned*. No other conclusion would give effect to the treaty. And *the right was intended to be continuing* . . .

The extinguishment of the Indian title, opening the land for settlement and preparing the

way for future states, were appropriate to the objects for which the United States held the territory. And surely it *was within the competency of the nation to secure to the Indians*

such a remnant of *the great rights they possessed as "taking fish at all usual and accustomed places."* Nor does it restrain the state unreasonably, if at all, in the regulation of the right. *It*

only *fixes in the land such easements as enable the right to be exercised* (emphasis added).[[32]](#footnote-32)

The treaties did not grant rights to the Indians that signed them; treaties allowed White settlers to share in the rights already secured by the tribes.[[33]](#footnote-33) Furthermore, treaties signed by representatives of the U.S. government were “supreme law of the land” and took precedence over state law.

That didn’t seem to matter much when the U.S. Congress and the Army Corps of Engineers set about damming the mighty Columbia River. As the dams rose, they flooded the traditional fishing grounds of the tribes. And while government officials documented 27 fishing sites behind the Bonneville Dam, for example, Yakama tribal Chair William Yallup Sr. contended that because of the fluctuation of the river from season to season and year to year, the actual number of sites was closer to one thousand.[[34]](#footnote-34) Alternate sites were promised (“In-Lieu” sites). Most did not materialize. The loss of fishing villages and access points behind Bonneville Dam, the Grand Coulee Dam, and others all along the river meant the loss of burial sites, seasonal homes, food, income, and a way of life.[[35]](#footnote-35)

By the mid-1900s, the salmon populations had declined precipitously due to overfishing, populated waterways, and damming of the rivers that led to spawning grounds, leading to violent clashes between native and non-native fishers and state fisheries agents. While the increasing number of state-level court cases brought visibility to the plight of tribal fishers, decisions at the federal level were required to re-affirm the tribal treaty right to fish and to access the waters in which they swim.

In the 1969 consolidated ruling on *Sohappy v. Smith* and *United States v. Oregon* regarding the tribal share of Columbia River salmon, Judge Robert Belloni wrote:

The state [Oregon] may not qualify the federal right by subordinating it to some other state objective or policy. It may use its police power only to the extent necessary to prevent the exercise of that right in a manner that will imperil the continued existence of the fish

resource . . . In the case of regulations affecting Indian treaty fishing rights the protection of

the treaty right to take fish at the Indians' usual and accustomed places must be an objective

of the state's regulatory policy co-equal with the conservation of fish runs for other users . . .

The treaty Indians, *having an absolute right to that fishery*, *are entitled to a fair share* of the fish produced by the Columbia River system (emphasis added).[[36]](#footnote-36)

Judge Belloni determined that non-Indian fisheries would need to be subject to conservation laws and practices *before* Indian fisheries could lawfully be restricted by the states, and not the other way around.[[37]](#footnote-37) Furthermore, the states could exercise their police power only when fishing practices put the continuing existence of the resource in peril.[[38]](#footnote-38) Decisions written by Justice William O. Douglas in 1968 and in 1973 also articulated the position that states could regulate off-reservation fishing by Indians *only* to achieve species conservation goals, not to enforce discriminatory practices that favored commercial or non-Indian recreational fisherfolk.[[39]](#footnote-39)

Another important part of the Belloni decision was his order that Oregon treaty tribes be allowed to participate meaningfully in rule-making regarding the state’s fisheries.[[40]](#footnote-40) In doing so, he underscored the Tribal right to exercise control over this natural resource.

In 1970, *United States v. Washington* was filed on behalf of tribes that had been parties to the Stevens treaties. In the filing, U.S. Attorney Stan Pitkin argued that Washington had considered treaty rights as privileges and not as rights reserved against impingement by White settlers.[[41]](#footnote-41) By 1975, 21 tribes were party to the lawsuit.

The case came before Judge George H. Boldt. Like others before him, Judge Boldt leaned on the precedent that the treaties needed to be interpreted as Tribal representatives of the times would have understood them. He listened to the tribal citizens who came into his courtroom as well as to the scientific and legal experts. He then argued that parties to the treaties could not have envisioned a future involving limits on the numbers of fish they could take from the waters. Their lives revolved around salmon and steelhead trout, and they had insisted on assurances of being able to hunt and fish and trade as they had since time immemorial. On February 12, 1974, Judge Boldt ruled that “in common with” meant “sharing equally” and thus that half of each year’s runs off-reservation would be allotted to Tribal fisherfolk and half to non-natives.[[42]](#footnote-42) The Boldt Decision also put into place a co-management structure for the fisheries—known in Washington State as the North of Falcon process.[[43]](#footnote-43) Indeed, according to District Court Judge James Burns of Oregon,

The record in this case, and the history set forth . . . make it crystal clear that it has been

the recalcitrance of Washington State officials (and their vocal non-Indian commercial and

sports fishing allies) which produced the denial of Indian rights requiring intervention by

the district court. This responsibility should neither escape notice nor be forgotten.[[44]](#footnote-44)

Despite challenges and arguments that Boldt’s mandates overstepped his authority, in 1979, the U.S. Supreme Court upheld the *Boldt Decision*, affirming tribal sovereignty and the rights reserved by tribes in treaties entered into in the 1800s.

The *Boldt Decision* bolstered demands for the removal of dams blocking salmon and steelhead spawning rivers and streams. However, it took an act of the U.S. Congress in 1992, not the opinion of a court Justice, to initiate the removal of the dams on the Elwha River on the Olympic Peninsula in Washington.[[45]](#footnote-45) Still, in the decades following the *Boldt Decision*, when hydroelectric dams came up for relicensing before the Federal Energy Regulatory Commission (FERC), tribes and others have been able to argue for their removal. The loss of salmon, the environmental degradation caused by the dams and the businesses they supported, the loss of culture and spiritual life of tribes, and the expense of upgrades to aging infrastructure have led to dam decommissioning and destruction. Table 1 below lists some of the successes in the Pacific Northwest. But, as indicated in Figure 2, more work remains.

***Table 1:*** *Dam Removals in the Pacific Northwest with Tribal Involvement* (Based on Fox, Reo, Fessell, Dituri (2022), pp. 33 – 34)[[46]](#footnote-46)



One other piece of legislation is worthy of mention when thinking of tribes, salmon, and water. According to the *Winters* Doctrine (resulting from *Winters v. United States* of 1908), when Congress established reservations for tribes, permanent homelands within the boundaries of the lands they once occupied, it implicitly reserved rights to water to fulfill the purposes of the reservations.[[47]](#footnote-47) Those rights are considered senior to any other claims to water in an area—in times of water shortages, those demands must be filled first. However, the Doctrine specified neither a formula for determining the amount of water reserved for the reservation nor the purposes for which the reserved water could be used.[[48]](#footnote-48) For tribes in the Pacific Northwest, fishing was a key element in life and self-sufficiency. Thus, as outlined in *Colville Confederated Tribes v. Walton* (1981), the reserved water right needed to be sufficient to support a fishery in the watershed.[[49]](#footnote-49) As Justice Wright noted,

. . . permitting the Indians to determine how to use reserved water is consistent with the

general purpose for the creation of the Indian reservation – providing a homeland for the *survival and growth of the Indians and their way of life* (emphasis added).[[50]](#footnote-50)

**Part 5: “Dams Down, Water Back . . . Salmon Back”: The Challenge**

My strength is from the fish; my blood is from the fish, from the roots and the berries.

The fish and the game are the essence of my life.

Yakama Chief Meninock[[51]](#footnote-51)

For the tribes of the Pacific Northwest, salmon and water were the first gifts given to assist them with life on Turtle Island. Colonial policies and actions have eroded access to those sacred gifts. And yet, the absolute right to fish, a right in the land, and a homeland for the survival and growth of their way of life have all been affirmed by the highest courts in the United States. The Land Back movement has sought to reassert Native American sovereignty over lands they once stewarded.

What might a “Dams Down, Water Back . . . Salmon Back” movement look like? What would be needed to remove dams and reassert sovereignty over the rivers and streams that supplied the water and fish, and supported the life of the indigenous people of the Pacific Northwest? What does Coyote teach us about what needs to happen?

The previous sections outlined some of the important elements of the case for repairing the harm done by colonial appropriation of this sacred resource and reasserting the sovereignty of the tribes over the waterways. It is now up to you, dear reader, to determine the next steps.

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1. Copyright 2024 The Evergreen State College. Teaching notes for this case are available at http://nativecases.evergreen.edu. Kathleen M. Saul is a Resource Faculty member at The Evergreen State College. Van Maxwell-Miller graduated from the Graduate Program on the Environment at The Evergreen State College in June 2024. Thank you to Barbara Leigh Smith and Linda Moon Stumpff for their many insightful comments on earlier drafts of this and other cases and their continuing mentorship. [↑](#footnote-ref-1)
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