

10-21-2016

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EXHIBIT 7

**A Reply
to the Report of Dr. Stephen Wee**

by
E. Richard Hart

May 20, 2016

Table of Contents

I. Introduction	1
II. Coeur d'Alene Subsistence 1780-1873	3
III. Buffalo and the Coeur d'Alene	14
IV. Early Coeur d'Alene Agriculture	34
Dr. Wee's Table 1 (1875-1880)	46
V. Establishment of the Coeur d'Alene Reservation	53
VI. Conclusions	60
Appendix: New Hart Exhibits	66

I. Introduction

A report entitled “Establishment of the Coeur d’Alene Reservation and the Transformation of Coeur d’Alene Land and Water Use, from Contact through Allotment,”¹ has been submitted to the Office of Attorney General of the State of Idaho by Dr. Stephen Wee of JRP Historical Consulting, LLC. This report purports to provide a history of the Coeur d’Alene Tribe’s use of water from the 18th century through the time of the establishment of the Coeur d’Alene executive order reservation in 1873. The report makes a number of large assertions and suggestions which are historically incorrect and unsupported by primary documentary evidence.

As I demonstrated in my initial report on Coeur d’Alene water use, relying on a large body of documentary evidence, the Coeur d’Alene Tribe subsisted primarily on hunting, fishing, gathering, and digging roots up to and beyond the date of the establishment of the 1873 Coeur d’Alene Reservation.² I also demonstrated that the use of water was central to all the Tribe’s subsistence activities and way of life.

The report submitted by Dr. Wee suggests that after the Tribe acquired the horse and then began to undertake buffalo hunts on the east side of the Rocky Mountains, their traditional subsistence patterns were dramatically altered and they no longer relied upon hunting, fishing, gathering and digging of roots in their traditional territory, especially in the heart of their territory around Coeur d’Alene Lake (the area which would become the Coeur d’Alene Reservation). As I will demonstrate from the available documentary evidence, this assertion,

¹Wee, Stephen. “Establishment of the Coeur d’Alene Reservation and the Transformation of Coeur d’Alene Land and Water Use, from Contact through Allotment.” Submitted to: Office of Attorney General, State of Idaho. Submitted by: JRP Historical Consulting, LLC; February 25, 2016.

²Hart, E. Richard. “A History of Coeur d’Alene Tribal Water Use: 1780-1915,” November 25, 2015.

which acts as the foundation for the structure of Dr. Wee's overall report, does not have a basis in fact.

In his report, Dr. Wee has also suggested that the Coeur d'Alene Reservation was not actually established until 1891. This is completely false. The reservation was established in 1873. In subsequent years the United States repeatedly and officially confirmed its effective date as 1873 and it was permanently ratified by Congress by the late 1880s.

Dr. Wee is confused about the history of dry-farming, both in general and in particular as to its possible impacts on Coeur d'Alene subsistence. Dry-farming had no impact on Coeur d'Alene prior to the establishment of the Coeur d'Alene Reservation in 1873 and was not even practiced on the portion of the Palouse adjacent to the reservation until well after the establishment of the reservation. The Tribe did not move to the Desmet area until 1877-1878, well after the establishment of the reservation. The priest responsible for convincing a large number of tribal members to move to the Desmet area provided a very clear, first-hand description of the area as it looked prior to the move. Dr. Wee seems to have misused a number of sources in reaching his conclusions regarding dry-farming.

The following sections relate to subsistence, buffalo-hunting, agriculture (including a short history of dry-farming in the region), and the establishment and ratification of the 1873 reservation.

II. Coeur d'Alene Subsistence, 1780-1873

At the time of first contact with non-Indians from the Europe, and throughout the period from that time until the Coeur d'Alene Reservation was established in 1873, the Tribe was dependent on fishing, hunting, gathering and digging roots for subsistence. Although they also relied on hunting for deer and other animals in their own region, and engaged in an annual buffalo hunt to the east, without their provident supply of fish, they could not have survived. The water in their territory was necessary for all of their subsistence activities.

Between 1780 and 1873 (the date of the establishment of the Coeur d'Alene Reservation), the Tribe depended on the water in the heart of its aboriginal territory for all of its subsistence activities: hunting, fishing, gathering of plants and digging of roots. During that period, there is not evidence to suggest much, if any change at all, in the subsistence requirements and practices of the Coeur d'Alene Tribe.

In determining subsistence practices of the Tribe, first-hand evidence must be given a high priority. In my initial report, I provided considerable first-hand evidence of Coeur d'Alene subsistence practices during the period.³ There is documentary evidence providing first-hand observations of Coeur d'Alene subsistence practices up to the point when their 1873 reservation was established.

In 1806 Lewis and Clark were, evidently, the first Europeans to encounter Coeur d'Alene. In the text of their journals and on their map they identified the Tribe with Coeur d'Alene Lake.⁴

³Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, especially pages 5-44.

⁴Biddle, Nicholas (ed.). *The Journals of the Expedition Under the Command of Cpts. Lewis and Clark*. New York: The Heritage Press, 1962, Vol. I, end map; Vol. II, p. 450. [14]

The first written record from a fur trader/trapper in contact with the Tribe was from David Thompson, who encountered tribal members in 1809 and who reported, “they made us an acceptable present of dried Salmon and other Fish, with Berries, and the meat of an Antelope.”⁵

Three years later, 1812, trapper Ross Cox described his meeting with the Coeur d’Alene, saying:

Their country is tolerably well stocked with beaver, deer, wild-fowl, &c.; and its vegetable productions are similar to those of Spokan. Some of this Tribe occasionally visited our fort at the latter place with furs to barter, and we made a few excursions to their lands. We found them uniformly honest in their traffic; but they did not evince the same warmth of friendship for us as the Spokans, and expressed no desire for the establishment of a trading post among them. They are in many respects more savage than their neighbours.⁶

Cox, like others, noted the evident Coeur d’Alene defense and protection of their territory.

Jesuit Missionaries of the Roman Catholic Church first arrived among the Coeur d’Alene in the 1840s and priests have remained among them to the present day. The paintings and drawings of Father Nicolas Point provide first-hand representations of Coeur d’Alene use of tribal waters for hunting and fishing.⁷ In his textual records, Point, who arrived among the Coeur d’Alene in 1842, also noted that the country had plentiful game, birds and fish, and that the people hunted, fished and gathered roots, traveling by foot or by bark canoes. In his description of their villages, Point said roots were stored in their lodges and that skins of animals

⁵Glover, Richard (ed.). *David Thompson’s Narrative, 1784-1812*. Toronto: The Champlain Society, 1962, p. 296. [73]

⁶Cox, Ross. *Adventures on the Columbia*. Portland, Oregon: Binfords & Mort Publishers, n.d., p. 262. [46]

⁷Hart, E. Richard. “A History of Coeur d’Alene Tribal Water Use: 1780-1915,” November 25, 2015, Figures 19-25, (pp. 55-64).

hung from poles, and "fish were being smoked over a fire."⁸

Point traveled around Coeur d'Alene Lake to find the place he thought would be the best location for his planned mission. He described Chief Stellam's village at the head of the Spokane River on Coeur d'Alene Lake, where he said the "waters are teeming with fish which are caught, until January, by means of a trellised barrier extending from shore to shore." The following spring, however, he began construction on the first mission church on the banks of the St. Joe River at Chief Gabriel's village site.⁹ This location was also a favorite fishing spot for the Coeur d'Alene and fishing weirs were observed in use at that location well into the 20th century.¹⁰ In a section he wrote describing his time with the Coeur d'Alene between November, 1842 and February, 1843, Father Point provided a detailed account of tribal fishing. He said, in part:

The Coeur d'Alenes also have their great hunt, but their country, dotted with lakes and interlaced with rivers, abounds in fish no less than in game animals, so they also have their great fishing expeditions. Fishing, like hunting, is done almost the year round. But the great fishing expedition takes place in fall, and the great hunting expedition occurs in the winter.¹¹

⁸Point, Nicolas. *Wilderness Kingdom: Indian Life in the Rocky Mountains, 1840-1847. The Journals and Paintings of Nicolas Point, S. J.* Edited and translated by Joseph P. Donnelly. New York: Holt, Rinehart and Winston, 1967, pp. 12, 14, and 47-50. [137]

⁹Point, Nicolas. *Wilderness Kingdom: Indian Life in the Rocky Mountains, 1840-1847. The Journals and Paintings of Nicolas Point, S. J.* Edited and translated by Joseph P. Donnelly. New York: Holt, Rinehart and Winston, 1967, pp. 50, 58-62, and 67. [137]

De Luca-Waide, Delores. *Historical Essays of the Harrison Area.* Harrison, Idaho: privately printed, n.d., p. 2. [54]

¹⁰Pentland, Pat Allen. "The Illfated Mission: The Sacred Heart Mission on the St. Joe River, 1842-46," [thesis] presented to Gonzaga History Department, May 1973, p. 42. [699]

¹¹Point, Nicolas. *Wilderness Kingdom: Indian Life in the Rocky Mountains, 1840-1847. The Journals and Paintings of Nicolas Point, S. J.* Edited and translated by Joseph P. Donnelly. New York: Holt, Rinehart and Winston, 1967, pp. 174-175. Hunting was described by Point on pp. 178-181. [137]

For the remainder of this quotation see Hart report, pp.63-64.

Father Pierre-Jean De Smet purchased a parcel of land from the Coeur d'Alene in 1846 and had the Mission of the Sacred Heart, as it was called, constructed at this site. De Smet's maps locate the major Coeur d'Alene villages located in the heart of tribal territory on Coeur d'Alene Lake, the Coeur d'Alene River and the St. Joe River.¹²

Father John Joseph Augustine Joset lived among the Coeur d'Alene from 1844 until his death in 1900 at the age of 90. He learned to speak the Tribe's language and was influential with the tribe during that period. He provided an important first-hand description of Coeur d'Alene subsistence practices in 1845. In that document he said the Coeur d'Alene "do not go to seek their food beyond the narrow circle of their valleys." Father Joset said tribal food was obtained by hunting, fishing and gathering. He also described, like Father Point, how the Tribe used their waters as part of their hunting activities.¹³

Governor Isaac I Stevens first reached Coeur d'Alene country in 1853. At that time, he described a recent communal tribal deer hunt in which over four hundred deer were killed. Stevens also described tribal trout fisheries then being used by the Coeur d'Alene.¹⁴

Father De Smet again described Coeur d'Alene territory in 1859, saying that all the rivers and their tributaries in Coeur d'Alene territory "abound wonderfully in mountain trout and other

¹²Dozier, Jack. "History of the Coeur d'Alene Indians to 1900." M.A. Thesis, 1961, p. 31. [64]

De Smet, Pierre-Jean. Manuscript maps nos. 13, 27, 28, 34 (sides one and two) and 37, De Smetiana Collection; Jesuit Missouri Province Archives. St. Louis, Missouri. [647]

Peterson, Jacqueline. *Sacred Encounters: Father De Smet and the Indians of the Rocky Mountain West*. Washington State University: Norman, 1993, pp. 118-119 and 122. [135]

¹³De Smet, Father Pierre Jean. "Missions of the Rocky Mountains." *Annals of the Propagation of the Faith* Vol. 7 (1846): pp. 363, 368-369, and 372-375. [55] Emphasis added. For additional material from Joset on hunting and gathering, see Hart, pp. 68-69.

¹⁴Stevens, Isaac I. *Narrative and Final Report of Explorations for a Route for a Pacific Railroad*, "Reports of Explorations and Surveys, to Ascertain the Most Practicable and Economical Route for a Railroad from the Mississippi River to the Pacific Ocean," Vol. XII, Book I. Washington: Thomas H. Ford, Printer, 1860, pp. 109, 130-135. [168]

fish.” He said much game was found in the forests of the Tribe, including deer, bear and “a variety of fur-bearing animals.”¹⁵

Captain John Mullan was first in Coeur d’Alene country with Governor Stevens in 1853. Between 1859 and 1862 he led road-building parties that went through the Tribe’s territory. As previously noted, Mullan observed small-scale farming that had begun at the Catholic mission, and said the Tribe “live by hunting, fishing and cultivating the soil.”¹⁶

In 1865 Father Joseph M. Cataldo, for whom the Coeur d’Alene mission would later be named, came down the Mullan Road to work among the Tribe. He described Coeur d’Alene fishing camps along the Coeur d’Alene River in the 1860s.¹⁷

First-hand evidence of subsistence practices also comes from the Tribe itself. In the early 1870s as the Tribe negotiated with the United States to reach an agreement on the location of a reservation to form a permanent homeland, the tribe indicated that it wanted a reservation which would include land that could be used for future agricultural cultivation, but in 1872 also said that they still required resources necessary for hunting and fishing.¹⁸ A White surveyor appointed to carry out a survey of the aborted 1867 executive order reservation, also emphasized the Tribe’s reliance on fishing, saying, “Should the fishing be excluded there will in my opinion be trouble with these Indians,” but adding that if the fishing grounds and the mission were to be included in

¹⁵De Smet, Pierre-Jean. *New Indian Sketches*. Fairfield, Washington: Ye Galleon Press, 1985 (first published 1863), p. 130. [56]

¹⁶Mullan, Captain John. *Miners and Travelers’ Guide to Oregon, Washington, Idaho, Montana*. New York: Arno Press, 1973 (originally published 1865), p. 44. [118]

¹⁷Weibel, Geo. F. Rev. Joseph M. Cataldo, S.J.: *a Short Sketch of a Wonderful Career*. Spokane: Gonzaga Quarterly, March 15, 1928, pp. 6 and 9. [282]

¹⁸Chiefs of the Coeur d’Alene Nation to [Commissioner of Indian Affairs], November 18, 1872, Letters Received, Washington Superintendency, Microfilm, M 234, Roll 912, RG 75, National Archives. [300]

the Tribe's reservation, "there will be no trouble."¹⁹ Idaho Governor T. W. Bennett concurred in a letter written October 4, 1873, saying that the Tribe demanded that the reservation include the mission and "fishing and mill privileges..."²⁰

The Tribe's focus on the use of water for all then current and perceived future subsistence practices can be seen from the provision they included in the 1873 agreement (which led to the 1873 executive order reservation). This provision of the agreement between the United States and the Coeur d'Alene, which could only have come from the Tribe, required

....that the waters running into said reservation shall not be turned from their natural channel where they enter said reservation.²¹

All of the first-hand evidence during the period from 1780 to 1873 shows Coeur d'Alene dependence on fish (including plentiful species of trout, white fish, as well as salmon²²), game,

¹⁹D. P. Thompson to Surveyor General, May 6, 1873, Letters Received, Washington Superintendency, Microfilm, M 234, Roll 912, RG 75, National Archives. [305]

²⁰"Governor Bennett's Letter," Idaho Signal, Vol. 1, October 4, 1873 (the governor's letter was dated September 18, 1873). [704]

²¹Shanks to Sec. of the Interior, enclosing agreement with Coeur d'Alene, August 1, 1873, Letters Received, Idaho Superintendency, Microfilm, M 234, Roll 341, RG 75, National Archives. [313]

²²Dr. Wee suggests that the Coeur d'Alene only fished for salmon in what would become off-reservation sites. That is not the case. The Tribe fished for trout, white fish and other species at fishery sites on their rivers and in their lake. See for instance:

Teit, James A. "The Coeur d'Alène." In *Forty-Fifth Annual Report of the Bureau of American Ethnology, 1927-1928*, edited by Franz Boas. Washington, D. C.: Government Printing Office, 1930, e. g. pp. 55 (lake and river fishing) and 106 (lake trout-fishing at night). [171]

Peltier, Jerome. *Manners and Customs of the Coeur D'Alene Indians*. Moscow, Idaho: Peltier Publications, 1975, pp. 37-38 (fish traps on St. Joe River). [133]

Stevens, Gov. Isaac Ingalls. *Journal of Operations of Governor Isaac Ingalls Stevens of Washington Territory in 1855* (Edward J. Kowrach, ed.). Fairfield, Washington: Ye Galleon Press, 1978, pp. 37-38 ("a Mess of Speckled trout" in the Coeur d'Alene River). [167]

De Smet, Pierre-Jean. *New Indian Sketches*. Fairfield, Washington: Ye Galleon Press, 1985 (first published 1863), p. 130. "All the rivers and rivulets in the Coeur-d'Alene country abound wonderfully in mountain trout and other fish." [56]

Diomedi, Alexander. *Sketches of Indian Life in the Pacific Northwest*. Fairfield, Washington: Ye Galleon Press, 1978 (originally published 1902), p. 61. The mission was

plants, and roots. The Tribe villages were located in the heart of their homeland, and they used that area to locate villages and for permanent occupation. Seasonal subsistence practices required wider use of the whole aboriginal territory and protection of that territory from outsiders was a high priority of the Tribe. Their somewhat insular attitude toward outsiders was noted by Europeans from the beginning of contact.

With reduction of their aboriginal territory, the Tribe had to put even more dependence on the area left within the 1873 reservation for subsistence, including the necessity to use all the water flowing into the reservation.

The primary evidence relating to Coeur d'Alene subsistence practices during the period 1780 to 1873 is conclusive. Nevertheless, it is instructive to look at what other experts have concluded about Coeur d'Alene subsistence practices. Teit has provided the fullest description of traditional Coeur d'Alene subsistence, especially fishing activities, which I included in my initial report.²³ Other experts reached similar conclusions.²⁴ Even Chalfant, who testified against the Coeur d'Alene in the Indian Claims Commission, provides consistent evidence on Coeur d'Alene subsistence.²⁵

established next to the Coeur d'Alene River, which was "copiously supplied with mountain trout." [60]

Pentland, Allen. "The Illfated Mission: The Sacred Heart Mission on the St. Joe River, 1842-46," [thesis] presented to Gonzaga History Department, May 1973; Sacred Heart Collection, Box 10; Special Collections, Gonzaga University map (Figure 26 in my initial report) and page 42. [699] Pentland even mapped fish traps used by the Coeur d'Alene where the St. Joe River enters Coeur d'Alene Lake, which existed into the 20th century!

²³Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, pp. 21-23.

²⁴Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, for instances see, on Peltier pp. 2, 6, 16, 18, 24, 29-31, and 35-38; on Hodge, p. 3; on Ray, pp. 4, 10, 18, 31; and on Dozier, pp. 6 and 25.

²⁵Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, for instance, see, pp. 2, 28, 26-27, and 29-39.

There is no primary evidence at all to suggest that buffalo meat created any change whatsoever in overall Coeur d'Alene subsistence practices. In fact, Father Joset, who lived among the Tribe for over half a century, said, they did not "go to seek their food beyond the narrow circle of their valleys" and described hunting, fishing and gathering in the heart of their aboriginal homeland.²⁶

Even though events occurring after the establishment of the 1873 Coeur d'Alene Reservation had significant impacts on their traditional subsistence activities, those activities continued on the new reservation. In 1876 Father Alexander Diomedi was transferred to the Sacred Heart Mission, which he described as being on a hill near the Coeur d'Alene River, which was "copiously supplied with mountain trout." He said the mission was purposefully built in a place where there was a good supply of game and fish, and that other fishing and hunting camps and villages were in use at that time.²⁷

Diomedi also described what the Coeur d'Alene's Camas Prairie looked like in 1876 (obviously not being dry-farmed).²⁸

This was a beautiful and fertile prairie, lying partly within their own reservation and then stretching away miles and miles beyond it, to the north and west, while on the south and east it was surrounded by ranges of mountains well supplied with timber, pine, tamarack and fir. This land was beautiful, well-watered, very productive and covered with tall bunch-grass. In this prairie, which was their own land, because a part of the reservation; all the different camps of the Coeur d'Alene, as well as people from surrounding tribes, had been accustomed to assemble during the summer season to dig camas.

²⁶De Smet, Father Pierre Jean. "Missions of the Rocky Mountains." *Annals of the Propagation of the Faith* Vol. 7 (1846): pp. 363, 368-369, and 372-375. [55]

²⁷Diomedi, Alexander. *Sketches of Indian Life in the Pacific Northwest*. Fairfield, Washington: Ye Galleon Press, 1978 (originally published 1902), pp. 61-65. [60]

²⁸Diomedi, Alexander. *Sketches of Indian Life in the Pacific Northwest*. Fairfield, Washington: Ye Galleon Press, 1978 (originally published 1902), pp. 63-64. [60] Other tribes were invited to join the Coeur d'Alene to dig in the Camas Prairie so long as there were abundant roots available and the other tribes abided by Coeur d'Alene rules.

A year later, in 1877, at the time of the outbreak of the Nez Perce War, Coeur d'Alene were reported to be digging camas near today's St. Maries, guarded by a tribal "army."²⁹

At that time a general debate was recorded in which the Jesuit Priests argued for the Tribe to consolidate (consistent with the Jesuit's old strategy of "reduction" of tribes) their villages into one village near their Camas Prairie. Father Diomedi said he argued that Whites would soon cause their game to disappear, and said further, that

Neither should they depend upon the river, which would soon be filled with boats and rafts and logs for fuel which would cause the fish to migrate to safer and quieter places.³⁰

Diomedi reported that he continued to lobby for the move into the spring of 1878, when he reported that near Rock Creek, a Coeur d'Alene family gave him "a few potatoes and some trout..." Diomedi stayed the night and his hosts fed him camas and dried fish for breakfast.³¹ During that year, 1878, Diomedi and the priests finally convinced a large number of families to move to the Tribe's Camas Prairie, and the mission at Desmet was established. It is clear from Diomedi's description of the debate and eventual decision, as just described, that the Camas Prairie was uncultivated prior to the move and that the Coeur d'Alene were subsisting on their traditional hunting, fishing and digging of roots, especially camas. Although there is one mention of a "few" potatoes, the meals the priest described were all traditional Coeur d'Alene foods.³²

²⁹Burns, Robert Ignatius. "Coeur d'Alene Diplomacy in the Nez Perce War of 1877," *Records of the American Catholic Historical Society of Philadelphia*. 63 (March 1952), p. 45. [24]

³⁰Diomedi, Alexander. *Sketches of Indian Life in the Pacific Northwest*. Fairfield, Washington: Ye Galleon Press, 1978 (originally published 1902), pp. 68-69. [60]

³¹Diomedi, Alexander. *Sketches of Indian Life in the Pacific Northwest*. Fairfield, Washington: Ye Galleon Press, 1978 (originally published 1902), p. 72. [60]

³²Of course the Tribe did have its own "water potatoes," but it is unclear from this Diomedi document which potato is referred to here.

Even with the influx of miners and prospectors and the pressures of other non-Indian settlers around them, the Coeur d'Alene continued their traditional subsistence practices in the 1880s. P. Arthius, a Jesuit scholastic, was reported to have said upon arriving at the mission in the early 1880s, "Although civilized, [these] Indians have not abandoned their laws and their own peculiar customs."³³

Traditional subsistence practices by the Coeur d'Alene continued long after the 1880s and into the 20th century. For instance, Allen Pentland, who completed a Gonzaga University thesis on the original Jesuit mission at the mouth of the St. Joe River, mapped the location of fish traps that he reported were present and in use when his grandparents moved to the area.

There also existed at Mission Point a fairly extensive construction of Indian fish traps, built between the end of the plateau and the river, across the outlets of present day Goose Haven Lake and Peterson Creek. These traps were apparently used annually to harvest the fish imprisoned in the flooded meadow lands each spring, which were attempting to pass back into the river as the high water receded. Being constructed from willows, this fishery obviously predated the mission itself, and was still used by the Indians at the turn of the century.³⁴

A number of secondary sources also provide corroboration of the Tribe's reliance on traditional subsistence foods in the period 1877-1878, including:

Harms, Su, ed. *The Coeur D'Alene Teepee* Vols. I-III (1937-1940) (July 1980). Plummer, Idaho: Serento Press, pp. 85 and 110-111. [79]

Kowrach, Edward J., and Thomas E. Connolly (eds.) *Saga of the Coeur D'Alene Indians: An Account of Chief Joseph Seltice*. Fairfield, Washington: Ye Galleon Press, 1990, p. 229. [101]

³³St. Hilaire, S. J. "Sacred Heart Mission, Idaho; History Manuscript," (1963) Gonzaga University. Oregon Province Archives of the Society of Jesus, Box 732, Early History 1872-1911, Spokane, Washington, p. 19. [165] This document was reporting a letter sent by Arthius in 1884:

Arthius, P. "Rocky Mountains." *Woodstock Letters*, Vol. 13 No. 3 (1884): pp. 381-382. [10]

³⁴Pentland, Allen. "The Illfated Mission: The Sacred Heart Mission on the St. Joe River, 1842-46," [thesis] presented to Gonzaga History Department, May 1973; Sacred Heart Collection, Box 10; Special Collections, Gonzaga University map (Figure 26 in my initial report) and page 42. [699]

Other examples are found in the documentation from the 1909-1910 Washington Water Power Company hearings at which witnesses described the use of the lands around Coeur d'Alene Lake that were annually submerged, but used by the Indians for various purposes. Many witnesses testified about the Coeur d'Alene fishing and about the fish traps that were located in Section 2, T. 46 N., R. 3 W. The Fish Traps area is north of the bend in the St. Joe River in that section. J. S. Pence, who lived on the reservation between 1897 and 1902, testified that these traps were made by sinking sticks and branches into the high ground of the bottomlands, so that when fish had gone into these areas during high water, they could be caught in the weirs as they tried to get out. Fishing activities were not limited to the summer months. Several witnesses described ice fishing in the winter.³⁵

Considerable first-hand evidence of the use of Coeur d'Alene Lake bottomlands for hunting, fishing and transportation was found for years during the first two decades of the twentieth century (1900-1920).³⁶

There is ample evidence to demonstrate continued practices of hunting, fishing, and gathering for subsistence purposes during a period of many decades following the establishment of the 1873 Coeur d'Alene Reservation.

³⁵United States. Department of the Interior. Records Relating to Legal Action Taken by the Department of the Interior Against the Washington Water Power Company, 1909-10. Record Group 49, Records of the Bureau of Land Management, General Land Office, Unidentified Divisions, Entry 1028, Boxes 1-7. National Archives, Washington, D.C. Volume 3; pp. 1247, 1250, 1261, 1270, 1297-1298. [673]

³⁶Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, for instance, see pp. 314-316, 319, 321-322, 324, 325, and 328-329.

III. Buffalo and the Coeur d'Alene

The documentary evidence demonstrates conclusively that the center of Coeur d'Alene aboriginal territory (which became the Coeur d'Alene Reservation), was integral to all of the Tribe's subsistence activities. Ample fish, game and plants existed in Tribe's central aboriginal territory to support necessary subsistence for the people. The evidence does not support Dr. Wee's revisionist theory that buffalo meat affected traditional Coeur d'Alene subsistence practices. Dr. Wee stands alone in proposing this theory, which at its face, and from a logical point of view, does not make any sense.

From the first encounter with the American Bison, Europeans referred, using several spellings, to the animal as "buffalo." Virtually all 19th century references to the animal use the term "buffalo." With that in mind, I will use the term "buffalo" while referring to the hunting practices of the Coeur d'Alene Tribe.

Prior to the acquisition of the horse, there is no controverting the fact that the Coeur d'Alene depended on hunting (deer, elk and small game), fishing, gathering berries and other plants, and digging camas and other roots for their subsistence. There is also, however, no evidence that the Coeur d'Alene ever subsisted substantially on buffalo meat, as asserted by Dr. Stephen Wee.

The Coeur d'Alene acquired the horse by at least 1760.³⁷ At first they probably had few horses and they were of little importance.³⁸ The Coeur d'Alene were in one of the most remote

³⁷Dozier, Jack. "History of the Coeur D'Alene Indians to 1900." M.A. Thesis, University of Idaho, 1962, p. 11. Dozier says the horse was acquired in "about 1760. [64]

Teit, James A. "The Coeur d'Alene." In *Forty-Fifth Annual Report of the Bureau of American Ethnology, 1927-1928*, edited by Franz Boas. Washington, D. C.: Government Printing Office, 1930, p. 109, reported that oral tradition among tribal members suggested they had "plenty of horses" by "about 1760." [171]

³⁸Teit, James A. "The Coeur d'Alene." In *Forty-Fifth Annual Report of the Bureau of*

parts of the Plateau region of what would become the northwest United States. Economic historian D. E. Livingston-Little reported that "In all probability, Idaho was the last of the fifty of the United States of America to be reached by white men."³⁹ Teit reported that "The Coeur d'Alene were one of the last tribes to obtain firearms," and that they were not well supplied with firearms by the mid-19th century, when "most of them, or at least many of them, had only bows and arrows," unlike surrounding tribes.⁴⁰ The Blackfoot were formidable foes who did not like interlopers in their territory, so the winter Coeur d'Alene buffalo hunts were dangerous endeavors. The actual facts and history surrounding the dangerous Coeur d'Alene buffalo hunts suggests the primary purpose was to obtain winter pelts and robes, and that the activity also had an important ceremonial purpose. The latter purpose resulted in many individuals going on different hunts over many years until most of the Tribe had been on at least one hunt.

Ethnologist James A. Teit conducted field work among the Coeur d'Alene during the first decade of the twentieth century.⁴¹ He said buffalo were sometimes hunted by the Coeur d'Alene prior to the Tribe's acquisition of the horse, "by small parties related by blood or marriage to the Pend d'Oreilles or Flathead....They hunted in the Pend d'Oreilles and Flathead country with their

American Ethnology, 1927-1928, edited by Franz Boas. Washington, D. C.: Government Printing Office, 1930, p. 109. [171]

³⁹Livingston-Little, D. E. "An Economic History of North Idaho, 1800-1900--Part I." *Journal of the West* Vol. II, No. 2 (April 1963): p. 127. [107]

⁴⁰Teit, James A. "The Coeur d'Alene." In *Forty-Fifth Annual Report of the Bureau of American Ethnology, 1927-1928*, edited by Franz Boas. Washington, D. C.: Government Printing Office, 1930, p. 101. [171]

Livingston-Little, D. E. "An Economic History of North Idaho, 1800-1900--Part I." *Journal of the West* Vol. II, No. 2 (April 1963): p. 128, echoed Teit, saying the Plains Indians had muskets before the Coeur d'Alene. [107]

⁴¹Boas, Franz. "Preface" to Teit, James A. "The Coeur d'Alene." In *Forty-Fifth Annual Report of the Bureau of American Ethnology, 1927-1928*, edited by Franz Boas. Washington, D. C.: Government Printing Office, 1930, p. 25. [171] Boas explained that Teit's objectives in his field work were to determine the "distribution of Salishan dialects and general movements of the tribes so far as these could be ascertained by tradition."

friends, and were generally absent about nine months.”⁴²

After the acquisition of the horse, larger parties were able to travel greater distances on buffalo hunts. Ethnologist James A. Teit reported that The Coeur d’Alene went buffalo hunting “after the harvesting of the principal root and berry crops, and after the salmon had been put up.” They went “well-equipped” to the Plains, first in small parties, and then “at last nearly the entire tribe took part in these excursions.”⁴³ Anthropologist Rodney Frey, who relied heavily on Teit for his comments on Coeur d’Alene buffalo hunting, and after his own analysis of tribal traditions, explained that different individuals participated in the hunts each year until eventually “nearly the entire tribe went,” but added that this was prior to 1800.⁴⁴

According to the documentary record, after the acquisition of the horse, the Coeur d’Alene conducted most of their buffalo hunts in Blackfoot country.⁴⁵ There were several routes they could take to reach portions of the Plains, on the other side of the Rocky Mountains, where the great buffalo herds were located, but the most important took them through Pend d’Oreille country.

The great trade route between east and west, both before and after the advent of the horses, was by way of Pend Oreille River, which

⁴²Teit, James A. "The Coeur d'Alene." In *Forty-Fifth Annual Report of the Bureau of American Ethnology, 1927-1928*, edited by Franz Boas. Washington, D. C.: Government Printing Office, 1930, p. 96. [171]

⁴³Teit, James A. "The Coeur d'Alene." In *Forty-Fifth Annual Report of the Bureau of American Ethnology, 1927-1928*, edited by Franz Boas. Washington, D. C.: Government Printing Office, 1930, p. 97. [171]

⁴⁴Frey, Rodney. *Landscape Traveled by Coyote and Crane: The World of the Schitsu'umsh (Coeur d'Alene Indians)*. Seattle: University of Washington Press, 2001, p. 55.

⁴⁵For an indication of the relationship of Coeur d’Alene territory with Blackfoot territory, see the following:

DeMallie, Raymond J. (editor). *Handbook of North American Indians: History of Indian-White Relations* Vol. 13 Part 1. Washington: Smithsonian Institution, 2001, xi (map). [733]

Walker, Deward E., Jr., editor. *Handbook of the North American Indians*, Volume 12. Washington: Smithsonian Institution, 1998, map (ix). [734]

was the easiest and most important gateway through the mountains toward the Columbia River region.⁴⁶

Buffalo robes were important trade goods. Tribes that obtained buffalo robes on the Plains could trade them with the more western tribes for other goods.⁴⁷ After acquisition of the horse, buffalo hides were used by the Coeur d'Alene to provide covering for their tipis and for winter robes.⁴⁸ The number of hides needed to provide covering for a tipi, or lodge, ranged from six to twenty, depending on the size of the tipis.⁴⁹ Buffalo hides were also used to help furnish the interior of tipis and to provide coverings for sweat lodges.⁵⁰

All reports from the mid-19th century indicate that the principal subsistence of the Coeur d'Alene included fish, roots and berries. There is no indication from any primary source that the

⁴⁶Teit, James A. "The Coeur d'Alene." In *Forty-Fifth Annual Report of the Bureau of American Ethnology, 1927-1928*, edited by Franz Boas. Washington, D. C.: Government Printing Office, 1930, p. 355 (a similar comment is found on page 322). [171]

⁴⁷Stevens, Gov. Isaac Ingalls. *Narrative and Final Report of Explorations for a Route for a Pacific Railroad*, "Reports of Explorations and Surveys, to Ascertain the Most Practicable and Economical Route for a Railroad from the Mississippi River to the Pacific Ocean," Vol. XII, Book I. Washington: Thomas H. Ford, Printer, 1860, p. 109, reported that he met Pend d'Oreille with "buffalo robes and meat to trade with more western tribes." [168]

⁴⁸Cody, Edmund. *History of the Coeur D'Alene Mission of the Sacred Heart*, Kellogg, Idaho: Edmund R. Cody, 1930, p. 17. Cody noted that such tipis were stocked with fish for food. [36]

Peltier, Jerome. *Manners and Customs of the Coeur D'Alene Indians*. Moscow, Idaho: Peltier Publications, 1975, p. 25. [133]

Dozier, Jack. "History of the Coeur D'Alene Indians to 1900." M.A. Thesis, University of Idaho, 1962, p. 11. [64]

⁴⁹Dempsey, Hugh A. "Blackfoot," in DeMallie, Raymond J. (editor). *Handbook of North American Indians: History of Indian-White Relations* Vol. 13 Part 1. Washington: Smithsonian Institution, p. 604. [735]

McHugh, Tom (with the assistance of Victoria Hobson). *The Time of the Buffalo*. New York: Alfred A. Knopf, 1972, p. 97. [736]

Ray, Verne F. *Cultural Relations in the Plateau of Northwestern America*. Los Angeles, 1939, pp. 136-137, explained that the acquisition of the horse may have led to the use of fewer earth lodges because of mobility advantages. [146]

⁵⁰McHugh, Tom (with the assistance of Victoria Hobson). *The Time of the Buffalo*. New York: Alfred A. Knopf, 1972, p. 97. [736]

general subsistence practices of the Tribe changed when after they acquired the horse and began to make periodic buffalo-hunting pilgrimages over the Rocky Mountains. As noted above, Teit observed that the Coeur d'Alene went buffalo hunting "after the harvesting of the principal root and berry crops, and after the salmon had been put up."⁵¹

In his economic history of north Idaho, Dallas Eugene Livingston-Little talked about the Coeur d'Alene region, and said

The camas prairies gave the Indians a staple root crop, the forest sheltered game animals, and the streams and lakes provided fish, both salmon and other varieties of trout.⁵²

The first Europeans, traders/trappers and missionaries described the type of subsistence practices of the Coeur d'Alene, as I described in considerable detail in my original report on Coeur d'Alene water use.⁵³ For instance, in 1809 David Thompson reported that when he first met members of the Tribe, they provided him with a "present of dried Salmon and other Fish, with Berries, and the meat of an Antelope."⁵⁴ Three years later, Ross Cox, a trapper with Astor's Pacific Fur Company had an early encounter with the Coeur d'Alene, and later wrote:

The Pointed-hearts, or as the Canadians call them, LES COEURS D'ALENES, (Hearts of Awls), are a small Tribe inhabiting the shores of a lake about fifty miles to the eastward of Spokane House. Their country is tolerably well stocked with beaver, deer, wild-fowl, &c.; and its vegetable productions are similar to those of Spokane. Some of this Tribe occasionally visited our fort at the latter place with furs to barter, and we made a few excursions to their lands. We found them uniformly honest in their traffic; but

⁵¹Teit, James A. "The Coeur d'Alene." In *Forty-Fifth Annual Report of the Bureau of American Ethnology, 1927-1928*, edited by Franz Boas. Washington, D. C.: Government Printing Office, 1930, p. 97. [171]

⁵²Livingston-Little, D. E. "An Economic History of North Idaho, 1800-1900--Part I." *Journal of the West* Vol. II, No. 2 (April 1963): p. 122. [107]

⁵³Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, especially pages 44-71.

⁵⁴Glover, Richard (ed.). *David Thompson's Narrative, 1784-1812*. Toronto: The Champlain Society, 1962, p. 296. [73]

they did not evince the same warmth of friendship for us as the Spokans, and expressed no desire for the establishment of a trading post among them. They are in many respects more savage than their neighbours.⁵⁵

The first Catholic missionaries that worked among the Coeur d'Alene also wrote about the traditional subsistence practices of the Coeur d'Alene. Father Nicolas Point established a mission in Coeur d'Alene territory in 1843. That mission was located near the mouth of the St. Joe River, at a place that came to be known as Mission Point. Father Point described the location as a favorite fishing location of the Tribe, and said,

The Coeur d'Alenes also have their great hunt, but their country, dotted with lakes and interlaced with rivers, abounds in fish no less than in game animals, so they also have their great fishing expeditions. Fishing, like hunting, is done almost the year round. But the great fishing expedition takes place in fall, and the great hunting expedition occurs in the winter.⁵⁶

All the first-hand reports from the Europeans who first came into contact with the Tribe indicated that the Tribe's subsistence consisted of fish, berries, and roots. I am not aware of a single first-hand account that ever mentioned the Coeur d'Alene eating buffalo meat.

Buffalo, however, as noted above, had great value for the hides, which could be used for trade, clothing, coverings for both habitation and sweat lodges, and for other the furnishings used inside the lodges. After the acquisition of the horse it was advantageous to have more mobility and buffalo hide coverings for lodges became more useful.

After the acquisition of the horse, Coeur d'Alene buffalo hunts became regular and

⁵⁵Cox, Ross. "Adventures on the Columbia River." In *California State Library Occasional Papers, Reprint Series No. 26*, Vols. I & II, 1941, pp. 131-132. [45]

⁵⁶Point, Nicholas. *Wilderness Kingdom: Indian Life in the Rocky Mountains, 1840-1847. The Journals and Paintings of Nicholas Point, S. J.* Edited and translated by Joseph P. Donnelly. New York: Holt, Rinehart and Winston, 1967, pp. 174-175. [137]

periodic. Such buffalo hunts were going on in the mid-19th century. Teit reported that tribal members went hunting, "after the harvesting of the principal root and berry crops, and after the salmon had been put up."⁵⁷

As noted above, the Coeur d'Alenes' buffalo-hunting pilgrimages went to the northeast of their aboriginal territory, through Kalispel territory, and into the territory of the Flathead and Blackfoot. The Blackfoot were well-armed and aggressively defended their territory. The Coeur d'Alene reportedly went in large "well-equipped" parties,⁵⁸ and joined groups of other Salishan tribes.⁵⁹ As the Reverend Edmund Cody, reported, in his history of the Coeur d'Alene Mission,⁶⁰

The yearly hunt for the buffalo was accompanied by much fatigue and made at a cost of grave danger or death, or, what was far worse, of capture and torture at the hands of the cruel Blackfeet.

⁵⁷Teit, James A. "The Coeur d'Alene." In *Forty-Fifth Annual Report of the Bureau of American Ethnology, 1927-1928*, edited by Franz Boas. Washington, D. C.: Government Printing Office, 1930, p. 97. [171]

⁵⁸Teit, James A. "The Coeur d'Alene." In *Forty-Fifth Annual Report of the Bureau of American Ethnology, 1927-1928*, edited by Franz Boas. Washington, D. C.: Government Printing Office, 1930, p. 97. [171]

⁵⁹Ray, Verne F. "The Columbia Confederacy: A League of Central Plateau Tribes." In Stanley Diamond, editor, *Culture in History: Essays in Honor of Paul Radin*. Columbia University Press: New York, 1960, p. 773. Ray said that some of the other Salish tribes consciously tried to provoke hostilities with the Blackfoot (pp. 775 and 777). [737]

Josephy, Alvin M., Jr. *The Nez Perce Indians and the Opening of the Northwest*. New Haven: Yale University Press, 1965, p. 30. [97]

Dempsey, Hugh A. "Blackfoot," in DeMallie, Raymond J. (editor). *Handbook of North American Indians: History of Indian-White Relations* Vol. 4. Washington: Smithsonian Institution, pp. 604 and 616-618. [735]

Ruby, Robert H. and John A. Brown. *Half-Sun on the Columbia: A Biography of Chief Moses*. University of Oklahoma Press: Norman, 1965, pp. 5, 8, and 18-19. [738]

Ray, Verne F. "Tribes of the Columbia Confederacy, and the Palus," Plaintiff's Exhibit No. 113, United States court of Claims Docket No. 261-70, *The Confederated Tribes of the Colville Reservation v. The Yakima Tribes of Indians of the Yakima Reservation*, January 1, 1971, p. 13. [739]

⁶⁰Cody, Edmund. *History of the Coeur D'Alene Mission of the Sacred Heart*, Kellogg, Idaho: Edmund R. Cody, 1930, p. 18. [36]

Needless to say, the dangerous excursions into Blackfoot country required that the Coeur d'Alene be mobile and equipped to defend themselves.

As Livingston-Little observed, "The camas prairies gave the Indians a staple root crop, the forest sheltered game animals, and the streams and lakes provided fish..."⁶¹ For these reasons, as Father Joset concluded, the Coeur d'Alene "do not go to seek their food beyond the narrow circle of their valleys."⁶² The Blackfoot were dangerous, the buffalo were on the other side of the Rocky Mountains, and although the buffalo robes were valuable commodities, the Coeur d'Alene had ample sources of subsistence food at home around Coeur d'Alene Lake.

There are a very few first-hand references to Coeur d'Alene participating in buffalo hunts. In October, 1853, Washington Territorial Governor Isaac I. Stevens reported that he encountered a party of sixty Coeur d'Alene on their way to hunt (presumably for buffalo) in Blackfoot country, along with a group of Nez Perce. The Coeur d'Alene said they would return from their hunt in March.⁶³ Buffalo hides, it has been reported, were taken especially in the winter to be "used chiefly for robes, bedding, winter moccasins, and gloves."⁶⁴

Two years later, Stevens reported that he participated in a council with three "principal

⁶¹Livingston-Little, D. E. "An Economic History of North Idaho, 1800-1900--Part I." *Journal of the West* Vol. II, No. 2 (April 1963): p. 122. [107]

⁶²De Smet, Father Pierre Jean. "Missions of the Rocky Mountains." *Annals of the Propagation of the Faith* Vol. 7 (1846): pp. 363, 368-369, and 372-375. [55] Emphasis added.

⁶³Stevens, Gov. Isaac Ingalls. *Narrative and Final Report of Explorations for a Route for a Pacific Railroad*, "Reports of Explorations and Surveys, to Ascertain the Most Practicable and Economical Route for a Railroad from the Mississippi River to the Pacific Ocean," Vol. XII, Book I. Washington: Thomas H. Ford, Printer, 1860, pp. 131-132. [168]

Livingston-Little, D. E. "An Economic History of North Idaho, 1800-1900--Part I." *Journal of the West* Vol. II, No. 2 (April 1963): p. 127, reported that even the Nez Perce, although they led annual expeditions to Blackfoot country to hunt buffalo, "depended on camas and salmon for the bulk of their dietary needs." [107]

⁶⁴McHugh, Tom (with the assistance of Victoria Hobson). *The Time of the Buffalo*. New York: Alfred A. Knopf, 1972, p. 97. [736]

Chiefs” of the Coeur d’Alene Tribe. The Coeur d’Alene leaders rejected Stevens’ proposal of sending a Coeur d’Alene delegation to meet with the Blackfoot because “a few of their people went to the Buffalo hunt, and besides they were afraid to go to the Council. The Blackfeet would kill them.” Later, on his way back over the Rocky Mountains, Stevens said a “considerable party of Coeur d’Alenes had crossed the mountains some two weeks before us...”⁶⁵

Between 1859 and 1862 Captain John Mullan led a military expedition that constructed a road through Coeur d’Alene territory. Later, Mullan produced extensive reports published by Congress and also published a popular guide intended to encourage miners, emigrants and travelers to use the road. He described the Coeur d’Alene Tribe in the guide, saying they lived along the Coeur d’Alene and St. Joe Rivers. Mullan also reported that the Coeur d’Alene went on buffalo hunts into Blackfoot country. “They own houses, cattle, and canoes, and with the Spokanes and Nez Percés often cross the mountains in quest of buffalo.” However, he actually did not say they in any way subsisted on the buffalo they hunted. In fact, he continued, “They live by hunting, fishing and cultivating the soil.” While he did not give any indication of the Coeur d’Alene subsisting on buffalo meat, he did say that they lived “mostly in skin lodges,” probably an indication of the use of buffalo hides for their tipis.⁶⁶

Between the time Governor Stevens first met the Coeur d’Alene and the time the reservation was established in 1873, the herds of buffalo were dramatically decreased on the Plains, and, in fact, almost eliminated. Buffalo hunting became the rage as a “sporting” event in

⁶⁵Stevens, Gov. Isaac Ingalls. *Journal of Operations of Governor Isaac Ingalls Stevens of Washington Territory in 1855* (Edward J. Kowrach, ed.). Fairfield, Washington: Ye Galleon Press, 1978, pp. 38-41. [167]

⁶⁶Mullan, Captain John. *Miners and Travelers' Guide to Oregon, Washington, Idaho, Montana, Wyoming, and Colorado, Via the Missouri and Columbia Rivers*. Fairfield, Washington: Ye Galleon Press, 1991 (reprint, originally published 1865), p. 42. [118]

the 1850s, prompting elaborately-outfitted expeditions by wealthy Europeans. Hunting guides like "Buffalo Bill Cody" took groups of White hunters into the Plains in the 1860s. Then, as European tanneries learned how to process hides, professional "hidemen" began hunting on the Plains. It was reported that "One dealer's entire supply went to the British army, which considered buffalo leather more flexible and elastic than cowhide, and used it to replace many of the standard articles in a soldier's outfit."⁶⁷

By 1871, the United States began a policy of encouraging the slaughter of the buffalo, in the belief that it would force Plains tribes onto reservations, where there would be the promise of rations.⁶⁸ In 1872 the slaughter of buffalo by White hunters increased, the White hunters taking only the hides and not even bothering with the meat.⁶⁹ Between 1871 and 1873 (the year the Coeur d'Alene Reservation was established), the buffalo herds were nearly completely decimated.

In 1872 and 1873 the Atchison, Topeka and Santa Fe [Railroad] carried east about 424,000 buffalo robes and hides. The Kansas Pacific and Union Pacific each carried as many—in all, about 1,250,000 buffalo skins were carried by the three western railroads.⁷⁰

In 1873 the leader of an English hunting party reached a portion of the Plains where they had hunted buffalo a year earlier, and said,

Where there were myriads of buffalo a year before, there were now myriads of carcasses. The air was foul with a sickening stench,

⁶⁷McHugh, Tom (with the assistance of Victoria Hobson). *The Time of the Buffalo*. New York: Alfred A. Knopf, 1972, p. 253. [736]

⁶⁸Joseph, Alvin M., Jr. *The Indian Heritage of America*. New York: Alfred A. Knopf, 1974, p. 339. [96]

⁶⁹Lamar, Howard R. *The New Encyclopedia of the American West*. Yale University Press: New Haven & London, 1998, p. 140. By 1872 more than one half million buffalo had been slaughtered for their hides alone. [740]

⁷⁰Branch, E. Douglas. *The Hunting of the Buffalo*. New York and London: D. Appleton and Company, 1929, p. 169. [19]

and the vast plain, which only a short twelvemonth ago teemed with animal life, was a dead, solitary, putrid desert.⁷¹

At the same time as the buffalo herds were being eliminated, the nation faced a severe economic depression. The Panic of 1873 turned into a depression that lasted for years and cost many workers their entire livelihoods. The Panic of 1873 was known as the "Great Depression" until the Crash of 1929 led to the "Great Depression" of the 1930s.⁷² The worldwide economic depression of 1873 also increased a focus on non-Indian buffalo hunting.⁷³ This was at the same time, 1872-1873, that federal Indian policy increasingly focused on opening up Indian hunting grounds and reducing tribal aboriginal territory in order to encourage more White settlement.⁷⁴ In the face of all this evidence, Dr. Stephen Wee, in his report for the State of Idaho, has expounded the highly speculative and completely revisionist theory that the Coeur d'Alene Tribe gave up its traditional subsistence patterns when it began hunting buffalo, which, according to Dr. Wee, the Tribe continued until such time as the buffalo were gone and the people were forced to turn to agriculture. The history of the Tribe's relationship with the buffalo is provided above, but it is instructive to look at just what Dr. Wee uses upon which to base his unusual conclusions.

⁷¹Branch, E. Douglas. *The Hunting of the Buffalo*. New York and London: D. Appleton and Company, 1929, p. 170. [19]

⁷²Joseph, Alvin M., Jr. *On the Hill: A History of the American Congress*. New York: Simon and Schuster, 1975, especially p. 241. [741]

Miller, James and John Thompson. *Almanac of American History*. Washington, D. C.: National Geographic, 2005, p. 200. [742]

Grun, Bernard. *The Timetables of History: A Horizontal Linkage of People and Events*. New York: Simon and Schuster, 1975, p. 434. [743]

⁷³McHugh, Tom (with the assistance of Victoria Hobson). *The Time of the Buffalo*. New York: Alfred A. Knopf, 1972, p. 254. See also pp. 262 (photo) and 282. [736]

⁷⁴Hagan, William T. "United States Indian Policies, 1860-1900," *Handbook of North American Indians: History of Indian-White Relations* Vol. 4. Washington: Smithsonian Institution, 1988, pp. 55-57. [77]

First, Dr. Wee includes a number of paragraphs in his report, in which he reaches broad conclusions, but for which he provides no basis of support. Such paragraphs can be found on pages 2, 50, 100, and finally on 166. On a few other pages he provides citations to the following seven works to support his revisionist theory about Coeur d'Alene subsistence. The first six are secondary sources (here listed in alphabetical order). The seventh, Mullan, I have already described, and is a primary source.

1. Chalfant, Stuart A. "Ethnological Field Investigation and Analysis of Historical Material Relative to Coeur d'Alene Indian Aboriginal Distribution, "Defendant's Exhibit #13, Defendant's Exhibits 01-39, Box 234, Docket #81, Case Files, 1946-1983, Records of the Indian Claims Commission, Record Group 279, National Archives, DC.

Dr. Wee suggests that Chalfant supports his theory of buffalo meat changing Coeur d'Alene subsistence activities. In fact, Chalfant emphasizes fishing and says subsistence patterns of the Tribe "remained unchanged."

Stuart A. Chalfant testified for the United States against a number tribes in cases brought before the United States Indian Claims Commission. Chalfant cited and then commented on primary sources. The work of Chalfant is a secondary source and his conclusions were frequently rejected by the Claims Commission.⁷⁵ Chalfant testified against the Palus, Spokane, Columbia, Chelan, Entiat, and Coeur d'Alene Tribes, as well as other tribes. Dr. Wee cites a

⁷⁵For instance, see:

Chalfant, Stuart A. "Material Relative to Aboriginal Land Use and Occupancy by the Wenatchi Salish of Central Washington," (Dockets 224 as amended and 161) *Interior Salish and Eastern Washington Indians IV*. Garland Publishing Inc.: New York, 1974; p. 371, in which Chalfant questioned the political organization of the Wenatchi Tribe, a claim that was rejected by the Claims Commission. [777]

United States. Indian Claims Commission. "Opinion," Docket No. 161, July 29, 1963, *Interior Salish and Eastern Washington Indians IV*. Garland Publishing Inc.: New York, 1974; pp. 704-706 (12 Ind. Cl. Comm. 377-379). [778]

section of Chalfant's work on the Coeur d'Alene, in which Chalfant said:

Much of the traditional subsistence pattern, the yearly rounds, the hunting areas and fishing sites, the camas grounds, remained unchanged. And it is these areas which determine the lands held in common by all of the Coeur d'Alene and define the extent of their aboriginal territory. This is not to be misconstrued as implying that they never ranged beyond [sic, beyond] these basic subsistence areas.⁷⁶

Chalfant goes on to identify the principal "Fishing Stations," and says, for instance, that "Coeur d'Alene lake, particularly at Chatcolet, was a favorite winter fishing place."⁷⁷

This source does not support Dr. Wee's thesis.

2. Frey, Rodney. *Landscape Traveled by Coyote and Crane: The World of the Schitsu'umsh (Coeur d'Alene Indians)*. Seattle: University of Washington Press, 2001.

Rodney Frey is an anthropologist who has collected and published a number of works which include oral narratives of Coeur d'Alene elders. His work does not support the theory presented by Dr. Wee. Dr. Wee cites Frey to support his basic conclusions regarding Coeur d'Alene buffalo-hunting practices. However, Dr. Wee does not analyze the materials presented by Frey in the above work. Dr. Frey has been careful to point out that when presenting oral narratives, they should not necessarily be assumed to be accurate historically. Dr. Frey said,

Oral literature is a particular form of literature, involving universal elements of drama, (for example, elaborate plot, rich characters such as heroes and buffoons, unexpected twists and suspense)....

⁷⁶Chalfant, Stuart A. "Ethnological Field Investigation and Analysis of Historical Material Relative to Coeur d'Alene Indian Aboriginal Distribution, "Defendant's Exhibit #13, Defendant's Exhibits 01-39, Box 234, Docket #81, Case Files, 1946-1983, Records of the Indian Claims Commission, Record Group 279, National Archives, DC., p. 146. [744]

⁷⁷Chalfant, Stuart A. "Ethnological Field Investigation and Analysis of Historical Material Relative to Coeur d'Alene Indian Aboriginal Distribution, "Defendant's Exhibit #13, Defendant's Exhibits 01-39, Box 234, Docket #81, Case Files, 1946-1983, Records of the Indian Claims Commission, Record Group 279, National Archives, DC., p. 148. [744]

In contrast, oral history is, above all, history...⁷⁸

In the work cited by Dr. Wee, Frey calls the stories he presents "teachings." In the section cited by Dr. Wee, Frey first reviews the work of Teit, who pointed out that buffalo hunts took place after the Coeur d'Alene were through harvesting root and berry crops and storing salmon for future use. Frey also pointed out that the acquisition of the horse allowed the use of hide-covered lodges, or tipis. Although Frey is entirely a secondary source, he did provide a quote from Coeur d'Alene tribal elder Lawrence Aripa, who said,

They didn't go to the buffalo country just to hunt. They had plenty [of deer and elk to hunt] right here. They'd learn about different things, pick up things along the way. And they'd say, "The children would leave as children, and they'd come back as grown ups."⁷⁹

Frey, a secondary source, asserted that the buffalo hunts did augment the foods of the Coeur d'Alene, but that "berries continued to be gathered, deer hunted, and fish caught..."⁸⁰ Frey provides no first-hand evidence relating to Coeur d'Alene buffalo hunting.

3. Harms, Su, ed. *The Coeur D'Alene Teepee* Vols. I-III (1937-1940). Plummer, Idaho: Serento Press, 1980.

In the late 1930s employees at the Catholic mission school at Desmet produced a mimeographed "newspaper" which included interviews with tribal elders. In 1980 Sue Harms, assisted by Father Cornelius Byrne of the Sacred Heart Mission, reprinted and published a series

⁷⁸Frey, Rodney (editor). *Stories That Make the World: Oral literature of the Indian Peoples of the Inland Northwest As Told by Lawrence Aripa, Tom Yellowtail, and Other Elders*. Norman, Oklahoma: University of Oklahoma Press, 1995, p. 10. [745]

⁷⁹Frey, Rodney. *Landscape Traveled by Coyote and Crane: The World of the Schitsu'umsh (Coeur d'Alene Indians)*. Seattle: University of Washington Press, 2001, p. 53, brackets inserted by Frey.

⁸⁰Frey, Rodney. *Landscape Traveled by Coyote and Crane: The World of the Schitsu'umsh (Coeur d'Alene Indians)*. Seattle: University of Washington Press, 2001, p. 53.

of issues for *The Coeur d'Alene Teepee*. These articles, originally printed in the mission newspaper between 1937 and 1940, included an article called "An Indian Herodotus, Chief Peter Moctelme (from the Memoirs of Basil Peone)," which is cited extensively by Dr. Wee. In my initial report, I have described what Mr. Peone said he learned from his elders.⁸¹ Dr. Wee relies on this article in the school newspaper for two quotes, one in which Father Diomedi was said to have warned (I pointed out in my report that it was more like an observation than a prediction) that the buffalo would soon be gone. I also quoted the reply of one Coeur d'Alene to the priest. The Coeur d'Alene said,

We already have a permanent home: the pure fresh waters of the Coeur d'Alene River filled with fish, the mountains full of game, lakes with an abundant supply of water potatoes, nearby timber with all the wood we need!⁸²

The Peone article reprinted by Harms and cited by Dr. Wee provides no first-hand evidence regarding buffalo-hunting by the Coeur d'Alene.

4. Palmer, Gary B. "Indian Pioneers: The Settlement of Nilukhwalqw (Upper Hangman Creek, Idaho) by the Schitsu'umsh (Coeur d'Alene Indians)," *Oregon Historical Quarterly*, spring, 2001 (Volume 102, No. 1), pp. 22-47.

Dr. Palmer is an anthropologist who has conducted fieldwork at Coeur d'Alene and published quite a number of articles relating to the Tribe, many of which I cited in the Coeur d'Alene lakebed case.⁸³ I also published an article co-authored by Dr. Palmer and Coeur

⁸¹Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, pp. 14-15.

⁸²Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, p. 163.

⁸³See Hart Coeur d'Alene lakebed exhibits numbers 124, 125, 126, 127, 128, 129, 783, 1147, 1167, 1168, 1169, 1171, 1179 and 1184.

d'Alene priest Thomas E. Connolly (who also co-edited *Saga of the Coeur d'Alene Indians*).⁸⁴

Palmer's work is a secondary source that provides excellent analysis of other sources relating to Coeur d'Alene history and culture. Dr. Wee cites three pages from this article by Dr. Palmer (which is drawn from an earlier paper he presented in 1981 and which I cited in the lakebed case).⁸⁵ The pages cited by Dr. Wee all relate to the same 1876 incident reported in the previously-cited Peone account. Dr. Palmer repeats the assertion of Father Diomedi that the last Coeur d'Alene buffalo hunt was in 1876.⁸⁶ Dr. Palmer also analyzed the arguments made by Father Diomedi and the Coeur d'Alene regarding moving to the Desmet area. What is notable about Dr. Palmer's analysis, and which is not reported by Dr. Wee, is Dr. Palmer's description of the Coeur d'Alene's description of their own territory around Lake Coeur d'Alene. What Dr. Palmer said was

What is perhaps most significant about the Moctelme-Peone version is the enumeration of all the edible things in the environment, including big game, birds, fish, and camas. Every significant domain is mentioned: water, land, air, plant and animal, fish, fowl, and mammal. The Indian version also shows anxiety over the laws of the whites, perhaps a source of greater worry to the Coeur d'Alene than to Father Diomedi.⁸⁷

Although Palmer's work is very valuable, it does not provide Dr. Wee with any first-hand

⁸⁴Connolly, Thomas E., and Gary B. Palmer. "Making Traditional Values Work in the 20th Century." In *Wealth and Trust: a Lesson from the American Indian*, edited by E. Richard Hart, pp. 8-10. Sun Valley, Idaho: Institute of the North American West, 1982. [40]

⁸⁵Palmer, Gary B. "Indian Pioneers: Migration to Ni'lokhwalqw (DeSmet)," unpublished paper presented at 80th annual meeting, American Anthropological Association, December, 1981. [1147]

⁸⁶Palmer, Gary B. "Indian Pioneers: The Settlement of Nilukhwalqw (Upper Hangman Creek, Idaho) by the Schitsu'umsh (Coeur d'Alene Indians)," *Oregon Historical Quarterly*, spring, 2001 (Volume 102, No. 1), p. 27. [746]

⁸⁷Palmer, Gary B. "Indian Pioneers: The Settlement of Nilukhwalqw (Upper Hangman Creek, Idaho) by the Schitsu'umsh (Coeur d'Alene Indians)," *Oregon Historical Quarterly*, spring, 2001 (Volume 102, No. 1), p. 32. See also Palmer's notes on the Harms work (pp. 46-47, notes 26-29). [746]

accounts of Coeur d'Alene buffalo-hunting.

5. Teit, James A. "The Coeur d'Alene." In *Forty-Fifth Annual Report of the Bureau of American Ethnology, 1927-1928*, edited by Franz Boas. Washington, D. C.: Government Printing Office, 1930, pp. 23-396.

As noted above, Ethnologist James A. Teit conducted field work among the Coeur d'Alene in the first decade of the 20th century. On page 17 of his report, Dr. Wee cites Teit to support his conclusions regarding the change in Coeur d'Alene subsistence patterns. Although the citation Dr. Wee provides includes all pages of the Teit report, the quotation he uses in the paragraph in question actually come from page 97 of Teit's report. Teit provided an accurate and complete description of Coeur d'Alene subsistence practices, as Teit was able to document them with his field work in the early 20th century. I used Teit extensively and a review of his work can be found in my initial report.⁸⁸

Teit is probably the single most important source relating to Coeur d'Alene traditional subsistence patterns, and his work contradicts Dr. Wee's assertion that buffalo-hunting by the Coeur d'Alene resulted in the abandonment of their traditional subsistence patterns.

6. Woodworth-Ney, Laura. *Mapping Identity: The Creation of the Coeur d'Alene Indian Reservation, 1805-1902*. Boulder, Colorado: University Press of Colorado, 2004.

Woodworth-Ney is a secondary source. She analyzed existing primary sources in

⁸⁸Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015. Especially see pp. 2-47.

Teit, James A. "The Coeur d'Alene." In *Forty-Fifth Annual Report of the Bureau of American Ethnology, 1927-1928*, edited by Franz Boas. Washington, D. C.: Government Printing Office, 1930, pp. 23-396. [171]

drafting her book. Her description of Coeur d'Alene subsistence practices in their aboriginal territory is consistent with what I provided in my initial report.⁸⁹ Citing other sources (including *Saga of the Coeur d'Alene Indians*), she reported that the Tribe began buffalo hunts in the 18th century and continued them until the 1870s. Woodworth-Ney said that acquisition of the horse allowed the Tribe to expand their root-digging grounds and said that the Tribe joined expeditions of "Spokane, Nez Perce, Kalispel, and Kootenai tribes in crossing the Rocky Mountains into Flathead territory for an annual buffalo hunt." She asserted that people on these expeditions came back with meat and hides (although I am unaware of any first-hand accounts describing meat being brought back). She continued that the hunts complemented traditional subsistence activities and that "women maintained their important role within the food cycle."⁹⁰

Dr. Woodworth-Ney's work is a secondary source and does not provide evidence, first-hand or otherwise, to support the assertion of Dr. Wee that buffalo-hunting supplanted traditional subsistence practices of the Coeur d'Alene.

The final source cited by Dr. Wee to support his revisionist theory regarding buffalo and the Coeur d'Alene is Mullan. Writing in the early 1860s, Mullan described Indians found along the road he constructed between 1859 and 1862, including the Coeur d'Alene. Mullan not only produced extensive reports that were published by Congress, he published a popular guide, intended to encourage miners and travelers to use the road to move west.⁹¹ The section

⁸⁹Woodworth-Ney, Laura. *Mapping Identity: The Creation of the Coeur d'Alene Indian Reservation, 1805-1902*. Boulder, Colorado: University Press of Colorado, 2004, pp. 8-11.

⁹⁰Woodworth-Ney, Laura. *Mapping Identity: The Creation of the Coeur d'Alene Indian Reservation, 1805-1902*. Boulder, Colorado: University Press of Colorado, 2004, p. 14.

⁹¹United States. Congress. Senate. *Report and Map of Capt. John Mullan, United States Army, of his Operations While Engaged in the Construction of a Military Road from Fort Walla Walla, on the Columbia River, to Fort Benton, on the Missouri River*. Sen. Ex. Doc. No. 43.

regarding the Coeur d'Alene is the same in the guide and government publication cited by Dr. Wee. Mullan was the only primary, first-hand account cited by Wee in support his conclusions regarding Coeur d'Alene buffalo hunting. Above, I have discussed in detail what Mullan actually said. As I noted, Mullan said the Coeur d'Alene "Live by hunting, fishing, and cultivating the soil." He said they frequently crossed the Rocky Mountains with Nez Perce and Spokane to hunt buffalo and that they lived in hide-covered lodges.⁹²

At its face the logic of Dr. Wee is questionable. It is also highly speculative and revisionist history unsupported by documentary history, and in fact, without a basis in fact. Not one primary document supports his claims.

In 1876, as I have shown above, when Father Diomedi argued that tribal members should move nearer the mission at Desmet, he claimed that he convinced the Coeur d'Alene that they should cease hunting buffalo because when they were in Blackfoot country in the winter they could die without the benefit of confession, and that when the chiefs were convinced they told him the last year they would hunt would be 1876.⁹³ During the arguments, one Coeur d'Alene responded to Diomedi, arguing against moving from their villages along the lakes and rivers in the heart of their homeland in the 1873 reservation.

We are not like you; you need bread, we have camas; you require

37th Congress, 3rd Session. Washington, D. C.: Government Printing Office, 1863. [209]

United States. Congress. House. *Military Road from Fort Benton to Fort Walla-Walla*. Ex. Doc. No. 44. 36th Congress, 2d Session. Washington, D. C.: Government Printing Office, 1861. [197]

Mullan, Captain John. *Miners and Travelers' Guide to Oregon, Washington, Idaho, Montana, Wyoming, and Colorado, Via the Missouri and Columbia Rivers*. New York: Arno Press, 1973 (originally published 1865). [118]

⁹²Mullan, Captain John. *Miners and Travelers' Guide to Oregon, Washington, Idaho, Montana, Wyoming, and Colorado, Via the Missouri and Columbia Rivers*. Fairfield, Washington: Ye Galleon Press, 1991 (reprint, originally published 1865), p. 49. [118]

⁹³Diomedi, Alexander. *Sketches of Indian Life in the Pacific Northwest*. Fairfield, Washington: Ye Galleon Press, 1978 (originally published 1902), pp. 62-63. [60]

good clothing, we are satisfied with deer skins and buffalo robes.
We can live comfortably on what you would think poor and
wretched.⁹⁴

Diomedi was not predicting the demise of the buffalo, but responding with the knowledge of government policy and activity that he knew was occurring on the Plains. By 1876, the Coeur d'Alene would not have the buffalo to augment their subsistence practices and to provide them with robes and hides to cover their tipis. In fact, as he knew, they would have to rely completely on the natural resources found within the boundaries of the reservation established for them in 1873.

⁹⁴Diomedi, Alexander. *Sketches of Indian Life in the Pacific Northwest*. Fairfield, Washington: Ye Galleon Press, 1978 (originally published 1902), p. 69. [60]

IV. Early Coeur d'Alene Agriculture

Between 1845 and 1873 there are several documentary allusions to small plots of cultivation found near the Catholic Mission, which was often cited as the location of limited tribal agriculture. These small agricultural gardens were located first near the St. Joe River where water could be diverted and then near the Coeur d'Alene River where water could be diverted to the Cataldo Mission. It was highly unusual for the government agents to see any agricultural activity among the Indians on the Plateau, and from their point of view it was quite encouraging to see these gardens. But in real terms, the amount of land actually under cultivation was very small. An analysis of the original mission site on the St. Joe River (ca. 1846) shows an agricultural field of possibly thirty acres. A drawing by Father De Smet in 1870 of the mission at the Cataldo site also shows a fenced field of only a few dozen acres (see Figures 26 and 27 in my initial report).⁹⁵ While the Tribe was engaged in some agriculture by 1873, it amounted to small garden plots and was not sufficient to maintain the Tribe's members. The only way the Tribe could survive in 1873 was through continued traditional hunting, fishing, and gathering practices, all of which revolved around the Lakes, rivers, and other water sources within the Coeur d'Alene's territory.

In fact, if the actual citations used by Dr. Wee to support extensive Coeur d'Alene

⁹⁵Pentland, Pat Allen. "The Illfated Mission: The Sacred Heart Mission on the St. Joe River, 1842-46," [thesis] presented to Gonzaga History Department, May 1973, p. 42. [699]

De Smet, [Father Pierre-Jean]. "Another Letter from Father De Smet," *Letters and Notices*, 1871, Sacred Heart Collection, Box 1, Folder 17, Special Collections, Gonzaga University. [705]

Chittenden, Hiram Martin and Alfred Talbot Richardson (eds.). *Life, Letters and Travels of Father Pierre-Jean De Smet, J. J., 1801-1873*. Four Volumes. New York: Francis P. Harper, 1905, Volume II, p. 571 and Volume III, p. 994, provides quotes of DeSmet talking about how missions should be located so as to take advantage of "rivulets" that could be diverted for irrigation. [747]

agriculture prior to 1873 are examined it becomes very apparent that there was insufficient agriculture to partially support even a small portion of the Tribe. On page 101 of his report, Dr. Wee cites three sources to support extensive Coeur d'Alene agricultural activity prior to 1873. The exhibit provided by Dr. Wee to support footnote 255 lists thirty (30) acres under cultivation by the Coeur d'Alene in 1870.⁹⁶ The citation Dr. Wee lists for his footnote 256 does not provide any indication of acreage cultivated.⁹⁷ Dr. Wee then states that in 1872 there is evidence to support a total of twenty (20) acres of cultivation by the Coeur d'Alenes. The exhibits provided by Dr. Wee do not match the citations provided in his footnote 257, but at any rate it is important to note that Dr. Wee suggests the total cultivation drops from thirty (30) to twenty (20) acres between 1870 and 1872.

It is obviously impossible that even under the best circumstances such small acreage could not provide subsistence for the Tribe. It does not take an expert to know that humans cannot live upon just bread. Protein and other nutrients are required for sustained human life and for physical activity.⁹⁸ Living on bread alone would quickly lead to muscle loss in the body and eventual malnutrition and scurvy. Even if a few families were getting a few loaves of bread a

⁹⁶William Park Winans, "Statistical Return of Farming &c of the Indians parties to no treaty, East of Cascade Mountains, 1870," 60-61; and William P. Winans to Ross, August 1, 1870, 45. ff. 34 Cage 147, Letterbook "Copies of Correspondence of W.P. Winans," Box 147/4, Cage 147, William Park Winans Papers, 1836-1915, Manuscripts, Archives, and Special Collections, Washington State University, Pullman, WA [hereafter MASC WSU].

⁹⁷J.M. Cataldo, S.J. to Rev. Father, July 15, 1872, 165-166. ff. 4:12 Cataldo, Fr. Joe, Correspondence, To Fr. DeSmet, 1871-1872, published in Letters and Notices, Box 4, Correspondence, Personal Papers of Cataldo, Joseph, JOPA GSC.

⁹⁸Federal Drug Administration. Guidance for Industry: A Food Labeling Guide (14. Appendix F: Calculate the Percent Daily Value for the Appropriate Nutrients). Guidance for Industry: A Food Labeling Guide (14. Appendix F: Calculate the Percent Daily Value for the Appropriate Nutrients). The following web site last accessed May 20, 2016:

<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm064928.htm> [748]

month from the wheat produced on thirty acres of land, in a relatively short time, without the balanced diet provided by traditional subsistence foods, those families would not survive.

In constructing his theory on Coeur d'Alene agriculture, Dr. Wee has also relied heavily⁹⁹ on *Saga of the Coeur D'Alene Indians: An Account of Chief Joseph Seltice*,¹⁰⁰ edited by Kowrach and Connolly, and almost exclusively in its erroneous conclusions regarding the dates of the tribe's conversion to agriculture. This work, my exhibit [101], although an interesting family history, does not provide conclusive evidence on any matter in the present case. During the lakebed trial I explained that the details most suspect in oral histories are dates, noting that it requires careful first-hand questioning of a trained ethnohistorian to establish correct dates from an informant during fieldwork. In a work such as this, although corroboratory details may be helpful, anomalous conclusions must be questioned, and atypical dates and uncorroborated dates are especially suspect. I cited this exhibit in the lakebed case, and in the current matter, only to provide corroboration of other sources and to provide corroborative detail.¹⁰¹ None of my substantive conclusions are based solely on this work.

Dr. Wee seems to use this work to substantiate his claim that the Coeur d'Alene were

⁹⁹Wee, Stephen. "Establishment of the Coeur d'Alene Reservation and the Transformation of Coeur d'Alene Land and Water Use, from Contact through Allotment." Submitted to: Office of Attorney General, State of Idaho. Submitted by: JRP Historical Consulting, LLC; February 25, 2016, pp. 7, 9, 11, 12, 21, 23-25, 34, 46, 50, 84-85, 102-104, and 106, citing the following pages from *Saga...*, 19, 24-25, 31, 37, 56, 60-61, 65-69, 70-72, 82-84, 86-87, 133, 158-161, 174-179, 181, 183-184, 186-187, 191, 204-205, 215, 229-239, 241-244, 253-255, 315-316, 358-360.

¹⁰⁰Kowrach, Edward J., and Thomas E. Connolly (eds.) *Saga of the Coeur D'Alene Indians: An Account of Chief Joseph Seltice*. Fairfield, Washington: Ye Galleon Press, 1990. [101]

¹⁰¹Hart, E. Richard. "The Coeur d'Alene Tribe's Claim to Lake Coeur d'Alene," 3 Vols., July 15, 1996, pp. 18, 20, 30, 32, 33, 35, 36, 81, 89, 90, 99, 102, 108, 109, 110, 134, 139, 143, 234, and 269.

Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, pp. 333-336.

largely agrarian before the establishment of the 1873 reservation. However, this work cannot be used to substantiate such a claim. Although Andrew Seltice, prior to his death in 1902, was reported to have dictated reminiscences to his son Peter Seltice, the notes from Peter Seltice have apparently not survived. After Peter died in 1909, Joseph Seltice received the materials. Later Joseph used the materials to write two different versions of his father's history. One of these manuscripts forms the basis for the *Saga*... Some of the materials were obviously written by either Peter or Joseph Seltice since the incidents described occurred after the Andrew Seltice's death. In 1949 these manuscripts were passed on to Joseph Seltice's daughter. His daughter, Marceline Seltice Kevis, Andrew Seltice's granddaughter, sometime after 1949 added details dealing with the history following 1878, enlisting the help of a local high school teacher. In 1983 the manuscripts were given to Father Edward J. Kowrach, who added sections of his own. The final editing was carried out by Father Thomas E. Connolly. Over a period of nearly a century a total of at least six people had a hand in writing this manuscript. None of the material was written by Andrew Seltice and none was even written in the 19th century.¹⁰² Obviously, any use of this manuscript to document 19th century historical details must be done with great care. Indeed, the book's publisher Glenn Adams said this was the "worst manuscript he ever saw." During the lakebed trial Father Connolly, the final editor of the work, explained that dates in the book were unreliable, especially those dealing with the tribe's transition to agriculture.¹⁰³

It appears that Dr. Wee misused *Saga of the Coeur d'Alene* as a source in order to reach some of his central conclusions, especially those dealing with the dates of the Coeur d'Alene

¹⁰²Kowrach, Edward J., and Thomas E. Connolly (eds.) *Saga of the Coeur D'Alene Indians: An Account of Chief Joseph Seltice*. Fairfield, Washington: Ye Galleon Press, 1990, pp. 9-10. [101]

¹⁰³*Idaho v. United States et Al.*, Trial Transcript, December 11, 1997, Federal District Court; Spokane, Washington, pp. 1527-1532. [749]

Tribe's conversion agriculture.

Dry-farming is an agricultural technique of producing crops without the use of irrigation on lands with little rainfall or irrigation potential. In the Palouse area of the current State of Washington (and a sliver of Idaho) where dry-farming is practiced, it typically involves the commercial production of winter wheat. The earliest recorded dry-farming evidently took place on the Russian Steppes, but there is no evidence of dry-farming on or adjacent to the Coeur d'Alene Reservation prior to the establishment of the 1873 reservation.

Although a few early visitors to the Palouse area indicated the possibility of dry-farmed wheat in the area,¹⁰⁴ the earliest records of any dry-farming on the Columbia Plateau come in the early 1860s, in the area of Walla Walla.¹⁰⁵ Other sources indicate that the first western United States dry farm experiment occurred to the south of Walla Walla, in Utah, where Mormon pioneers, like all other emigrants to what would be the Plateau and Great Basin in the western United States, had concluded that without irrigation, agriculture was impossible. In 1863 a group of Scandinavian immigrants, unable to use the alkali water of Malad Creek,

in desperation...plowed up the sagebrush land, planted grain, and awaited results. To their surprise, fair yields of grain were obtained.¹⁰⁶

¹⁰⁴Granatstein, David. *Dryland Farming in the Northwestern United States: A Nontechnical Overview*. MISC0162, Washington State University Cooperative Extension, 1992, p. 5, reported that Hudson's Bay Company employees at Fort Colville planted wheat in 1826, that Territorial Governor Isaac I. Stevens compared the Columbia Basin prairies to the Russian Steppes in the 1850s, and missionary Henry Spaulding speculated that wheat could be grown in the Palouse in 1846, and was said to have raised some wheat at Lapwai, Idaho, without irrigation. [750]

¹⁰⁵Duffin, Andrew P. *Plowed Under: Agriculture and Environment in the Palouse*. Seattle and London: University of Washington Press, 2007, pp. 34-38. Duffin pointed out that the Jesuit missionaries did not establish "a base in the Palouse" (pp. 34-35). [751]

Duffin, Andrew Philip. "Fill the Earth and Subdue It: The Environmental Consequences of Intensive Agriculture in the Palouse," PhD dissertation, Washington State University, Department of History, 2003, p. 49.

¹⁰⁶Widtsoe, A. John. *Dry-Farming: A System of Agriculture for Countries Under Low*

The dry-farming first attempted in the Walla Walla area in the 1860s resulted in yields of approximately 33 bushels per acre. As the amount of acreage planted in wheat expanded, the price dropped dramatically, to about thirty cents per bushel.¹⁰⁷ When the Walla-to-Wallula railroad was completed in 1875, commercial agriculture in the Walla Walla area became a possibility. Fairly extensive crops began to be planted in the Walla Walla region of the Palouse in the late 1870s and the planting of fields increased to new areas.¹⁰⁸ Some settlers the Willamette Valley arrived in the Walla Walla area to attempt dry-farming in 1870s, but a much larger number of immigrants began arriving from Utah to settle in the Snake River drainage (although most were drawn by the possibility of irrigated agriculture).¹⁰⁹ Agriculture in what would be Idaho was disrupted by a prolonged drought in the 1870s.¹¹⁰

The real boom in the Walla Walla dry-farming community came in the 1880s when the

Rainfall. Boston, Massachusetts: IndyPublish.com, 2008 (originally published 1911), p. 149. [752]

“The History of Dry-Farming [Chapter XVII],” <http://soilandhealth.org/wp-content/uploads/01aglibrary/010102/0101217.html>. Last accessed April 12, 2016. [753]

“Dry Farming in Utah,” Utah History Encyclopedia. http://www.uen.org/utah_history_encyclopedia/d/DRY_FARMING.html. Last accessed April 12, 2016. [754]

¹⁰⁷Granatstein, David. *Dryland Farming in the Northwestern United States: A Nontechnical Overview*. MISC0162, Washington State University Cooperative Extension, 1992, p. 5. [750]

¹⁰⁸Duffin, Andrew Philip. “Fill the Earth and Subdue It: The Environmental Consequences of Intensive Agriculture in the Palouse,” PhD dissertation; Washington State University, Department of History, 2003, p. 52.

Granatstein, David. *Dryland Farming in the Northwestern United States: A Nontechnical Overview*. MISC0162, Washington State University Cooperative Extension, 1992, p. 6. [750]

¹⁰⁹Granatstein, David. *Dryland Farming in the Northwestern United States: A Nontechnical Overview*. MISC0162, Washington State University Cooperative Extension, 1992, p. 6. [750]

Fiege, Mark. *Irrigated Eden: The Making of an Agricultural Landscape in the American West*. Seattle and London: University of Washington Press, 1999, pp. 32-33. [755]

¹¹⁰Fiege, Mark. *Irrigated Eden: The Making of an Agricultural Landscape in the American West*. Seattle and London: University of Washington Press, 1999, p. 24. [755]

transcontinental railroad finally reached the area. Eventually, during the same decade, a rail spur reached Spokane, Washington, which then began to be a hub for agricultural activity.¹¹¹ During the same decade erosion caused by dry-farm plowing became a serious issue. As a result a “summer fallow” routine was established in many areas. By the 1890s the average yields for wheat in Washington was around 16 bushels per acre.¹¹²

In 1891 the Washington State Agricultural College Experiment Station and School of Science was founded in Pullman. The following year an agricultural experiment station was established in Moscow, Idaho.¹¹³ Dry-farming experiments were conducted in the Columbia Basin in the late 1800s, but according to John A. Widtsoe, and by 1895 or 1896 summer fallow practices began in the Columbia Basin. However, Widtsoe concluded:

Really successful and extensive dry-farming in the Columbia Basin began about 1897.¹¹⁴

But it was not until the early 20th century that dry-farming gained major notoriety, due to

¹¹¹Duffin, Andrew Philip. “Fill the Earth and Subdue It: The Environmental Consequences of Intensive Agriculture in the Palouse,” PhD dissertation; Washington State University, Department of History, 2003, pp. 55-56.

Granatstein, David. *Dryland Farming in the Northwestern United States: A Nontechnical Overview*. MISC0162, Washington State University Cooperative Extension, 1992, p. 6. The principal wheat variety during the period, according to Granatstein, as “Little Club,” introduced from California. [750]

¹¹²Duffin, Andrew P. *Plowed Under: Agriculture and Environment in the Palouse*. Seattle and London: University of Washington Press, 2007, pp. 49 and 51 [751].

¹¹³Granatstein, David. *Dryland Farming in the Northwestern United States: A Nontechnical Overview*. MISC0162, Washington State University Cooperative Extension, 1992, p. 6. [750]

Duffin, Andrew Philip. “Fill the Earth and Subdue It: The Environmental Consequences of Intensive Agriculture in the Palouse,” PhD dissertation; Washington State University, Department of History, 2003, p. 60.

¹¹⁴Widtsoe, A. John. *Dry-Farming: A System of Agriculture for Countries Under Low Rainfall*. Boston, Massachusetts: IndyPublish.com, 2008 (originally published 1911), p. 151. More extensive dry-farming experiments were conducted in California and the Great Plains in the latter 1800s. [752]

the work of several men, including John A. Widtsoe and Hardy Webster Campbell. Campbell had begun his study of dry-farming in 1879 and in 1902 published *Campbell's 1902 Soil Culture Manual*, and became known for the Campbell System of farming.¹¹⁵ John A. Widtsoe studied the dry-farming by Utah settlers and published his study, *Dry-Farming: A System of Agriculture for Countries Under Low Rainfall*, in 1911. Writing in 1910, Widtsoe said that until recently dry-farming had not been considered as a potential methodology for growing crops in low-rainfall environments. However, Widtsoe believed, that by 1910, successful dry-farming was now possible.

Dry-farming, as at present understood, is the profitable production of useful crops, without irrigation, lands that receive annually a rainfall of 20 inches or less.¹¹⁶

Partly as a result of the work of Widtsoe and Campbell, the first Dry-Farming Congress took place in Denver, Colorado in 1907. The second, in 1908, was in Salt Lake City, Utah. The third took place in Cheyenne, Wyoming, in 1909 and the fourth took place in Billings, Montana later in the same year, 1909.¹¹⁷ The fifth Dry Farming Congress was held in Spokane, Washington, in 1910.¹¹⁸

¹¹⁵Campbell, H. W. *Campbell's 1902 Soil Culture Manual: Explains how the Rain Waters are Stored and Conserved in the Soil; how Moisture Moves in the Soil by Capillary Attraction, Percolation and Evaporation, and how these conditions may be regulated by cultivation*. Holdrege, Nebraska: H. W. Campbell, 1902. [756]

Encyclopedia of the Great Plains. "Campbell, Hardy Webster (1850-1937)," on line at <http://plainshumanities.unl.edu/encyclopedia/doc/egp.ag.016.xml>. Last accessed April 12, 2016. [757]

¹¹⁶Widtsoe, A. John. *Dry-Farming: A System of Agriculture for Countries Under Low Rainfall*. Boston, Massachusetts: IndyPublish.com, 2008 (originally published 1911), pp. I and 1. [752]

¹¹⁷Widtsoe, A. John. *Dry-Farming: A System of Agriculture for Countries Under Low Rainfall*. Boston, Massachusetts: IndyPublish.com, 2008 (originally published 1911), pp. 158-159. [752]

¹¹⁸Granatstein, David. *Dryland Farming in the Northwestern United States: A Nontechnical Overview*. MISC0162, Washington State University Cooperative Extension, 1992,

Idaho became a state in 1890. Even with the expanded interest in dry-farming techniques, in Idaho by the early 1900s irrigation, not dry-farming, was considered the future. In the early 1900s “wheat and other grains constituted a second major crop [after alfalfa] in Idaho’s irrigated landscape,” and

In 1900, Idaho state engineer D. W. Ross envisioned an environment in which the farmer could “laugh at the cloudless skies” because irrigation would allow him to have “the much needed moisture under perfect control.” The *Twin Falls News*, boosting local reclamation projects, concurred. “Irrigation is the science of farming,” the paper announced in 1904. “Rainfall farming is accidental farming.”

That attitude was also seen nationally with the passage of the 1902 National Reclamation Act, which allowed for large new irrigation projects.¹¹⁹

Dr. Wee suggests, in his conclusions, that by the second half of the 19th century, the Coeur d’Alene Tribe had little need for the water resources on what would be their permanent reservation, because they had turned to agriculture that did not require the application of water for successful harvests. That agriculture, according to Dr. Wee, was “dry land” agriculture, carried “without resorting to water storage or irrigation,” in the Palouse agricultural area according to Dr. Wee.¹²⁰

Dr. Wee’s conclusions are flawed in a number of ways. First of all, as I have shown in my initial testimony and in the above portion of this rebuttal testimony, there is no evidence to

p. 6. [750]

¹¹⁹Fiege, Mark. *Irrigated Eden: The Making of an Agricultural Landscape in the American West*. Seattle and London: University of Washington Press, 1999, pp. 11, 16 and 53. [755]

¹²⁰Wee, Stephen. “Establishment of the Coeur d’Alene Reservation and the Transformation of Coeur d’Alene Land and Water Use, from Contact through Allotment.” Submitted to: Office of Attorney General, State of Idaho. Submitted by: JRP Historical Consulting, LLC; February 25, 2016, p. 167.

show that the Coeur d'Alene had in any way diminished their traditional subsistence activities by 1873. Second, the farming that has been documented to have occurred by that date was minimal and was barely sufficient to provide food for the mission. Third, Dr. Wee has attributed large dry-farms to the Coeur d'Alene and used sources that do not support that claim. Finally, Dr. Wee has not provided any primary, first-hand accounts to support large-scale farming by the Coeur d'Alene prior to the establishment of the reservation in 1873, and has treated at least one secondary source as though it is a primary source.

I pointed out in my initial testimony that the mission farm, which was worked by Indians and praised by visitors, probably didn't exceed in size, "a few dozen acres."¹²¹ Dr. Wee cited reports from Indian Agent Winans in 1870 and 1872 in which the agent said the Coeur d'Alene were cultivating twenty or thirty acres. Winans reported that in 1872 the Tribe produced one hundred bushels of wheat and two hundred bushels of potatoes.¹²² The mission farms were designed to support those living at the mission and were located next to important water sources where irrigation ditches could be diverted to the farms—first where the St. Joe River entered Coeur d'Alene Lake and second along the Coeur d'Alene River. Neither of these locations are in what is called the Palouse area.

Dry-farming in the part of the Palouse which includes a small sliver of the Coeur d'Alene Reservation did not become prominent until well after the establishment of the Coeur d'Alene

¹²¹Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, p. 84, and Figures 26 and 27.

¹²²Wee, Stephen. "Establishment of the Coeur d'Alene Reservation and the Transformation of Coeur d'Alene Land and Water Use, from Contact through Allotment." Submitted to: Office of Attorney General, State of Idaho. Submitted by: JRP Historical Consulting, LLC; February 25, 2016, p. 101. Of course, even if the Coeur d'Alene had been producing wheat, considerable protein would also be necessary to complete their diet—humans cannot live by bread alone.

Reservation. Dry-farming had no impact on Coeur d'Alene subsistence practices prior to the establishment of the Coeur d'Alene Reservation. The move of Coeur d'Alene families to the Desmet area, which borders on the Palouse region, came years after the establishment of the Coeur d'Alene Reservation.

In attempting to support his argument about Coeur d'Alene dry-farming, Dr. Wee cites a number of sources. He cites the dissertation written by Andrew Philip Duffin, titled "Fill the Earth and Subdue It: The Environmental Consequences of Intensive Agriculture in the Palouse" in support of his arguments.¹²³ However, on the second page of Dr. Duffin's dissertation, Duffin provides a map of his study area. This map of the Palouse excludes all of the Coeur d'Alene Reservation.¹²⁴ Dr. Duffin later revised his dissertation into book form and published it with University of Washington Press in 2007. In this book Duffin also noted that the Coeur d'Alene Catholic mission sites were not in the Palouse, when speaking of Father De Smet he said no missionaries "established a base in the Palouse."¹²⁵

In conclusion, there is not evidence to support Dr. Wee's speculation that the Coeur d'Alene were engaged in extensive dry-farming by 1873. In fact, there is not evidence to support the idea of any 1873 dry-farming in that part of the Palouse which bordered the Coeur d'Alene

¹²³Duffin, Andrew Philip. "Fill the Earth and Subdue It: The Environmental Consequences of Intensive Agriculture in the Palouse," PhD dissertation; Washington State University, Department of History, 2003.

¹²⁴Duffin, Andrew Philip. "Fill the Earth and Subdue It: The Environmental Consequences of Intensive Agriculture in the Palouse," PhD dissertation; Washington State University, Department of History, 2003, p. 2. The principal point of this dissertation was to show how damaging to the region early dry-farming practices were, including wildlife and habitat loss, soil erosion, and water pollution (e.g., pp. 61-69).

¹²⁵Duffin, Andrew P. *Plowed Under: Agriculture and Environment in the Palouse*. Seattle and London: University of Washington Press, 2007, pp. 34-35. Duffin's discussion on Indian land-use in the Palouse was focused on the Palus Indians, to the west and south of the Coeur d'Alene (see for instance 25-27 and 34-35) [751]

Reservation. The available historical evidence supports a conclusion that the limited agriculture in which tribal members were engaged was associated with Cataldo Mission, just off the bank of the Coeur d'Alene River and that the produce from this farm likely did little more than support those living at the mission. It would be a number of years before dry-farming was conducted in the Palouse adjacent to the Coeur d'Alene Reservation.

Dr. Wee's Table 1 (1875-1880)¹²⁶

As I have demonstrated there is no documentary evidence to support extensive Coeur d'Alene agricultural activity prior to the establishment of the reservation in 1873. I have also demonstrated that traditional subsistence practices continued for many years subsequent to the establishment of the reservation. The evidence shows that agriculture did not affect Coeur d'Alene subsistence practices until at least 1878, five years after the establishment of the reservation.

Dr. Wee provides a table that purports to indicate Coeur d'Alene agricultural activity during the years between 1874 and 1880. This table, as well as the rest of his report, does not support his assertion of extensive agricultural activity between 1873 and 1878.

Dr. Wee does not provide citations for the data he has included in his "Table 1: Agriculture and Stock Raising on Coeur d'Alene, 1874, 1877-1904, and 1906." I have examined the data in the table from the years 1875 to 1880 and have found it to be unreliable and misleading. In the cases where it is possible to determine where he acquired the numbers he

¹²⁶Wee, Stephen. "Establishment of the Coeur d'Alene Reservation and the Transformation of Coeur d'Alene Land and Water Use, from Contact through Allotment." Submitted to: Office of Attorney General, State of Idaho. Submitted by: JRP Historical Consulting, LLC; February 25, 2016, p. 108.

asserts represent "Agriculture and Stock Raising on Coeur d'Alene," during those years, it is clear the sources do not represent what he claims.

1874

Special Indian Agent John A. Simms was appointed to the Colville Agency in September, 1872, after the Colville Reservation was established by Executive Order.¹²⁷ He was stationed at Fort Colville, just east of the Columbia River in the Colville Valley, on the opposite side of the river from the newly established Colville Reservation. The Colville Reservation which Captain Simms presided over was established by executive orders dated between April and July, 1872. The President stated that it was set aside for Indians "in Washington Territory, not parties to any treaty," including the Methow, Okanagan, San Poel, Lake, Colville, Calispel, Spokane and Coeur d'Alene.¹²⁸

Simms had previously been agent to the Nez Perce and had consulted with Spokane and Coeur d'Alene leaders about moving to the Colville Reservation. Those tribes told Simms they would not relocate to the Colville Reservation. Seltice of the Coeur d'Alene said, "We have not sold our country and shall not leave it."¹²⁹

In his annual report on the Colville Reservation for 1874, Agent Simms' report discusses the tribes on the Colville Reservation. He does not mention the Coeur d'Alene anywhere in his

¹²⁷Simms [sic, Simms] to Milroy, October 20, 1873. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1873*. Washington: Government Printing Office, 1874, p. 314-315. [758]

¹²⁸Kappler, Charles Joseph. *Indian Affairs, Laws and Treaties*, 3 vols. Washington, D. C.: Government Printing Office, 1904; Vol. I, pp. 915-916. [99]

¹²⁹Supt. of Indian Affairs, Washington Territory, to Commissioner of Indian Affairs, December 15, 1872, Letters Received, Washington Superintendency, Microfilm, M 234, Roll 912, RG 75, National Archives. [302]

report. He said that the Indians of his agency “sowed over 600 bushels of grain this spring, not 50 of which were furnished by the Government, but from various causes the yield will not be as much as was anticipated.”¹³⁰

Dr. Wee’s Table 1 suggests that the Coeur d’Alene harvested 600 acres of grain in 1874. In fact, there is no evidence submitted in support of this table to suggest that the Coeur d’Alene or any other tribe harvested any grain. The report upon which Dr. Wee apparently depended, indicates that Indians on the Colville Reservation (over one hundred miles away from the Coeur d’Alene Reservation), had sowed, not harvested, 600 bushels of some kind of grain, but that “the yield will not be as much as was anticipated.”¹³¹ There is no indication whatsoever that this report referred in any way to the Coeur d’Alene.

Dr. Wee does not provide any figures for the years 1875 and 1876.

1877

Dr. Wee includes a set of numbers purporting to include agricultural production on the Coeur d’Alene Reservation in 1877 in his Table 1.¹³² None of these numbers applies in any way to the Coeur d’Alene Reservation. The numbers are all taken from the Commissioner of Indian Affairs’ Annual Report for 1877 and all refer entirely to the Colville Reservation, not to the

¹³⁰Simms to Smith, September 1, 1874, *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1874*. Washington: Government Printing Office, 1874, pp. 328-329. [759]

¹³¹Simms to Smith, September 1, 1874, *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1874*. Washington: Government Printing Office, 1874, pp. 328-329. [759]

¹³²Wee, Stephen. “Establishment of the Coeur d’Alene Reservation and the Transformation of Coeur d’Alene Land and Water Use, from Contact through Allotment.” Submitted to: Office of Attorney General, State of Idaho. Submitted by: JRP Historical Consulting, LLC; February 25, 2016, p. 108.

Coeur d'Alene Reservation.¹³³

1878

Dr. Wee includes a set of numbers purporting to include agricultural production on the Coeur d'Alene Reservation in 1878 in his Table 1.¹³⁴ None of these numbers applies in any way to the Coeur d'Alene Reservation. The numbers are all taken from the Commissioner of Indian Affairs' Annual Report for 1878 and all refer entirely to the Colville Reservation, not to the Coeur d'Alene Reservation.¹³⁵

1879

Dr. Wee includes a set of numbers purporting to include agricultural production on the Coeur d'Alene Reservation in 1879 in his Table 1. None of these numbers applies in any way to the Coeur d'Alene Reservation. The numbers are all taken from the Commissioner of Indian Affairs' Annual Report for 1879 and all refer entirely to the Colville Reservation, not to the Coeur d'Alene Reservation.¹³⁶ While Agent Simms does praise the "thrift and progress in civilized pursuits" of the Coeur d'Alene Tribe, he does not provide crop figures for the Coeur

¹³³Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1877*. Washington: Government Printing Office, 1877, pp. 253 and 315. [760]

¹³⁴Wee, Stephen. "Establishment of the Coeur d'Alene Reservation and the Transformation of Coeur d'Alene Land and Water Use, from Contact through Allotment." Submitted to: Office of Attorney General, State of Idaho. Submitted by: JRP Historical Consulting, LLC; February 25, 2016, p. 108.

¹³⁵Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1878*. Washington: Government Printing Office, 1878, p. 309. [761]

¹³⁶Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1879*. Washington: Government Printing Office, 1879, pp. 141, 224 and 259. [762]

d'Alene Reservation.¹³⁷ His crop figures are provided for the Colville Reservation.

1880

Dr. Wee also includes figures he asserts represent agricultural harvests on the Coeur d'Alene Reservation for the 1880.¹³⁸ The manner in which Dr. Wee has constructed his Table 1 is strikingly evident for this year, and demonstrates how this table cannot be taken to represent any valid evidence in the current matter.

Here again, Dr. Wee attributes figures from the Colville Reservation and asserts they include production from the Coeur d'Alene Reservation. In 1880 there is a report from Agent James O'Neill on the Coeur d'Alene Reservation. In that report he does, in fact, mention a "marked change" in the condition of the Coeur d'Alene Indians, saying that new farms had been opened and listing a number of farms with a total of 570 acres among them. He also reports on tribal members using canoes to transport several tons of produce "down the lake to camp Coeur d'Alene." However, neither in the annual report of Agent O'Neill, nor in the statistical report later in the volume, are there any reports providing totals of agricultural production for the Coeur d'Alene Tribe.¹³⁹ The figures Dr. Wee uses in his Table 1 to indicate agricultural production on the Coeur d'Alene Reservation, all come, in fact, from the figures listed by Agent Simms on

¹³⁷Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1879*. Washington: Government Printing Office, 1879, p. 141. [762]

¹³⁸Wee, Stephen. "Establishment of the Coeur d'Alene Reservation and the Transformation of Coeur d'Alene Land and Water Use, from Contact through Allotment." Submitted to: Office of Attorney General, State of Idaho. Submitted by: JRP Historical Consulting, LLC; February 25, 2016, p. 108.

¹³⁹Oneill to Simms, August 6, 1880. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1880*. Washington: Government Printing Office, 1880, pp.154-155 and 260-261. [763]

agricultural production on the Colville Reservation.¹⁴⁰ Production accounts for dry-farming in Idaho between the 1860s and 1890s demonstrate that a total of 570 acres of Coeur d'Alene non-irrigated land could not possibly have produced the crops listed in Dr. Wee's Table 1 for 1880.¹⁴¹ However, as I have shown, Dr. Wee has not provided any legitimate agricultural production figures for the Coeur d'Alene Reservation in 1880.

¹⁴⁰Simms to Commissioner of Indian Affairs, August 18, 1880. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1880*. Washington: Government Printing Office, 1880, pp. 153-154 and statistical report on pp. 270-271. [763]

The figures for production of wheat, oats and barley, corn, and hay cut, are found both in Simms annual report and in the attached statistical report. Dr. Wee apparently arrived at the figure 7,150 bushels of "vegetables" by adding Simms 3,000 bushels of Colville potatoes with the statistical report's "4,150 bushels of [Colville Reservation] vegetables."

¹⁴¹Duffin, Andrew P. *Plowed Under: Agriculture and Environment in the Palouse*. Seattle and London: University of Washington Press, 2007, pp. 49 and 51. [751]

Granatstein, David. *Dryland Farming in the Northwestern United States: A Nontechnical Overview*. MISC0162, Washington State University Cooperative Extension, 1992, p. 5. [750]

V. Establishment of the 1873 Coeur d'Alene Reservation

Dr. Wee's report suggests that the Coeur d'Alene Reservation was not established in 1873 and that thus the priority date for Coeur d'Alene water rights is a much later date. No historical evidence supports this conclusion.

In the 1860s and '70s, with pressures increasing on the outlying areas of their aboriginal territory, the Coeur d'Alene became increasingly concerned in permanently protecting the heart of their homeland. This required negotiations with the United States. The Tribe's conduct leading up to and during the 1873 Agreement negotiations make it clear that the Tribe's intent was to reserve the heart of its territory as a permanent homeland. The Coeur d'Alene Tribe envisioned the reservation described in the 1873 Agreement and established by the 1873 Executive Order as a permanent homeland, a place where they could continue to live as a cohesive tribe, without intrusions by Whites. As they had told Colonel Wright in 1858, they wanted a treaty, or agreement, that created a strong wall around them. As Chief Seltice said to the Northwest Commission, "Make the paper strong; make it so strong that we and all Indians living on it shall have it forever."¹⁴² They conceived of the reservation as being built by the agreement with a "stone wall" constructed around it, to protect the Tribe from white interlopers.¹⁴³

In the Northwest region of the United States, including the Plateau, the United States was intent on extinguishing aboriginal title to the best farmland and opening that land to non-Indian

¹⁴²United States. Congress. House. *Reduction of Indian Reservations*. House Executive Document No. 63. 50th Congress, 1st Session. Washington, D. C.: Government Printing Office, 1888, pp. 9-11, 30-43, 53-56, and 60-65. [203]

¹⁴³Seltice *et. al.* to Commissioner of Indian Affairs, November, 1893, "Harrison Townsite on Coeur d'Alene Reservation," February 2, 1894, Special Case No. 200, Record Group 75, National Archives. [605]

settlement. Reservations could then be created out of the remaining territory, which included good hunting and grazing lands and which could be designed to include important fisheries and some potential farmland. A good example of this policy can be seen in the establishment of the Colville Reservation in 1872. When that reservation was established, the important farmlands in the Colville Valley, some already under cultivation by the Lakes (Sinixt) Tribe, were excluded from the reservation in order to make them available to Whites.¹⁴⁴ Reasons for including lands in the Colville Reservation included the argument that the reservation was more arid and sparsely populated than the lands to the east of the Columbia River, which were arable and better suited for White farming.¹⁴⁵ Commissioners Shanks, Bennett and Reed were participants in these actions, as well as the actions resulting in creation of the Coeur d'Alene Reservation the following year. The Commissioner of Indian Affairs, in his annual report for the year 1872, made it clear that reservations should have the capacity to provide access to hunting and fishing,

¹⁴⁴"The New Indian Reserve," *Walla Walla Union*, June 22, 1872. [764]

United States. Congress. Senate. *A Bill to Create a Reservation in the Territory of Washington for the Coeur D'Alene and Other Indian Tribes*. Sen. Misc. Doc. No. 32. 43d Congress, 1st Session. Washington, D. C.: Government Printing Office, 1874, p. 2. [210]

United States. Congress. House. *Proposed Indian Reservation in Idaho and Washington Territories*. Ex. Doc. No. 102. 43d Congress, 1st Session. Washington, D. C.: Government Printing Office, 1874, pp. 3-4.[198]

Shanks, John P. C., T. W. Bennett, and Henry W. Reed. "Extracts from Report of Commissioners," *Idaho Signal*, Vol. 1, p. 4, May 16, 1874.

Kappler, Charles J. *Indian Affairs, Laws and Treaties*, Vol. I. (Laws) "Colville Reserve," April 9, 1872 and July 2, 1872, Washington, D. C.: Government Printing Office, 1904, p. 916

¹⁴⁵Winans to [Superintendent], May 27, 1872, enclosing Winans to Ross, September 24, 1870. Records of the Washington Superintendency of Indian Affairs, 1853-1874, File Microfilm of the National Archives: M. 5, roll 20, National Archives-Pacific Alaska Region (Seattle).

"The New Indian Reserve," *Walla Walla Union*, June 22, 1872.

If there was ever any doubt about the intent of the United States toward the Coeur d'Alene relative to agriculture, it was made abundantly clear during the allotment process that the United States preferred to see farmland (even when actually farmed by Indians) in the hands of Whites.

“which condition implies the occupation of a territory far exceeding what could possibly be cultivated.”¹⁴⁶ The Coeur d’Alene Reservation was designed in a manner consistent with this model stated by the Commissioner in 1872. It was the intent of both the United States and the Coeur d’Alene to have a reservation capable of providing the resources necessary for traditional subsistence.

The intent of the United States in establishing the 1873 Coeur d’Alene Executive Order Reservation was driven, in essence, by the Tribe’s intent. The United States understood that the Tribe would fight to protect its homeland and the United States understood that the Coeur d’Alene homeland consisted of a large aboriginal territory and that aboriginal title to much of that territory required extinguishment to facilitate White settlement. Negotiation was the only feasible tool available to the United States in order to create a reservation for the Tribe and extinguish aboriginal title to tribal territory outside that reservation.

The result of the interaction of the United States and the Coeur d’Alene Tribe in 1873 was an agreement to establish a permanent reservation in the heart of the Tribe’s homeland, one which included the environment necessary for hunting, fishing, gathering and transportation (all associated with tribal water use).

Under the terms of the 1873 Agreement, the Coeur d’Alene Tribe agreed to give up (or “cede”) a portion of the Tribe’s aboriginal territory in return for certain land, rights, and other considerations. The Tribe agreed to a cession of the portion of their aboriginal territory lying outside the reservation described in the agreement, provided that the United States paid for any improvements Coeur d’Alene might have in lands outside the boundaries of the proposed

¹⁴⁶Walker, Francis A. “Report of the Commissioner of Indian Affairs, November 1, 1872,” in *Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1872*. Washington: Government Printing Office, 1872, p. 13. [767]

reservation. The Tribe also agreed to allow the United States to construct roads through the new reservation.

In return for the cession of aboriginal territory, the Tribe was to receive a reservation and other valuable considerations. The boundaries were carefully devised. The agreement that was reached between the 1873 commission and the Coeur d'Alene called for setting aside a reservation "for the exclusive use of the Coeur d'Alene Indians" that would enclose all of Coeur d'Alene Lake, the Catholic Mission and all of the Coeur d'Alene River from the mission to the lake, and a stretch of the St. Joe River from near the location of the first mission to where it entered the lake, along with "all and singular the lands and privileges lying" within the proposed boundaries.

It is clear from the circumstances leading up to 1873 and the terms of the 1873 Agreement, which included, among other rights, a land base much larger than the tribally-rejected 1867 Executive Order Reservation, that the Tribe was more concerned with preserving the water resource than it was with the potential arable land that would have been within the 1867 Reservation boundaries. While under the proposed terms, the United States reserved the right to construct roads through the reserve, significantly, in return it promised "that the waters running into said reservation shall not be turned from their natural channel where they enter said Reservation." This provision is unique and not found in agreements made by the United States with other tribes. It could only have come from the Tribe and been included in the agreement as a result of the insistence of the Tribe. The Tribe was also aware of the value of water power and was to receive two mills.¹⁴⁷

¹⁴⁷The Tribe was also to receive additional goods and money in return for the cession described in the agreement. In addition to the two mills, the United States agreed to provide agricultural implements, a schoolhouse, and one hundred seventy thousand dollars at five percent

This authority for the president to issue executive orders to establish Indian reservations has been carefully documented. By 1871, the only manner in which an Indian reservation could be established was by presidential executive order. During the period between 1871 and 1887, the president exercised a broadly established authority in setting aside millions of acres of land for Indian use and occupancy. During this period, the orders were considered to be of a temporary nature, until such time as Congress might act and make them permanent, as of the date of original issuance of the order.¹⁴⁸ As I document below, through numerous actions, reports and acts, Congress confirmed the efficacy of the 1873 Coeur d'Alene Reservation in subsequent years, and by the late 1880s had ratified that reservation and its effective date of 1873.

Though the 1873 Agreement was never ratified, the establishment of the 1873 Reservation was a triumph for the Coeur d'Alene Tribe, and the 1873 executive order reservation mirrored the reservation described in the agreement. It represented the protection of the heartland of the Tribe's traditional territory and necessary waters, including Coeur d'Alene Lake, the Coeur d'Alene River and the St. Joe River. More and more Whites were pouring into the country, and there had been terrific pressure to have the Tribe removed from their homeland to an already existing reservation. The alliance with the Catholic priests and intercession and assistance of the Catholics was of great help to the Tribe in this instance and helped result in the establishment, in 1873, of a 590,000 acre executive order reservation that contained nearly all of their village sites, all of Coeur d'Alene Lake, a large section of the Coeur d'Alene River, a

interest, to be used to pay for a blacksmith, millers and other things that the President might deem proper to, in the government's view, advance the civilization of the Indians.

¹⁴⁸Hart, E. Richard. "The Dawes Act and the Permanency of Executive Order Reservations," *Western Legal History: The Journal of the Ninth Judicial Circuit Historical Society*. Volume 12, Number 1(Winter/Spring/1999), pp. 11-12. This article was drawn from a larger work carried out for the United States Department of Justice. [768]

section of the St. Joe River, and a portion of the Tribe's Camas Prairie. The relations between the Tribe and the United States, the negotiations leading to the executive order, and the language in the agreement and executive order make it clear that the United States intended to convey Coeur d'Alene Lake and the rivers on the reservation to the Tribe, including the river water flowing into the reservation. The Tribe, in turn, continued to be dependent on these resources for their livelihood and survival. Even though the agreement was not ratified, because of these negotiations, the United States, in effect, recognized the extent of Coeur d'Alene territory, that it had never been ceded to the United States, and that the Tribe retained all of their original rights to that land. The Indian Claims Commission later concluded that the Coeur d'Alene "held all the waters of Spokane River from a little above Spokane Falls to the sources, including Coeur d'Alene Lake and all its tributaries."¹⁴⁹

As noted above, in 1873, the United States understood that Congress needed to confirm the president's executive order in order to make it permanent and completely efficacious as of the date of issuance.¹⁵⁰ Below I provide numerous reports, actions and Acts of Congress that both confirmed and ratified the 1873 executive order and made its 1873 date efficacious.

¹⁴⁹United States. Indian Claims Commission. "Findings of Fact." Docket No. 81, *The Coeur d'Alene Tribe of Indians v. The United States of America*, 1955, National Archives, pp. 4-6 and 4--10. [276]

United States. Indian Claims Commission. "Opinion." Docket No. 81, *The Coeur d'Alene Tribe of Indians v. The United States of America*, 1955, pp. 4--15 and 4--28. [277]

United States, Indian Claims Commission. "Commission Findings." In *Interior Salish and the Eastern Washington Indians I: the Coeur d'Alenes*. New York: Garland Publishing, Inc., 1974, pp. 304, 308, 313, 326 and 328. [648]

Bischoff, William N. "The Coeur d'Alene Country, 1805-1892." In *Interior Salish and Eastern Washington Indians I*. New York: Garland Publishing Inc., 1974, pp. 302, 308, 313, 326. [16]

¹⁵⁰Hart, E. Richard. "The Dawes Act and the Permanency of Executive Order Reservations," *Western Legal History: The Journal of the Ninth Judicial Circuit Historical Society*. Volume 12, Number 1(Winter/Spring/1999), pp. 11-47. [768]

Congress appropriated funds to support the reservation, appointed agents to oversee government operations there, reported on the reservation's establishment, provided annual reports on activities on the reservation, and passed laws recognizing, confirming and ratifying the reservation and its effective date of 1873.

The United States and the Congress of the United States immediately recognized and confirmed the president's 1873 executive order creating the Coeur d'Alene Reservation. For instance, beginning in 1874, the Commissioner of Indian Affairs and the Secretary of the Interior reported that "authority establishing" the Coeur d'Alene Indian Reservation was the executive order of November 8, 1873. Congressional confirmation of the reservation can be seen from the fact that funds were appropriated by Congress to survey the reservation. These facts were reported in annual reports over the next twenty years.¹⁵¹

¹⁵¹United States. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1874*. Washington, D. C.: Government Printing Office, 1874, p. 134. [769]

For the years from 1875-1891, see, for example:

United States. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1875*. Washington, D. C.: Government Printing Office, 1875, p. 136. [770]

United States. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1881*. Washington, D. C.: Government Printing Office, 1881, p. 263. [771]

United States. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1882*. Washington, D. C.: Government Printing Office, 1882, p. 304. [772]

United States. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1883*. Washington, D. C.: Government Printing Office, 1883, pp. 226-227. [773]

United States. Commissioner of Indian Affairs. *Sixtieth Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior, 1891*. Part 2.—Statistics. Washington, D. C.: Government Printing Office, 1891, p. 110. [774]

United States. Commissioner of Indian Affairs. *Fifty-Ninth Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior, 1890*. Washington, D. C.: Government Printing Office, 1890, p. 437. [775]

Acknowledgment and conformation of the reservation is also documented in many other official government documents.¹⁵²

¹⁵²United States. *Congressional Record*. 49th Congress, 2nd Session, pp. 272, 305, 502, 825, 1203, 1244, 1565, 1576-1577, 1682, 1736, 1974, 2729-2731. Washington, D. C.: Government Printing Office, 1886-1887. [186]

United States. *Congressional Record*. 50th Congress, 1st Session, pp. 19, 618, 693, 894, 1131, 2290, 2370, 3053, 4165, 4308, 4330, 4910. Washington, D. C.: Government Printing Office, 1887-1888. [187]

United States. Congress. House. *Spokane and Palouse Railway Company*. Report No. 3836. 49th Congress, 2d Session. Washington, D. C.: Government Printing Office, 1887. [200]

United States. Congress. House. *Washington and Idaho Railroad Company*. Report No. 4133. 49th Congress 2d Session. Washington, D. C.: Government Printing Office, 1887. [201]

United States. Congress. House. *Spokane and Palouse Railway Company*. Report No. 4134. 49th Congress, 2d Session. Washington, D. C.: Government Printing Office, 1887. [202]

United States. Congress. House. *Reduction of Indian Reservations*. House Executive Document No. 63. 50th Congress, 1st Session. Washington, D. C.: Government Printing Office, 1888. [203]

United States. Congress. House. *Washington and Idaho Railroad Company*. Report No. 1713. 50th Congress, 1st Session. Washington, D. C.: Government Printing Office, 1888. [204]

United States. Congress. House. *Ratification of Coeur D'Alene Indian Treaties in Idaho*. Report No. 2988. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890. [205]

United States. Congress. House. *Ratification of Coeur D'Alene Indian Treaties in Idaho*. Report No. 1109. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890. [206]

United States. Congress. Senate. *Letter from the Acting Secretary of the Interior*. Ex. Doc. No. 122. 49th Congress, 1st Session. Washington, D. C.: Government Printing Office, 1886. [212]

United States. Congress. Senate. *Letter from the Secretary of the Interior...about the Coeur D'Alene Indian Reservation*. Ex. Doc. No. 76. 50th Congress, 1st Session. Washington, D. C.: Government Printing Office, 1888. [213]

United States. Congress. Senate. *Resolution*. Misc. Doc. No. 36. 50th Congress, 1st Session. Washington, D. C.: Government Printing Office, 1888. [214]

United States. Congress. Senate. *A Letter of the Secretary of the Interior Relative to the Purchase of a Part of the Coeur D'Alene Reservation*. Ex. Doc. No. 14. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1889. [215]

United States. Congress. Senate. *Letter of the Secretary of the Interior Transmitting Correspondence in Relation to the Ratification and Confirmation of Certain Agreements Between the United States and the Coeur D'Alene Indians in Idaho Territory*. Misc. Doc. No. 95. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890. [216]

United States. Congress (Statutes). *The Statutes at Large of the United States of America from December 1889, to March, 1891*, pp. 215-219, 989-991, 1027-1032. Washington, D. C.: Government Printing Office, 1891. [221]

The effective date of the Coeur d'Alene Reservation has always be confirmed by the United States to be 1873.

See Also Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, especially pages 165, 203-204, 211, 213-214, 224, 227, 229, 232-234, 238-239, 243, 249, 252, 255-257, 259-260, and 262.

See also:

Hart, E. Richard. "The Dawes Act and the Permanency of Executive Order Reservations," *Western Legal History: The Journal of the Ninth Judicial Circuit Historical Society*. Volume 12, Number 1(Winter/Spring/1999), pp. 11-12. [768]

VI. Conclusions

Coeur d'Alene Subsistence

At the time of first contact with non-Indians from the Europe, and throughout the period from that time until well after the Coeur d'Alene Reservation was established in 1873, the Coeur d'Alene Tribe was dependent on fishing, hunting, gathering and digging roots for subsistence. Although they relied heavily on hunting for deer, elk, and other animals in their own region, and engaged in an annual buffalo hunt to the east, without their provident supply of fish, they could not have survived. As I have demonstrated, the water in their territory was necessary for all of their subsistence activities.¹⁵³

I have shown in the above section on the Coeur d'Alene and buffalo (bison) that there is no evidence to suggest that the acquisition of the horse and subsequent annual buffalo hunts by Coeur d'Alene Tribal members had any significant impact on their subsistence food requirements within their aboriginal territory.

The heart of their aboriginal territory, which became the 1873 Coeur d'Alene Reservation, provided the necessary foods for tribal members to subsist upon and survive. These foods included a number of species of fish, including bull trout, cutthroat trout, red band trout, white fish, and salmon. The Tribe maintained necessary fisheries on Coeur d'Alene Lake, the Coeur d'Alene River, the St. Joe River and associated tributaries. Deer, elk, and many other species of large and small game were hunted in the heart of the Tribe's aboriginal territory. Edible plants found in the wetlands and elsewhere in the heart of Coeur d'Alene territory included camas and the water potato (*Sagittaria latifolia* or wapato).

¹⁵³Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, see especially pp. 5-39.

The Coeur d'Alene people required, and used their rivers, streams, wetlands, and lakes in acquiring all of their subsistence foods, and as first-hand observer Father John Joseph Augustine Joset said in 1846, the Coeur d'Alene obtained their food by hunting, fishing and gathering and did "not go to seek their food beyond the narrow circle of their valleys."¹⁵⁴

Early Coeur d'Alene Agriculture

There is not evidence to support the idea of any 1873 dry-farming in that part of the Palouse which bordered the Coeur d'Alene Reservation. The available historical evidence supports a conclusion that the limited agriculture in which tribal members were engaged at that time was mostly associated with Cataldo Mission, just off the bank of the Coeur d'Alene River and that the produce from these gardens likely did little more than help support those living at the mission. It would be a number of years before dry-farming was conducted in the portion of the Palouse region adjacent to the Coeur d'Alene Reservation. A first-hand description of the Coeur d'Alene's Camas Prairie in 1876 makes it clear that no dry-farming was going on in that location at that date.

An analysis of the original mission site on the St. Joe River (ca. 1846) shows an agricultural field of possibly thirty acres. A drawing by Father De Smet in 1870 of the mission at the Cataldo site also shows a fenced field of only a few dozen acres (see Figures 26 and 27 in my initial report).¹⁵⁵ While the Tribe was engaged in some agriculture by 1873, it amounted to

¹⁵⁴De Smet, Father Pierre Jean. "Missions of the Rocky Mountains." *Annals of the Propagation of the Faith* Vol. 7 (1846): pp. 363, 368-369, and 372-375. [55]

¹⁵⁵Pentland, Pat Allen. "The Illfated Mission: The Sacred Heart Mission on the St. Joe River, 1842-46," [thesis] presented to Gonzaga History Department, May 1973, p. 42. [699]

De Smet, [Father Pierre-Jean]. "Another Letter from Father De Smet," *Letters and Notices*, 1871, Sacred Heart Collection, Box 1, Folder 17, Special Collections, Gonzaga University. [705]

small garden plots and was not sufficient to maintain the Tribe's members. The only way the Tribe could survive in 1873 was through continued traditional hunting, fishing, and gathering practices, all of which revolved around the lakes, rivers, and other water sources within the Coeur d'Alene's territory.

The Establishment of the 1873 Coeur d'Alene Reservation

From initial contact onward, the United States was made aware of the Tribe's dependence on the water resources within Coeur d'Alene territory and in particular Coeur d'Alene Lake and its major tributaries. Almost without exception, all early federal accounts recognized the Coeur d'Alene's connection to Coeur d'Alene Lake and the major streams of the region.

Exigencies prompting the United States to enter into negotiations with the Coeur d'Alene included the continuing, and unacceptable, threat of violence, and the 1873 (economic) Panic.

The United States was made explicitly aware of the Tribe's dependence on its water resources when the Tribe rejected the 1867 Executive Order Reservation because the order did not include the Tribe's important lakes and rivers. In a Coeur d'Alene petition to the United States requesting negotiation of an agreement, the Tribe made clear that its reservation must include those lakes and rivers. While few records remain from the negotiation sessions on the agreement, Idaho Governor Bennett (one of the United States Commissioners) made clear "[w]e found that the Indians demanded an extension of the reservation so as to include the Catholic Mission and fishing and mill privileges on the Spokane River." As a result of the Tribe's

Chittenden, Hiram Martin and Alfred Talbot Richardson (eds.). *Life, Letters and Travels of Father Pierre-Jean De Smet, J. J., 1801-1873*. Four Volumes. New York: Francis P. Harper, 1905, Volume II, p. 571 and Volume III, p. 594, provides quotes of DeSmet talking about how missions should be located so as to take advantage of "rivulets" that could be diverted for irrigation. [747]

demands, the 1873 Agreement contained a unique and express reservation of water—"that the waters running into said reservation shall not be turned from their natural channel where they enter said Reservation."

Confirmation and Ratification of the Reservation

Before the 1873 Agreement could be ratified, the President took action to establish the reservation described in the agreement. There was growing concern that non-Indians would encroach on the tribal lands, rights, and resources that were to be set aside in the 1873 Agreement before Congress was able to act. Accordingly, the Commissioner of Indian Affairs asked the President to sign an executive order to set aside the reservation described in the 1873 Agreement. The presidential Executive Order that created the 1873 Coeur d'Alene Reservation mirrored the 1873 Agreement between the United States and the Coeur d'Alene Tribe, and was intended to represent the reservation demanded by the Tribe during negotiations.

Between 1873 and 1889, numerous reports, official documents, and acts of Congress confirmed and ratified this Executive Order establishing the Coeur d'Alene Reservation and the reservation effective date of 1873.

As I have reported in my initial written testimony, subsequent agreements with the Tribe provided for the cession of portions of the Tribe's aboriginal territory, but did not abrogate any other rights. The 1887 Agreement confirmed that the Coeur d'Alene Reservation set aside in the 1873 Agreement and Executive Order would continue to "be held forever as Indian land and as homes for the Coeur d'Alene Indians . . ." and provided for payment to the Tribe for the cession of its aboriginal territory. That agreement also provided that "no part of the reservation shall ever be sold or occupied, open to white settlement, or otherwise disposed of without the consent

of the Indians.” The 1889 Agreement provided for the cession of the northern portion of the 1873 Reservation in order to provide non-Indian access to the Lake and Coeur d’Alene River. Once again, the United States made clear that it was only interested in obtaining tribal land through Coeur d’Alene consent. This *modus operandi* continued through the Harrison cession but abruptly and tragically ended with the Coeur d’Alene Allotment Act despite unanimous and vehement opposition from the Tribe’s members.

By the late 1880s the 1873 Coeur d’Alene Reservation had been confirmed by many reports and acts of Congress and had been officially ratified by the Congress, with the effective date established concretely as 1873.

A Permanent Homeland

It was the mutual intent of the United States and the Coeur d'Alene Tribe that the Coeur d'Alene Reservation would provide a homeland which would protect and continue to make available all the resources and uses necessary for the Tribe and its people to subsist and engage in its unique customs and traditions while at the same time offering new economic opportunities that would allow the Tribe to thrive into perpetuity.

The purpose of the Coeur d'Alene Reservation was to create a permanent homeland for the Coeur d'Alene people. Central to that homeland, and of critical importance to the Coeur d'Alene Tribe, in the past as well as today, is not only the reservation land, but the protection of Coeur d'Alene Lake and its tributaries. It was the intent of the Tribe and the United States that the Coeur d'Alene homeland would provide for the Tribe's continued right to use their water resources to engage in traditional activities including, but not limited to hunting, fishing, gathering, recreation, transportation, domestic use, cultural and spiritual uses. Their waters and related uses continue to be a critical part of the Coeur d'Alene Reservation. The Coeur d'Alene Reservation also provided for the future economic development of the Coeur d'Alene Tribe and people. In addition, the Tribe and the United States intended the Tribe to continue to develop its agricultural resources, hydropower, milling, and other potential commercial resources.

Appendix: New Hart Exhibits

733. DeMallie, Raymond J. (editor). *Handbook of North American Indians: History of Indian-White Relations* Vol. 13 Part 1. Washington: Smithsonian Institution, 2001, xi (map).
734. Walker, Deward E., Jr., editor. *Handbook of the North American Indians*, Volume 12. Washington: Smithsonian Institution, 1998, map (ix).
735. Dempsey, Hugh A. "Blackfoot," in DeMallie, Raymond J. (editor). *Handbook of North American Indians: History of Indian-White Relations* Vol. 13 Part 1. Washington: Smithsonian Institution.
736. McHugh, Tom (with the assistance of Victoria Hobson). *The Time of the Buffalo*. New York: Alfred A. Knopf, 1972.
737. Ray, Verne F. "The Columbia Confederacy: A League of Central Plateau Tribes." In Stanley Diamond, editor, *Culture in History: Essays in Honor of Paul Radin*. Columbia University Press: New York, 1960.
738. Ruby, Robert H. and John A. Brown. *Half-Sun on the Columbia: A Biography of Chief Moses*. University of Oklahoma Press: Norman, 1965.
739. Ray, Verne F. "Tribes of the Columbia Confederacy, and the Palus," Plaintiff's Exhibit No. 113, United States court of Claims Docket No. 261-70, *The Confederated Tribes of the Colville Reservation v. The Yakima Tribes of Indians of the Yakima Reservation*, January 1, 1971, p. 13.
740. Lamar, Howard R. *The New Encyclopedia of the American West*. Yale University Press: New Haven & London, 1998.
741. Josephy, Alvin M., Jr. *On the Hill: A History of the American Congress*. New York: Simon and Schuster, 1975.
742. Miller, James and John Thompson. *Almanac of American History*. Washington, D. C.: National Geographic, 2005, p. 200.
743. Grun, Bernard. *The Timetables of History: A Horizontal Linkage of People and Events*. New York: Simon and Schuster, 1975.
744. Chalfant, Stuart A. "Ethnological Field Investigation and Analysis of Historical Material Relative to Coeur d'Alene Indian Aboriginal Distribution," "Defendant's Exhibit #13, Defendant's Exhibits 01-39, Box 234, Docket #81, Case Files, 1946-1983, Records of the Indian Claims Commission, Record Group 279, National Archives, DC.

745. Frey, Rodney (editor). *Stories That Make the World: Oral literature of the Indian Peoples of the Inland Northwest As Told by Lawrence Aripa, Tom Yellowtail, and Other Elders*. Norman, Oklahoma: University of Oklahoma Press, 1995.

746. Palmer, Gary B. "Indian Pioneers: The Settlement of Nilukhwalqw (Upper Hangman Creek, Idaho) by the Schitsu'umsh (Coeur d'Alene Indians)," *Oregon Historical Quarterly*, spring, 2001 (Volume 102, No. 1).

747. Chittenden, Hiram Martin and Alfred Talbot Richardson (eds.). *Life, Letters and Travels of Father Pierre-Jean De Smet, J. J., 1801-1873*. Four Volumes. New York: Francis P. Harper, 1905, Volume II, p. 571 and Volume III, p. 994.

748. Federal Drug Administration. Guidance for Industry: A Food Labeling Guide (14. Appendix F: Calculate the Percent Daily Value for the Appropriate Nutrients). Guidance for Industry: A Food Labeling Guide (14. Appendix F: Calculate the Percent Daily Value for the Appropriate Nutrients). The following web site last accessed May 20, 2016.

749. *Idaho v. United States et Al.*, Trial Transcript, December 11, 1997, Federal District Court; Spokane, Washington, pp. 1527-1532.

750. Granatstein, David. *Dryland Farming in the Northwestern United States: A Nontechnical Overview*. MISC0162, Washington State University Cooperative Extension, 1992.

751. Duffin, Andrew P. *Plowed Under: Agriculture and Environment in the Palouse*. Seattle and London: University of Washington Press, 2007.

752. Widtsoe, A. John. *Dry-Farming: A System of Agriculture for Countries Under Low Rainfall*. Boston, Massachusetts: IndyPublish.com, 2008 (originally published 1911).

753. "The History of Dry-Farming [Chapter XVII]," <http://soilandhealth.org/wp-content/uploads/01aglibrary/010102/0101217.html>. Last accessed April 12, 2016. [753]

754. "Dry Farming in Utah," Utah History Encyclopedia. http://www.uen.org/utah_history_encyclopedia/d/DRY_FARMING.html. Last accessed April 12, 2016. [754]

755. Fiege, Mark. *Irrigated Eden: The Making of an Agricultural Landscape in the American West*. Seattle and London: University of Washington Press, 1999, pp. 32-33.

756. Campbell, H. W. *Campbell's 1902 Soil Culture Manual: Explains how the Rain Waters are Stored and Conserved in the Soil; how Moisture Moves in the Soil by Capillary Attraction, Percolation and Evaporation, and how these conditions may be regulated by cultivation*. Holdrege, Nebraska: H. W. Campbell, 1902.

757. Encyclopedia of the Great Plains. "Campbell, Hardy Webster (1850-1937)," on line at <http://plainshumanities.unl.edu/encyclopedia/doc/egp.ag.016.xml>. Last accessed April 12, 2016.

758. Simms [sic, Simms] to Milroy, October 20, 1873. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1873*. Washington: Government Printing Office, 1874, p. 314-315.
759. Simms to Smith, September 1, 1874, *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1874*. Washington: Government Printing Office, 1874, pp. 328-329.
760. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1877*. Washington: Government Printing Office, 1877, pp. 253 and 315.
761. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1878*. Washington: Government Printing Office, 1878, p. 309. [761]
762. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1879*. Washington: Government Printing Office, 1879, pp. 141, 224 and 259.
763. Oneill to Simms, August 6, 1880. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1880*. Washington: Government Printing Office, 1880, pp.154-155 and 260-261.
764. "The New Indian Reserve," *Walla Walla Union*, June 22, 1872.
765. Shanks, John P. C., T. W. Bennett, and Henry W. Reed. "Extracts from Report of Commissioners," *Idaho Signal*, Vol. 1, p. 4, May 16, 1874.
766. Kappler, Charles J. *Indian Affairs, Laws and Treaties*, Vol. I. (Laws) "Colville Reserve," April 9, 1872 and July 2, 1872, Washington, D. C.: Government Printing Office, 1904, p. 916.
767. Walker, Francis A. "Report of the Commissioner of Indian Affairs, November 1, 1872," in *Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1872*. Washington: Government Printing Office, 1872, p. 13.
768. Hart, E. Richard. "The Dawes Act and the Permanency of Executive Order Reservations," *Western Legal History: The Journal of the Ninth Judicial Circuit Historical Society*. Volume 12, Number 1(Winter/Spring/1999).
769. United States. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1874*. Washington, D. C.: Government Printing Office, 1874, p. 134.

770. United States. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1875*. Washington, D. C.: Government Printing Office, 1875, p. 136.
771. United States. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1881*. Washington, D. C.: Government Printing Office, 1881, p. 263.
772. United States. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1882*. Washington, D. C.: Government Printing Office, 1882, p. 304.
773. United States. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1883*. Washington, D. C.: Government Printing Office, 1883, pp. 226-227.
774. United States. Commissioner of Indian Affairs. *Sixtieth Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior, 1891*. Part 2.—Statistics. Washington, D. C.: Government Printing Office, 1891, p. 110.
775. United States. Commissioner of Indian Affairs. *Fifty-Ninth Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior, 1890*. Washington, D. C.: Government Printing Office, 1890, p. 437.
776. Hart, E. Richard. "The Efficacy of the 1873 Coeur d'Alene Executive Order," Expert Testimony Submitted to the United States Department of Justice, *United States v. Idaho*, civil #92-35703, July 19, 1997, 2 volumes.