

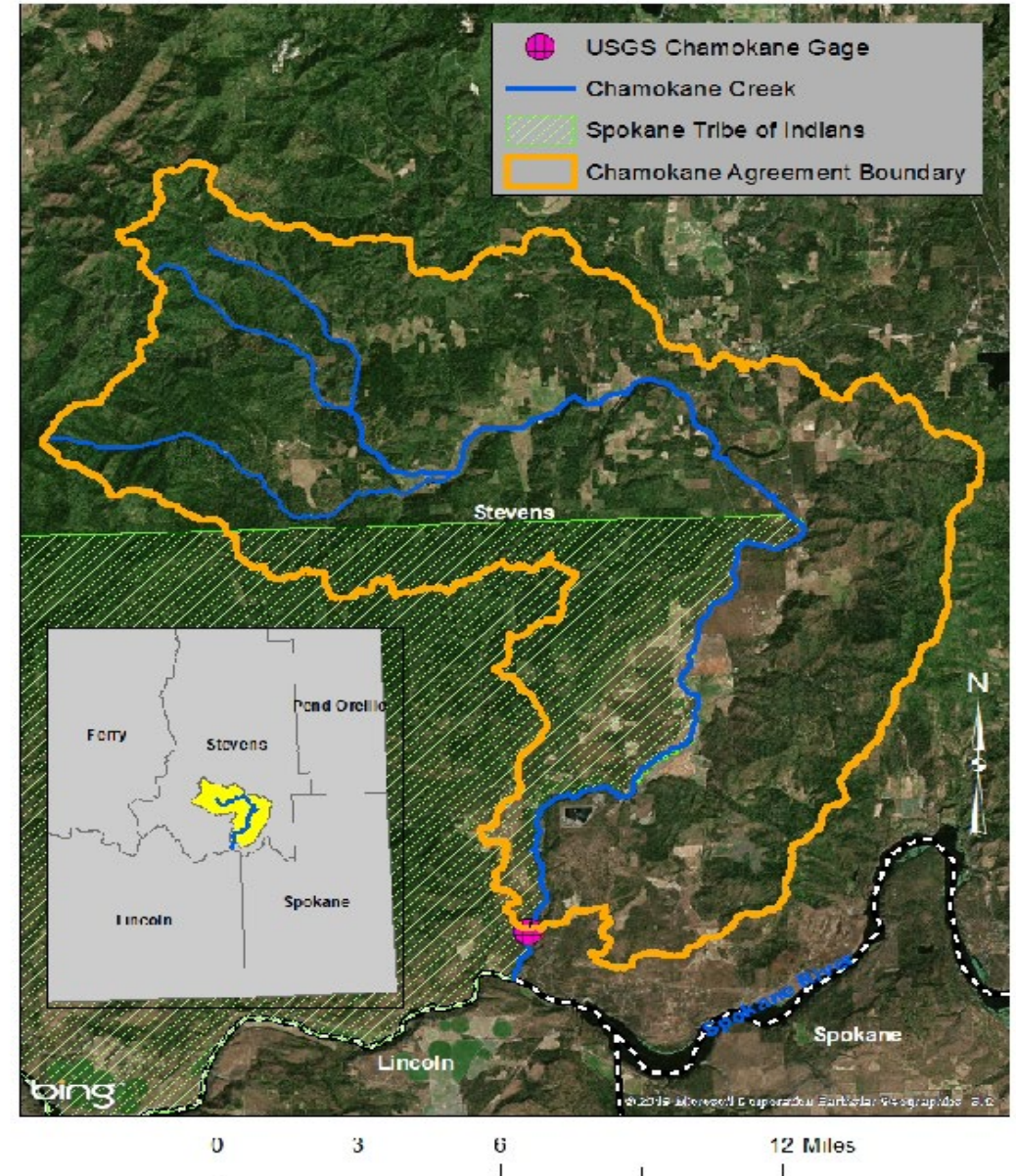
*Spokane Indian Tribe v. Sulgrove,*  
2022 WL 3083310.

PETITION FOR A WRIT OF CERTIORARI  
to the  
Supreme Court of the United States of America

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**The Whipple Law Group, PLLC**

# *Chamokane Creek Watershed*

- Spring-fed waters originate:
  - North of the Spokane Indian Reservation
  - Flow south along its eastern boundary over Chamokane Falls through a gorge then
  - Flow into the Spokane River
  - Joining the Columbia River and, eventually,
  - Empties into the Pacific Ocean.





# Water Use: The Legal Context

1. Based on scarcity
2. Prior appropriation
3. Water is owned by the state and regulated by allocation of permitted use



# Elements of a Water Right:

- a) Type of withdrawal (ground/surface)
- b) Beneficial use;
- c) Reasonable (identified) quantity;
- d) Period of time (seasonal);
- e) Specified location.

## ***Additional Considerations:***

1. First in time/First in use (last to shut off)
2. Highest and best use
3. Treaties provided reservation of rights/ e.g. fishing-→ leading to establishment of minimum in-stream flows
4. Add to this: Exemptions for domestic use
5. Adjudications....

# Adjudication:

1. Adjudication is "the formal process of settling, describing and recording every water right dating from "pioneer times to present." *F. TRELEASE, FEDERAL-STATE RELATIONS IN WATER LAW 36-37 (1975).*
2. The purpose of adjudicating water rights is to quantify the water rights of *all* claimants in a given water system.



## Procedural posture- *what a long strange trip its been...*

1. 1972: Adjudication
2. 1979: Unpublished memorandum opinion and order by United States District Court of the Eastern District of Washington
3. 1980-2005: Ensuing argument and litigation between water users
4. 1984: Appeal to 9th Circuit, *United States v. Anderson*, 736 F.2d 1358 (9th Cir. 1984).
5. 1988: Judgment amended
6. 2006: Re-examination Order
7. 2012: USGS Ground/Surface Hydrologic Resource Evaluations
8. 2015: Order for Notice and Evidentiary Hearing
9. 2015-2019: Settlement Negotiations
10. 2019: Negotiated Agreement
11. 2019: Eastern Washington District Order Approves Agreement
12. 2022: Appeal to 9<sup>th</sup> Circuit, *United States v. Anderson*
13. Present: Petition Certiorari

## Adjudication Chamokane Basin

### The Players:

***Plaintiffs:*** In 1972, the United States, acting on its own behalf and as trustee for the Spokane Indian Tribe, filed for adjudication' of water rights in the Chamokane Basin.

Spokane Tribe of Indians was permitted to intervene as a plaintiff.

***Defendants:*** Included the State of Washington and  
“all other persons and corporations having an interest in the disputed waters.

### Defendant claims:

- The defendants' water claims relied on water rights certificates, permits or applications granted by the State of Washington.

### Evidence presented included:

- Hydrologic studies, reports, logs, affidavits, etc.

### U.S. sought “Other relief” including:

A ruling that protection of tribal reserved water rights *did not* require the court to determine:

- groundwater withdrawals in the upper basin or
- the *de minimis* use of water for domestic purposes

**1979:**

**District Court of the Eastern District of Washington unpublished memorandum opinion and order**

***Holding:***

- 1. Reacquired tribal lands: *priority date* for water rights is the *date of reacquisition*.**
- 2. State of Washington: Possesses right regulatory jx. (i.e permits, certifications)**
  - within the external boundaries of the reservation**
    - ✓ absent contrary federal law or**
    - ✓ infringement by the state on tribe's right to self-government.**



# ***United States v. Anderson* (9<sup>th</sup> District)**

## **Issues:**

- I. Priority date: Date of reacquisition**
- II. Regulation authority of excess water within reservation boundaries**

## ***Holding***

- I. Non-Indian allotment lands reacquired by the tribe-**
  - **Priority date = Date of reacquisition**
- II. State has regulatory authority of excess water**
  - **within reservation boundaries**
  - **on lands held by non-Indians**
  - **within the Spokane Indian Reservation.**
- III. No Ruling re: *de minimis* issue: “water should always be available.”**

# If Wishes Were Horses



# Science to the Rescue:



Prepared in cooperation with the United States Bureau of Indian Affairs and the Washington State Department of Ecology

## Simulation of Groundwater and Surface-Water Resources and Evaluation of Water-Management Alternatives for the Chamokane Creek Basin, Stevens County, Washington



Scientific Investigations Report 2012–5224

U.S. Department of the Interior  
U.S. Geological Survey

### SCIENCE:

ALWAYS QUESTION, ALWAYS DOUBT.  
ALWAYS ADMITS WHEN IT IS WRONG.  
WHEN CHALLENGED, REPLIES WITH EVIDENCE.

### "THE SCIENCE":

NEVER QUESTION, NEVER DOUBT.  
NEVER ADMITS WHEN IT IS WRONG.  
WHEN CHALLENGED, BECOMES HOSTILE.



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# Do We Have An Agreement?



# District Court Hearing on Settlement Agreement

- July 31, 2019: the court granted the government parties' joint motions to proceed with implementing the agreement.





# Yay! We Have an Agreement. 😊

**“The agreement centers on a mitigation program that will improve streamflows for fish, allows existing water uses to continue, and provides water for future domestic needs in Stevens County, and on Spokane Tribal lands.”**

- ***WA Dept. of Ecology***

**“The mitigation and settlement will protect the tribe's water and fishing rights for generations to come.”**

- ***Spokane Tribal Business Council Chairwoman Carol Evans***

Unfortunately.... ☹



# Appeal to the 9<sup>th</sup> Circuit

- ***SPOKANE INDIAN TRIBE V. SULGROVE* (9<sup>TH</sup> Cir. 2022)**



# **We need an Answer!**

**Petition for Writ of Certiorari filed January 10, 2023**



# Arguments

## Question 1:

### Article III- Standing

**Legal requirement that a party have:**

- 1. Protected interest/injury in fact**
- 2. Casual connection**
- 3. Redressable**





## Question 2:

# Standing for Non-parties



**Next: Cert Pending . . .**

