

Statement of
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Before the House Natural Resources Committee
Subcommittee on Water, Wildlife and Fisheries

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*“Left in the Dark: Examining the Biden Administration’s Efforts to
Eliminate the Pacific Northwest’s Clean Energy Production”*

December 12, 2023

United States Congress

Good afternoon, Chairman Bentz and members of the Subcommittee. My name is Humaira Falkenberg. I am the Power Resources Manager of Pacific PUD. I also serve as the Chair of the Allocation, Rates and Contract Committee of the Public Power Council and as the Vice Chair of Northwest River Partners. With significant weight and responsibility, I am here today to plead the case for not-for-profit utilities, our consumers and communities in the Pacific Northwest in light of the potential settlement between the United States Government (USG) and Six Sovereigns by December 15, 2023.

As Pacific County PUD’s (Pacific) Power Resources Manager, I manage and oversee all wholesale power supply costs for our utility. Currently, wholesale purchase power makes up nearly 50% of our total annual operating expenses. We have a \$31.1 million operating budget where \$14.2 million is attributed to purchased power. As a Full Requirements customer of Bonneville Power Administration, we rely on BPA to provide 100% of our wholesale electricity. Therefore, BPA power rates have the single greatest impact on the rate we must charge to our customers to recover costs.

As a not-for-profit consumer owned utility for 80 years, Pacific has relied on BPA to supply reliable, affordable, and low carbon wholesale electric power. Recently, Pacific engaged with BPA on the next “Provider of Choice” 20-year contract, as our current contract expires in 2028. Accepting long-term power sales contracts is among our utility’s most significant actions; we do it with utmost care and thought towards long-term intergenerational impacts that will last well beyond 2044.

Procedural Injustice

When we learned that the USG was in secret negotiations with select parties from the CRSO litigation and drafted commitments without our knowledge, we were outraged at the lack of procedural justice demonstrated by FMCS and CEQ. The Council on Environmental Quality (CEQ) engaged the Federal Mediation and Conciliation Service (FMCS) to attempt to make progress in resolving issues in the long-running CRSO litigation in the Federal District Court. Yet, those processes have not been fair, transparent or impartial and have not allowed other parties to have a voice. The collective voice of millions of people in the Pacific Northwest was silenced as the USG spent more than six months behind doors negotiating with the plaintiffs without meaningful engagement with us. As a result, any USG’s potential agreement resulting from these proceedings carries a shroud of procedural injustice. Any aspirational hope of genuine mediation and conflict resolution was abandoned.

Nevertheless, we remain empathetic to both the origin story and the importance of salmon and other fish to the Columbia River Basin Tribes and the needs of stakeholders for affordable, reliable clean power. However, Pacific's customers demand decision making to be guided by impartiality, ensuring that biases and politics do not influence the decision and, ultimately, any outcomes. Under challenging negotiations, it would not be uncharacteristic for parties to sit in extreme discomfort jointly. Still, the responsibility of FMCS and CEQ would have been to preserve procedural fairness and to allow adequate time to review positions. The fruit from a procedurally unjust tree is unjust. It is with this frustration we plead with Congress.

Strategic Ambiguity

When the commitments made by the USG in the "U.S. Government Commitments in Support of the Columbia Basin Restoration Initiative and in Partnership with the Six Sovereigns" (USG Commitments) came into the public domain on November 29th, 2023, we were alarmed at the strategic ambiguity contained therein. The implications of the potential commitments by the USG in the CRSO litigation pose significant threats to the long-term value of the FCRPS. This strategic ambiguity within the USG Commitments is revealed in three key areas: 1) lack of clarity on the costs confronting BPA and its customers 2) lack of operational certainty and 3) lack of litigation forbearance.

Given the massive uncertainty regarding the future of the Federal Columbia River Power System (FCRPS), it becomes painfully challenging for us to consider signing the next 20-year contracts in light of unknown costs in the out years. The document creates intolerable ambiguity in predicting and planning future electric rates for our customers. A shorter-term contract with BPA may help us better limit an unacceptable exposure to risk, given so many unknowns created through this agreement.

Lack of Clarity on the Costs Confronting BPA and Its Customers

Many of the USG commitments made in the document do not have an underlying specific appropriations strategies or budget commitments or named federal agencies for such responsibilities, creating the concern that BPA and its ratepayers will be the default funding source if and when Congress fails to act. The document labeled as "draft" dated "11/2/2023" exposes at least \$100 million in long term additional Fish and Wildlife expenses, and \$200 million in capital investments. These costs are in addition to the \$200 million of Phase 2 Implementation Plan (P2IP), various other long-term and short-term funding agreements, the Fish Accords, and the existing Fish and Wildlife Program. Additionally, BPA could bear an undefined share of the \$200 million "Mid C Restoration Plan" costs per year. It is still being determined whether BPA would be left to fill the gap if Congress does not make the expected appropriations. BPA could be the payer of last resort.

Separately, the USG Commitments propose an Advanced Tribal Energy Sovereignty program. We want and need all communities to expand efforts to promote a clean energy future while doing so reliably and affordably. While we support Tribal Energy independence and would welcome the collaboration with LRTT to realize their goals, in the document, the Department of Energy is charged supporting tribal development of 1-3 GW of new renewable energy resources to be "accounted" for as replacement for the output of the LSRDs. The commitments presume LSRD breaching and as a remedy create the problematic optics of BPA's role as the off taker of such "replacement" resources.

It is reckless energy policy to presume that 1-3 GW of wind or solar could be considered "replacement" of LSRD output. The LSRDs provide nearly 1,000 aMW of energy at average water and provide 25% of the ancillary services of the FCRPS. These projects are equipped with Automatic Generation Control (AGC) making them an important part of the sixty-second demand and supply balance necessary for power grid stability and operations. These projects' operating reserves aid BPA in meeting its Balance Area Authority functions. As more intermittent and variable renewable resources are integrated into the grid,

flexible and controllable hydroelectric dams become even more critical for grid reliability—removing them isn't the answer; quite the contrary, it is their very existence that allows the abundant integration of variable fuel-saving resources and accelerates the clean energy transition.

Besides contributing to grid reliability, according to BPA, the LSRDs generate electricity at a cost of \$14 MWh, which is well below the cost of developing new renewable resources. These legacy resources are vital to maintaining affordable rates in the region and thereby contributing to economic justice for those the most financially marginalized.

In conclusion, there is great deal of ambiguity and uncertainty as how the USG commitments in the document would impact BPA's rates. There is no plain and explicit language in the document that cabins BPA's financial obligation; given the extreme uncertainty of funding obligations in the agreement, we estimate potential rate impacts from 5% to over 50%.

Lack of Operational Certainty

We have significant concerns pertaining to the vulnerability of hydro operations to other lawsuits, including river temperature lawsuits that the plaintiffs and their colleagues have threatened. The USG commits to developing and using a Sovereign-driven process for “durable operations” without any protections or standards for the power system impacts. The language, “(The) USG is committed to developing and using a Sovereign driven process to focus on maintaining and adaptively implementing (managing) the durable set of operations agreed to that govern at the lower Snake River and lower Columbia River dams prior to potential breach of the lower Snake River dams,” is alarming.

That being said, ambiguity still arises with the following sentence “USG commits to working with the Six Sovereigns on potential changes such as interim project operations, more aggressive advancement of mid-Columbia River habitat restoration, and fish passage,” which can be implemented after supplemental or additional environmental compliance documents are completed.

We also reject the need to conduct a new FCRPS related Biological Opinion, conduct new USACE feasibility studies, and an EIS. The USG spent more than \$45 million on the CRSO EIS in 2020 and a related Biological Opinion.

Furthermore, the agreement does not firewall BPA from exposure to further operational changes through the CRSO claims not excluded by the agreement such as the Clean Water Act claims.

Lack of Litigation Forbearance

We have learned several lessons from the failed Columbia Basin Fish Accords. To provide a much more predictable path forward for the region, this document needs to require that the plaintiffs commit to discontinuing their ESA litigation for the ten-year duration of the agreement; they should commit to refraining from other litigation that could adversely impact FCRPS operations and BPA power customers. The plaintiffs should be bound to be co-defendants with the USG in case of lawsuits from other organizations that seek to reduce the value of the FCRPS capabilities. A piecemeal approach to litigation forbearance will invariably result in future concessions on part of BPA. BPA's customers should only have to pay higher electric rates if they are receiving commensurate financial and legal protections in the future.

In summary, the USG commitments document is repeatedly ambiguous. The strategic ambiguity will lead to decades of litigation and represents irresponsible public policy. It is imperative that the language in the agreement be made simple, clear, and precise if it were to advance.

BPA Rates and Impacts to Pacific

The nexus of cost and operational uncertainties coupled with lack of litigation forbearance could result in BPA's ratepayers being held responsible for undefined future liabilities. Unlike other Federal agencies, BPA funds its operations entirely through the rates it charges its customers like Pacific and BPA's customers repay all costs associated with the production and transmission of power from the multipurpose federal projects. This includes the costs related to mitigating the impact of federal hydropower generation on threatened and endangered fish species. About 25 percent of BPA's Tier 1 rate, which includes foregone revenue for the cost of lost generation, is paid by BPA's consumer owned utilities for BPA's fish and wildlife programs; in the last ten years, we have paid an average of \$685 million per year and during the course of the current power sales contract, BPA's Tier 1 power rates have already increased 24 percent.

While Pacific takes its obligation to fund the largest and most comprehensive environmental mitigation program in the United States seriously, BPA's authority to undertake any costs is restrained by its organic, enabling statutes, including its ratemaking directive to set "the lowest possible rates to consumers consistent with sound business principles." In other words, BPA is a creature of its statutes, and it cannot, despite the nobleness of the cause, improperly use ratepayer funds. The use of rate payer funds for potential USG commitments is not a matter of "ends justify the means" but rather about the impact on the people in our community, and I care deeply about the residents of Pacific County.

Our rate payer funds are not dividend checks from the shareholders of for-profit companies; instead, rate payer funds are monies that represent the sweat of labor from the vast majority of our blue-collar, working-class customers employed in seafood processing, cranberry bogs, and agricultural farms, including those members of our community that are most marginalized like migrant workers, elderly, disabled, and Asset Limited, Income Constrained, Employed (ALICE) populations.

ALICE populations earn more than the Federal Poverty Level but not enough to afford the basics where they live. ALICE workers were celebrated as essential heroes during the COVID-19 pandemic, yet they do not earn enough to support their own families. 45% of Pacific County residents qualify as ALICE. Pacific County has the largest percentage of ALICE population in all of Washington state. ALICE populations have insufficient income. When households can't afford the basics, they are forced to make difficult choices and trade-offs every day — impossible decisions like whether to pay for prescriptions or keep enough food on the table. The larger the gap between income and expenses, the more extreme the decisions and the greater the risks to a family's immediate health, safety, and financial stability. The slightest impact to the cost of an essential service like electricity can have significant consequences for both ALICE populations and those below the federal poverty line.

Pacific County Service Territory, Demographics, and Electric Rates

Pacific County spans nearly 1,000 square miles with a population of less than 25,000 individuals sparsely dispersed (fewer than 25 people per square mile) along the mouth of the Columbia River. Nearly 70% of the county's population resides in unincorporated areas, with only four small municipalities (South Bend, Raymond, Long Beach, and Ilwaco) defined by urban growth areas. Because of the inherent costs of electrical infrastructure investment in areas lacking concentrated population centers, we face significant pressures in capital costs. Our low number of customers per mile of transmission and distribution lines means we have a higher proportion of fixed costs. Further these are precisely the areas most affected by supply chain issues and inflation. This makes any BPA rate increases more challenging for us to absorb, as there are limited opportunities in our cost structure for offsetting reductions.

Separately, the county experiences extreme weather events due to the proximity of the Pacific Ocean, and high wind events are common.¹ We are also at severe risk of disruption of roads and services by

¹ <https://mynorthwest.com/3937904/what-is-washingtons-windiest-city/>
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earthquake and/or tsunami² and susceptible to ever frequent impacts of climate change. Between December 3rd and 5th, 2023, Pacific County and the adjacent communities experienced 12 to 16 inches of heavy rain resulting in severe flooding due to increasing regular atmospheric rivers affecting the region. Conditions were so dire that a U.S. Coast Guard rescue swimmer was lowered by a helicopter to save a person stranded on a partially submerged vehicle in Western Wahkiakum County. In addition, winter storms typically include hours of 60-100 mph winds, causing trees to fall and damage lines and structures. Our coastal communities are taking the brunt of climate change impacts while the USG is ambiguously envisioning a future without the LSRD that provide carbon free electricity and aides the nation in clean energy transition. When we solve for climate change, we will solve for salmon.

Separately, the topography of our county includes a mountainous landscape with heavily forested terrain, dense canopy cover, numerous wetlands, and geologic hazard areas. Furthermore, there are prevalent corrosive aerial salts that degrade free-standing outdoor assets; with all these challenges, we still strive to have the most affordable rates in the state of Washington at 6.3 cents per kWh versus the state's average at 8.5 cents. But despite our best efforts to have the lowest rates for a non-generating PUD in Washington, 2,805 households are below the 200% Federal Poverty Level and hence have an energy burden of more than 6%.

We must do more with less because nearly one-third (34%) of the county's population is over the age of 65. The median household income of \$50,873 is 35% lower than the state median income of \$80,219. These earnings translate into considerable poverty across the county. Nearly 15% of the population lives at or below the poverty line, approximately 11% of the population has no health insurance and 25% of residents claim a federal disability and 17% of the people under the age of 65 are disabled³.

Furthermore, poverty is rampant amongst families in our community: 14.7% of all families with related children under the age of 18 live in poverty. Nearly 40% of all households with children under the age of 18 and headed by a sole female live in poverty. Every school in Pacific County qualifies for Title I federal funding. Over 70% of our total school enrollment is considered "Low Income." Layering on avoidable energy burden is a disproportionate regressive tax for our most vulnerable community members.

Per the Biden Administration's Justice 40 Initiative⁴ and CEQ's Climate and Economic Justice Screening Tool, Pacific County has multiple tracts considered disadvantaged because they meet more than one burden threshold and the associated socioeconomic threshold. Pacific County's multiple census tracts rank 97th percentile for energy costs and 85% percentile for low-income households where income is less than or equal to twice the federal poverty level. Our customers expect us to hold the line on electric rates. For us to do that, BPA costs must be kept as low as possible while continuing to responsibly fund fish and wildlife mitigation efforts that are effective and proportionately funded by all who benefit.

Separately, when using CEQ's Climate and Economic Justice Screen Tool over the entire Pacific Northwest, the geospatial mapping tool reveals vast areas of BPA's customer communities are some of the most marginalized and under resourced⁵. In the screen shot image below, areas highlighted in blue in Washington, Oregon, Idaho, and Montana are identified as disadvantaged communities that are overburdened. The USG must be mindful of minimizing adverse rate impacts to these communities to access essential human services like electricity.

²<https://mil.wa.gov/asset/5ba420aa1c85c#:~:text=For%20example%2C%20the%20unincorporated%20areas,could%20have%20county%2Dwide%20repercussions.>

³ <https://www.census.gov/quickfacts/fact/table/pacificcountywashington/AGE775222#AGE775222>

⁴ <https://www.whitehouse.gov/environmentaljustice/justice40/>

⁵ <https://screeningtool.geoplatform.gov/en/#4.64/46.7/-114.77>

It was centuries of oppression by the USG against Native Americans under the Doctrine of Discovery and subsequent Congressional policies of allotment and termination that cost Native Americans and First Nations hundreds of millions of acres of homelands of spiritual, ceremonial, and ancestral significance. Now, the federal taxpayer should bear potential commitments made by the USG as part of the CEQ-FMCS settlement process, for the atonement of past actions.

Respectfully, the USG must reconcile the uncertain financial burden of its extensive potential commitments in support of the Columbia Basin Restoration Initiative to the ratepayers of the BPA in the Pacific Northwest considering the results presented from CEQ's geospatial map. Any rate increases on BPA's customers will result in regressive harm to the communities most disproportionately disadvantaged and overburdened.

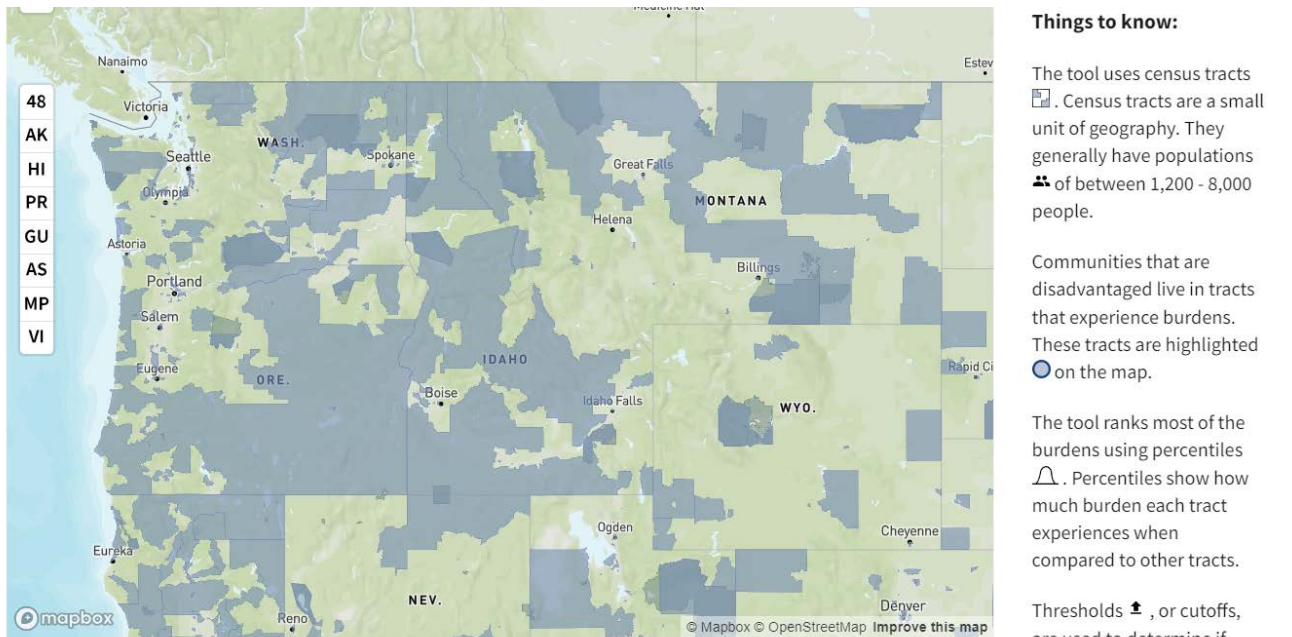
The USG's potential assurances in the CRSO litigation also pose significant threats to the long-term value of the Federal Columbia River Power System (FCRPS). Considering the substantial financial reliability and FCRPS operational uncertainty, committing to a 20-year Provider of Choice take or pay contract is difficult when long-term intergeneration impacts that will last beyond 2044 remain unknown.

While we support scientific, cost-effective mitigation efforts for fish and wildlife impacts that have a clear nexus to the impacts of the hydropower system, I humbly request that USG exercise moral courage and use principles of distributive justice while honoring BPA's organic, enabling statutes, including its ratemaking directive to set the "lowest possible rates" to appropriately ensure that potential burdens resulting from a settlement process are squarely cabined to the federal taxpayer.

The future of an urgent clean energy transition must prioritize important procedural, distributive, and restorative justice components that embraces equity and does not leave people behind. Hydropower remains the centerpiece of the Northwest's energy infrastructure and provides reliable, affordable, carbon-free power. We can only achieve our multiple policy objectives with it.

White House Council on Environmental Quality (CEQ) Climate and Economic Justice Screening Tool.

Census tracts that are overburdened and underserved are highlighted as being disadvantaged on the map. Federally Recognized Tribes are also considered disadvantaged communities.



U.S. territories note

Not all the data used in the tool are available or used for all U.S. territories.

Source: <https://screeningtool.geoplatform.gov/en/#4.64/46.7/-114.77>

Residential Rates* of Non-Generating Washington PUDs

1,200 kWh & 30 day-average Monthly Billing Including Basic Charge and All State Taxes



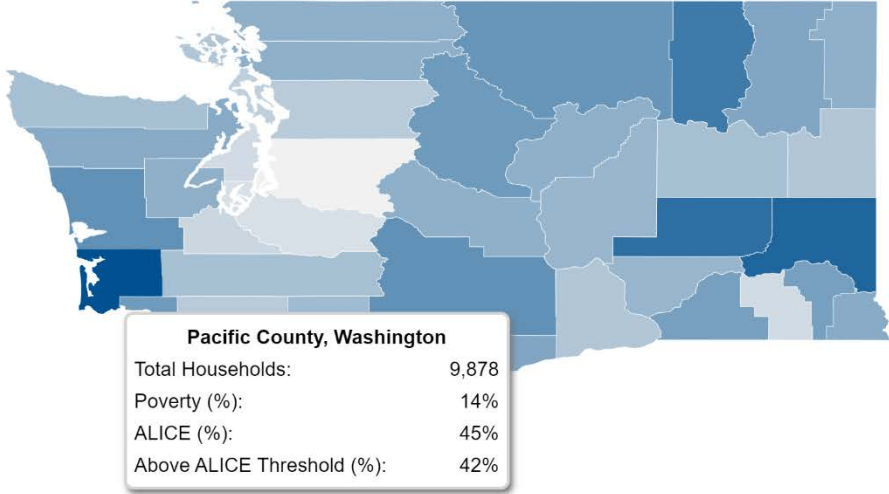
Skamania PUD	\$175.77
Jefferson PUD	\$159.94
Mason PUD 1	\$159.64
Grays Harbor PUD	\$157.81
Kittitas PUD	\$152.51
Mason PUD 3	\$152.06
Klickitat PUD	\$148.50
Clallam PUD	\$141.40
Snohomish PUD	\$140.32
Ferry PUD	\$133.61
Wahkiakum PUD	\$128.38
Franklin PUD	\$122.10
Benton PUD ***	\$118.59
Lewis PUD	\$117.71
Clark PUD **	\$116.95
Pacific PUD	\$111.80

* Based on 2023 data

** Does not include 'Cost of Delivery' charge referenced in rate schedule

*** Rate includes residential demand – assumed 10kW

Pacific County Asset Limited, Income Constrained, Employed (ALICE) populations.
Source: <https://www.unitedforalice.org/national-overview>

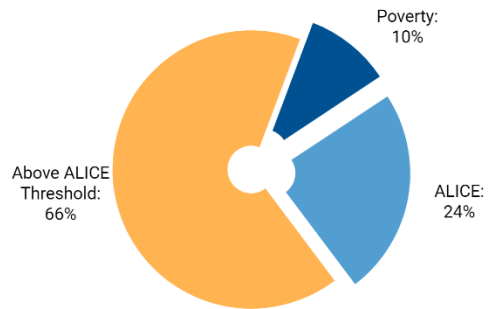


Washington • State Overview



United For ALICE calculates the cost of household essentials for all counties in Washington. These costs, outlined in the [Household Survival Budget](#), are calculated for various household sizes and compositions.

Of Washington's 3,013,644 households in 2021...

- 10% earned **below the Federal Poverty Level (FPL)**
- 24% were **ALICE**, in households that earned above the FPL but not enough to afford the basics in the communities where they live
- Together, 34% of households in Washington were **below the ALICE Threshold** (poverty + ALICE divided by total households)



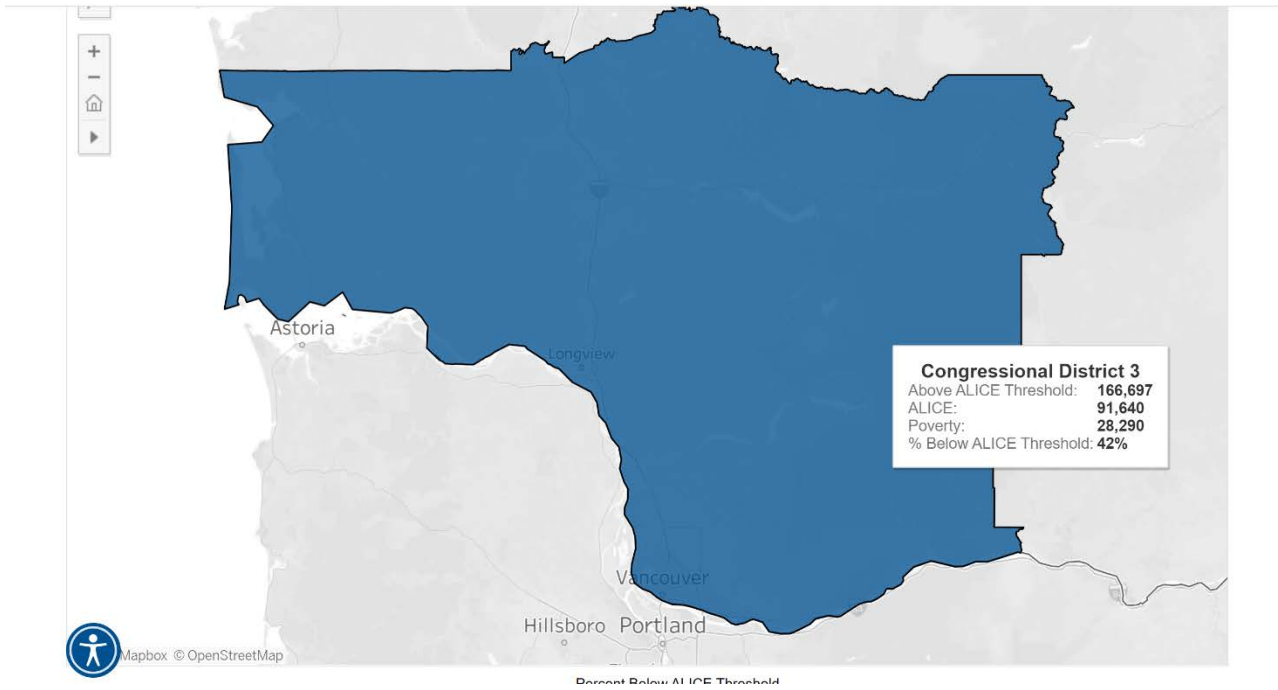
While the COVID-19 pandemic brought employment shifts, health struggles, and school/business closures in 2021, it also spurred unprecedented public assistance through pandemic relief measures. In 2019, 948,380

 households in Washington were below the ALICE Threshold; by 2021, that number had changed to 1,026,988.  the buttons below to switch between ALICE data over time by number and percentage.

3rd Congressional District, Washington. Asset Limited, Income Constrained, Employed (ALICE) populations.

Source: <https://www.unitedforalice.org/national-overview>

This interactive tool helps policymakers and community stakeholders better understand how many households are actually struggling in their district.



Insufficient Income: When households can't afford the basics, they are forced to make difficult choices and trade-offs every day — impossible decisions like whether to pay for prescriptions or keep enough food on the table. The larger the gap between income and expenses, the more extreme the decisions and the greater the risks to a family's immediate health, safety, and financial stability.

