

116TH CONGRESS
1ST SESSION

S. 216

To provide for equitable compensation to the Spokane Tribe of Indians of the Spokane Reservation for the use of tribal land for the production of hydropower by the Grand Coulee Dam, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2019

Ms. CANTWELL (for herself and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To provide for equitable compensation to the Spokane Tribe of Indians of the Spokane Reservation for the use of tribal land for the production of hydropower by the Grand Coulee Dam, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Spokane Tribe of Indi-
5 ans of the Spokane Reservation Equitable Compensation
6 Act”.

7 **SEC. 2. FINDINGS.**

8 Congress finds that—

1 (1) from 1927 to 1931, at the direction of Con-
2 gress, the Corps of Engineers investigated the Co-
3 lumbia River and its tributaries to determine sites at
4 which power could be produced at low cost;

5 (2) under section 10(e) of the Federal Power
6 Act (16 U.S.C. 803(e)), when licenses are issued in-
7 volving tribal land within an Indian reservation, a
8 reasonable annual charge shall be fixed for the use
9 of the land, subject to the approval of the Indian
10 tribe having jurisdiction over the land;

11 (3) in August 1933, the Columbia Basin Com-
12 mission, an agency of the State of Washington, re-
13 ceived a preliminary permit from the Federal Power
14 Commission for water power development at the
15 Grand Coulee site;

16 (4) had the Columbia Basin Commission or a
17 private entity developed the site, the Spokane Tribe
18 would have been entitled to a reasonable annual
19 charge for the use of the land of the Spokane Tribe;

20 (5) in the mid-1930s, the Federal Government,
21 which is not subject to licensing under the Federal
22 Power Act (16 U.S.C. 792 et seq.)—

23 (A) federalized the Grand Coulee Dam
24 project; and

1 (B) began construction of the Grand Cou-
2 lee Dam;

3 (6) when the Grand Coulee Dam project was
4 federalized, the Federal Government recognized
5 that—

6 (A) development of the project affected the
7 interests of the Spokane Tribe and the Confed-
8 erated Tribes of the Colville Reservation; and

9 (B) it would be appropriate for the Spo-
10 kane and Colville Tribes to receive a share of
11 revenue from the disposition of power produced
12 at Grand Coulee Dam;

13 (7) in the Act of June 29, 1940 (16 U.S.C.
14 835d et seq.), Congress—

15 (A) granted to the United States—

16 (i) in aid of the construction, oper-
17 ation, and maintenance of the Columbia
18 Basin Project, all the right, title, and in-
19 terest of the Spokane Tribe and Colville
20 Tribes in and to the tribal and allotted
21 land within the Spokane and Colville Res-
22 ervations, as designated by the Secretary
23 of the Interior from time to time; and

24 (ii) other interests in that land as re-
25 quired and as designated by the Secretary

1 for certain construction activities under-
2 taken in connection with the project; and

3 (B) provided that compensation for the
4 land and other interests was to be determined
5 by the Secretary in such amounts as the Sec-
6 retary determined to be just and equitable;

7 (8) pursuant to that Act, the Secretary paid—

8 (A) to the Spokane Tribe, \$4,700; and

9 (B) to the Confederated Tribes of the
10 Colville Reservation, \$63,000;

11 (9) in 1994, following litigation under the Act
12 of August 13, 1946 (commonly known as the “In-
13 dian Claims Commission Act” (60 Stat. 1049, chap-
14 ter 959; former 25 U.S.C. 70 et seq.)), Congress
15 ratified the Colville Settlement Agreement, which re-
16 quired—

17 (A) for past use of the land of the Colville
18 Tribes, a payment of \$53,000,000; and

19 (B) for continued use of the land of the
20 Colville Tribes, annual payments of
21 \$15,250,000, adjusted annually based on reve-
22 nues from the sale of electric power from the
23 Grand Coulee Dam project and transmission of
24 that power by the Bonneville Power Adminis-
25 tration;

1 (10) the Spokane Tribe, having suffered harm
2 similar to that suffered by the Colville Tribes, did
3 not file a claim within the 5-year statute of limita-
4 tions under the Indian Claims Commission Act;

5 (11) neither the Colville Tribes nor the Spokane
6 Tribe filed claims for compensation for use of the
7 land of the respective tribes with the Commission
8 prior to August 13, 1951, but both tribes filed unre-
9 lated land claims prior to August 13, 1951;

10 (12) in 1976, over objections by the United
11 States, the Colville Tribes were successful in amend-
12 ing the 1951 Claims Commission land claims to add
13 the Grand Coulee claim of the Colville Tribes;

14 (13) the Spokane Tribe had no such claim to
15 amend, having settled the Claims Commission land
16 claims of the Spokane Tribe with the United States
17 in 1967;

18 (14) the Spokane Tribe has suffered significant
19 harm from the construction and operation of Grand
20 Coulee Dam;

21 (15) Spokane tribal acreage taken by the
22 United States for the construction of Grand Coulee
23 Dam equaled approximately 39 percent of Colville
24 tribal acreage taken for construction of the dam;

1 (16) the payments and delegation made pursu-
2 ant to this Act constitute fair and equitable com-
3 pensation for the past and continued use of Spokane
4 tribal land for the production of hydropower at
5 Grand Coulee Dam; and

6 (17) by vote of the Spokane tribal membership,
7 the Spokane Tribe has resolved that the payments
8 and delegation made pursuant to this Act constitute
9 fair and equitable compensation for the past and
10 continued use of Spokane tribal land for the produc-
11 tion of hydropower at Grand Coulee Dam.

12 **SEC. 3. PURPOSE.**

13 The purpose of this Act is to provide fair and equi-
14 table compensation to the Spokane Tribe for the use of
15 the land of the Spokane Tribe for the generation of hydro-
16 power by the Grand Coulee Dam.

17 **SEC. 4. DEFINITIONS.**

18 In this Act:

19 (1) ADMINISTRATOR.—The term “Adminis-
20 trator” means the Administrator of the Bonneville
21 Power Administration or the head of any successor
22 agency, corporation, or entity that markets power
23 produced at Grand Coulee Dam.

24 (2) COLVILLE SETTLEMENT AGREEMENT.—The
25 term “Colville Settlement Agreement” means the

1 Settlement Agreement entered into between the
2 United States and the Colville Tribes, signed by the
3 United States on April 21, 1994, and by the Colville
4 Tribes on April 16, 1994, to settle the claims of the
5 Colville Tribes in Docket 181–D of the Indian
6 Claims Commission, which docket was transferred to
7 the United States Court of Federal Claims.

8 (3) COLVILLE TRIBES.—The term “Colville
9 Tribes” means the Confederated Tribes of the
10 Colville Reservation.

11 (4) COMPUTED ANNUAL PAYMENT.—The term
12 “Computed Annual Payment” means the payment
13 calculated under paragraph 2.b. of the Colville Set-
14 tlement Agreement, without regard to any increase
15 or decrease in the payment under section 2.d. of the
16 agreement.

17 (5) CONFEDERATED TRIBES ACT.—The term
18 “Confederated Tribes Act” means the Confederated
19 Tribes of the Colville Reservation Grand Coulee
20 Dam Settlement Act (Public Law 103–436; 108
21 Stat. 4577).

22 (6) SECRETARY.—The term “Secretary” means
23 the Secretary of the Interior.

24 (7) SPOKANE BUSINESS COUNCIL.—The term
25 “Spokane Business Council” means the governing

1 body of the Spokane Tribe under the constitution of
2 the Spokane Tribe.

3 (8) SPOKANE TRIBE.—The term “Spokane
4 Tribe” means the Spokane Tribe of Indians of the
5 Spokane Reservation, Washington.

6 **SEC. 5. PAYMENTS BY ADMINISTRATOR.**

7 (a) INITIAL PAYMENT.—On March 1, 2022, the Ad-
8 ministrator shall pay to the Spokane Tribe an amount
9 equal to 25 percent of the Computed Annual Payment for
10 fiscal year 2021.

11 (b) SUBSEQUENT PAYMENTS.—

12 (1) IN GENERAL.—Not later than March 1,
13 2023, and March 1 of each year thereafter through
14 March 1, 2029, the Administrator shall pay the Spo-
15 kane Tribe an amount equal to 25 percent of the
16 Computed Annual Payment for the preceding fiscal
17 year.

18 (2) MARCH 1, 2030, AND SUBSEQUENT YEARS.—
19 Not later than March 1, 2030, and March 1 of each
20 year thereafter, the Administrator shall pay the Spo-
21 kane Tribe an amount equal to 32 percent of the
22 Computed Annual Payment for the preceding fiscal
23 year.

1 **SEC. 6. TREATMENT AFTER AMOUNTS ARE PAID.**

2 (a) USE OF PAYMENTS.—Payments made to the Spo-
3 kane Business Council or Spokane Tribe under section 5
4 may be used or invested by the Spokane Business Council
5 in the same manner and for the same purposes as other
6 Spokane Tribe governmental amounts.

7 (b) NO TRUST RESPONSIBILITY OF THE SEC-
8 RETARY.—Neither the Secretary nor the Administrator
9 shall have any trust responsibility for the investment, su-
10 pervision, administration, or expenditure of any amounts
11 after the date on which the funds are paid to the Spokane
12 Business Council or Spokane Tribe under section 5.

13 (c) TREATMENT OF FUNDS FOR CERTAIN PUR-
14 POSES.—The payments of all amounts to the Spokane
15 Business Council and Spokane Tribe under section 5, and
16 the interest and income generated by those amounts, shall
17 be treated in the same manner as payments under section
18 6 of the Saginaw Chippewa Indian Tribe of Michigan Dis-
19 tribution of Judgment Funds Act (100 Stat. 677).

20 (d) TRIBAL AUDIT.—After the date on which
21 amounts are paid to the Spokane Business Council or Spo-
22 kane Tribe under section 5, the amounts shall—

23 (1) constitute Spokane Tribe governmental
24 amounts; and

25 (2) be subject to an annual tribal government
26 audit.

1 **SEC. 7. REPAYMENT CREDIT.**

2 (a) IN GENERAL.—The Administrator shall deduct
3 from the interest payable to the Secretary of the Treasury
4 from net proceeds (as defined in section 13 of the Federal
5 Columbia River Transmission System Act (16 U.S.C.
6 838k))—

7 (1) in fiscal year 2030, \$2,700,000; and

8 (2) in each subsequent fiscal year in which the
9 Administrator makes a payment under section 5,
10 \$2,700,000.

11 (b) CREDITING.—

12 (1) IN GENERAL.—Except as provided in para-
13 graphs (2) and (3), each deduction made under this
14 section for the fiscal year shall be—

15 (A) a credit to the interest payments oth-
16 erwise payable by the Administrator to the Sec-
17 retary of the Treasury during the fiscal year in
18 which the deduction is made; and

19 (B) allocated pro rata to all interest pay-
20 ments on debt associated with the generation
21 function of the Federal Columbia River Power
22 System that are due during the fiscal year.

23 (2) DEDUCTION GREATER THAN AMOUNT OF
24 INTEREST.—If, in an applicable fiscal year under
25 paragraph (1), the deduction is greater than the
26 amount of interest due on debt associated with the

1 generation function for the fiscal year, the amount
2 of the deduction that exceeds the interest due on
3 debt associated with the generation function shall be
4 allocated pro rata to all other interest payments due
5 during the fiscal year.

6 (3) CREDIT.—To the extent that a deduction
7 exceeds the total amount of interest described in
8 paragraphs (1) and (2), the deduction shall be ap-
9 plied as a credit against any other payments that
10 the Administrator makes to the Secretary of the
11 Treasury.

12 **SEC. 8. EXTINGUISHMENT OF CLAIMS.**

13 On the date that payment under section 5(a) is made
14 to the Spokane Tribe, all monetary claims that the Spo-
15 kane Tribe has or may have against the United States
16 to a fair share of the annual hydropower revenues gen-
17 erated by the Grand Coulee Dam project for the past and
18 continued use of land of the Spokane Tribe for the produc-
19 tion of hydropower at Grand Coulee Dam shall be extin-
20 guished.

21 **SEC. 9. ADMINISTRATION.**

22 Nothing in this Act establishes any precedent or is
23 binding on the Southwestern Power Administration, West-

- 1 ern Area Power Administration, or Southeastern Power
- 2 Administration.

