

Calendar No. 34116TH CONGRESS
1ST SESSION**S. 216****[Report No. 116-4]**

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

MARCH 7, 2019

Reported by Mr. HOEVEN, without amendment

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,*

1 **SECTION 1. SHORT TITLE.**

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

5 **SEC. 2. FINDINGS.**

6 Congress finds that—

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

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

17 (3) in August 1933, the Columbia Basin Com-
18 mission, an agency of the State of Washington, re-
19 ceived a preliminary permit from the Federal Power
20 Commission for water power development at the
21 Grand Coulee site;

22 (4) had the Columbia Basin Commission or a
23 private entity developed the site, the Spokane Tribe
24 would have been entitled to a reasonable annual
25 charge for the use of the land of the Spokane Tribe;

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

4 (A) federalized the Grand Coulee Dam
5 project; and

6 (B) began construction of the Grand Cou-
7 lee Dam;

8 (6) when the Grand Coulee Dam project was
9 federalized, the Federal Government recognized
10 that—

11 (A) development of the project affected the
12 interests of the Spokane Tribe and the Confed-
13 erated Tribes of the Colville Reservation; and

14 (B) it would be appropriate for the Spo-
15 kane and Colville Tribes to receive a share of
16 revenue from the disposition of power produced
17 at Grand Coulee Dam;

18 (7) in the Act of June 29, 1940 (16 U.S.C.
19 835d et seq.), Congress—

20 (A) granted to the United States—

21 (i) in aid of the construction, oper-
22 ation, and maintenance of the Columbia
23 Basin Project, all the right, title, and in-
24 terest of the Spokane Tribe and Colville
25 Tribes in and to the tribal and allotted

1 land within the Spokane and Colville Res-
2 ervations, as designated by the Secretary
3 of the Interior from time to time; and

4 (ii) other interests in that land as re-
5 quired and as designated by the Secretary
6 for certain construction activities under-
7 taken in connection with the project; and

8 (B) provided that compensation for the
9 land and other interests was to be determined
10 by the Secretary in such amounts as the Sec-
11 retary determined to be just and equitable;

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

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

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

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

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

24 (B) for continued use of the land of the
25 Colville Tribes, annual payments of

1 \$15,250,000, adjusted annually based on reve-
2 nues from the sale of electric power from the
3 Grand Coulee Dam project and transmission of
4 that power by the Bonneville Power Adminis-
5 tration;

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

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

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

19 (13) the Spokane Tribe had no such claim to
20 amend, having settled the Claims Commission land
21 claims of the Spokane Tribe with the United States
22 in 1967;

23 (14) the Spokane Tribe has suffered significant
24 harm from the construction and operation of Grand
25 Coulee Dam;

1 (15) Spokane tribal acreage taken by the
 2 United States for the construction of Grand Coulee
 3 Dam equaled approximately 39 percent of Colville
 4 tribal acreage taken for construction of the dam;

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

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

16 **SEC. 3. PURPOSE.**

17 The purpose of this Act is to provide fair and equi-
 18 table compensation to the Spokane Tribe for the use of
 19 the land of the Spokane Tribe for the generation of hydro-
 20 power by the Grand Coulee Dam.

21 **SEC. 4. DEFINITIONS.**

22 In this Act:

23 (1) ADMINISTRATOR.—The term “Adminis-
 24 trator” means the Administrator of the Bonneville
 25 Power Administration or the head of any successor

1 agency, corporation, or entity that markets power
2 produced at Grand Coulee Dam.

3 (2) COLVILLE SETTLEMENT AGREEMENT.—The
4 term “Colville Settlement Agreement” means the
5 Settlement Agreement entered into between the
6 United States and the Colville Tribes, signed by the
7 United States on April 21, 1994, and by the Colville
8 Tribes on April 16, 1994, to settle the claims of the
9 Colville Tribes in Docket 181–D of the Indian
10 Claims Commission, which docket was transferred to
11 the United States Court of Federal Claims.

12 (3) COLVILLE TRIBES.—The term “Colville
13 Tribes” means the Confederated Tribes of the
14 Colville Reservation.

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

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

1 (6) SECRETARY.—The term “Secretary” means
2 the Secretary of the Interior.

3 (7) SPOKANE BUSINESS COUNCIL.—The term
4 “Spokane Business Council” means the governing
5 body of the Spokane Tribe under the constitution of
6 the Spokane Tribe.

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

10 **SEC. 5. PAYMENTS BY ADMINISTRATOR.**

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

15 (b) SUBSEQUENT PAYMENTS.—

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

22 (2) MARCH 1, 2030, AND SUBSEQUENT YEARS.—
23 Not later than March 1, 2030, and March 1 of each
24 year thereafter, the Administrator shall pay the Spo-
25 kane Tribe an amount equal to 32 percent of the

1 Computed Annual Payment for the preceding fiscal
2 year.

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

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

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

15 (c) TREATMENT OF FUNDS FOR CERTAIN PUR-
16 POSES.—The payments of all amounts to the Spokane
17 Business Council and Spokane Tribe under section 5, and
18 the interest and income generated by those amounts, shall
19 be treated in the same manner as payments under section
20 6 of the Saginaw Chippewa Indian Tribe of Michigan Dis-
21 tribution of Judgment Funds Act (100 Stat. 677).

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

1 (1) constitute Spokane Tribe governmental
2 amounts; and

3 (2) be subject to an annual tribal government
4 audit.

5 **SEC. 7. REPAYMENT CREDIT.**

6 (a) IN GENERAL.—The Administrator shall deduct
7 from the interest payable to the Secretary of the Treasury
8 from net proceeds (as defined in section 13 of the Federal
9 Columbia River Transmission System Act (16 U.S.C.
10 838k))—

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

12 (2) in each subsequent fiscal year in which the
13 Administrator makes a payment under section 5,
14 \$2,700,000.

15 (b) CREDITING.—

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

19 (A) a credit to the interest payments oth-
20 erwise payable by the Administrator to the Sec-
21 retary of the Treasury during the fiscal year in
22 which the deduction is made; and

23 (B) allocated pro rata to all interest pay-
24 ments on debt associated with the generation

1 function of the Federal Columbia River Power
2 System that are due during the fiscal year.

3 (2) DEDUCTION GREATER THAN AMOUNT OF
4 INTEREST.—If, in an applicable fiscal year under
5 paragraph (1), the deduction is greater than the
6 amount of interest due on debt associated with the
7 generation function for the fiscal year, the amount
8 of the deduction that exceeds the interest due on
9 debt associated with the generation function shall be
10 allocated pro rata to all other interest payments due
11 during the fiscal year.

12 (3) CREDIT.—To the extent that a deduction
13 exceeds the total amount of interest described in
14 paragraphs (1) and (2), the deduction shall be ap-
15 plied as a credit against any other payments that
16 the Administrator makes to the Secretary of the
17 Treasury.

18 **SEC. 8. EXTINGUISHMENT OF CLAIMS.**

19 On the date that payment under section 5(a) is made
20 to the Spokane Tribe, all monetary claims that the Spo-
21 kane Tribe has or may have against the United States
22 to a fair share of the annual hydropower revenues gen-
23 erated by the Grand Coulee Dam project for the past and
24 continued use of land of the Spokane Tribe for the produc-

1 tion of hydropower at Grand Coulee Dam shall be extin-
2 guished.

3 **SEC. 9. ADMINISTRATION.**

4 Nothing in this Act establishes any precedent or is
5 binding on the Southwestern Power Administration, West-
6 ern Area Power Administration, or Southeastern Power
7 Administration.

Calendar No. 34

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