

114TH CONGRESS
2D SESSION

S. 2739

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

MARCH 17, 2016

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) FUND.—The term “Fund” means the Spo-
23 kane Tribe of Indians Recovery Trust Fund estab-
24 lished by section 5.

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

3 (8) 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 (9) SPOKANE TRIBE.—The term “Spokane
8 Tribe” means the Spokane Tribe of Indians of the
9 Spokane Reservation, Washington.

10 **SEC. 5. SPOKANE TRIBE OF INDIANS RECOVERY TRUST**
11 **FUND.**

12 (a) ESTABLISHMENT OF FUND.—There is estab-
13 lished in the Treasury of the United States a separate ac-
14 count to be known as the “Spokane Tribe of Indians Re-
15 covery Trust Fund”, consisting of—

16 (1) amounts deposited in the Fund under sub-
17 section (b); and

18 (2) any interest earned on investment of
19 amounts in the Fund.

20 (b) DEPOSITS.—On October 1 of the first fiscal year
21 after the date of enactment of this Act, the Secretary of
22 the Treasury shall, from the general fund of the Treasury,
23 deposit in the Fund \$53,000,000.

24 (c) MAINTENANCE AND INVESTMENT OF FUND.—
25 The Fund shall be maintained and invested by the Sec-

1 retary in accordance with the Act of June 24, 1938 (25
2 U.S.C. 162a).

3 (d) PAYMENTS TO THE SPOKANE TRIBE.—

4 (1) IN GENERAL.—At any time after the date
5 on which the Spokane Business Council has adopted
6 a plan described in subsection (e) and after amounts
7 are deposited in the Fund, the Spokane Business
8 Council may request that all or a portion of the
9 amounts in the Fund be disbursed to the Spokane
10 Tribe by submitting to the Secretary written notice
11 of the adoption by the Spokane Business Council of
12 a resolution requesting the disbursement.

13 (2) PAYMENT.—Not later than 60 days after
14 the date on which the Secretary receives notice
15 under paragraph (1), the Secretary shall disburse
16 the amounts requested from the Fund to the Spo-
17 kane Tribe.

18 (e) PLAN.—

19 (1) IN GENERAL.—Not later than 18 months
20 after the date of enactment of this Act, the Spokane
21 Business Council shall prepare a plan that describes
22 the manner in which the Spokane Tribe intends to
23 use amounts received under subsection (d) to pro-
24 mote—

25 (A) economic development;

1 (B) infrastructure development;

2 (C) educational, health, recreational, and
3 social welfare objectives of the Spokane Tribe
4 and the members of the Spokane Tribe; or

5 (D) any combination of the activities de-
6 scribed in subparagraphs (A) through (C).

7 (2) REVIEW AND REVISION.—

8 (A) IN GENERAL.—The Spokane Business
9 Council shall make available to the members of
10 the Spokane Tribe for review and comment a
11 copy of the plan before the date on which the
12 plan is final, in accordance with procedures es-
13 tablished by the Spokane Business Council.

14 (B) UPDATES.—The Spokane Business
15 Council may update the plan on an annual
16 basis, subject to the condition that the Spokane
17 Business Council provides the members of the
18 Spokane Tribe an opportunity to review and
19 comment on the updated plan.

20 **SEC. 6. PAYMENTS BY ADMINISTRATOR.**

21 (a) INITIAL PAYMENT.—On March 1, 2017, the Ad-
22 ministrator shall pay to the Spokane Tribe an amount
23 equal to 25 percent of the Computed Annual Payment for
24 fiscal year 2016.

25 (b) SUBSEQUENT PAYMENTS.—

1 (1) IN GENERAL.—Not later than March 1,
2 2018, and March 1 of each year thereafter through
3 March 1, 2026, the Administrator shall pay the Spo-
4 kane Tribe an amount equal to 25 percent of the
5 Computed Annual Payment for the preceding fiscal
6 year.

7 (2) MARCH 1, 2027, AND SUBSEQUENT YEARS.—
8 Not later than March 1, 2027, and March 1 of each
9 year thereafter, the Administrator shall pay the Spo-
10 kane Tribe an amount equal to 32 percent of the
11 Computed Annual Payment for the preceding fiscal
12 year.

13 **SEC. 7. TREATMENT AFTER AMOUNTS ARE PAID.**

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

19 (b) NO TRUST RESPONSIBILITY OF THE SEC-
20 RETARY.—Neither the Secretary nor the Administrator
21 shall have any trust responsibility for the investment, su-
22 pervision, administration, or expenditure of any amounts
23 after the date on which the funds are paid to the Spokane
24 Business Council or Spokane Tribe under section 5 or 6.

1 (c) TREATMENT OF FUNDS FOR CERTAIN PUR-
2 POSES.—The payments of all amounts to the Spokane
3 Business Council and Spokane Tribe under sections 5 and
4 6, and the interest and income generated by those
5 amounts, shall be treated in the same manner as payments
6 under section 6 of the Saginaw Chippewa Indian Tribe
7 of Michigan Distribution of Judgment Funds Act (100
8 Stat. 677).

9 (d) TRIBAL AUDIT.—After the date on which
10 amounts are paid to the Spokane Business Council or Spo-
11 kane Tribe under section 5 or 6, the amounts shall—

12 (1) constitute Spokane Tribe governmental
13 amounts; and

14 (2) be subject to an annual tribal government
15 audit.

16 **SEC. 8. REPAYMENT CREDIT.**

17 (a) IN GENERAL.—The Administrator shall deduct
18 from the interest payable to the Secretary of the Treasury
19 from net proceeds (as defined in section 13 of the Federal
20 Columbia River Transmission System Act (16 U.S.C.
21 838k))—

22 (1) in fiscal year 2026, \$2,700,000; and

23 (2) in each subsequent fiscal year in which the
24 Administrator makes a payment under section 6,
25 \$2,700,000.

1 (b) CREDITING.—

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

5 (A) a credit to the interest payments oth-
6 erwise payable by the Administrator to the Sec-
7 retary of the Treasury during the fiscal year in
8 which the deduction is made; and

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

13 (2) DEDUCTION GREATER THAN AMOUNT OF
14 INTEREST.—If, in an applicable fiscal year under
15 paragraph (1), the deduction is greater than the
16 amount of interest due on debt associated with the
17 generation function for the fiscal year, the amount
18 of the deduction that exceeds the interest due on
19 debt associated with the generation function shall be
20 allocated pro rata to all other interest payments due
21 during the fiscal year.

22 (3) CREDIT.—To the extent that a deduction
23 exceeds the total amount of interest described in
24 paragraphs (1) and (2), the deduction shall be ap-
25 plied as a credit against any other payments that

1 the Administrator makes to the Secretary of the
2 Treasury.

3 **SEC. 9. EXTINGUISHMENT OF CLAIMS.**

4 On the deposit of amounts in the Fund under section
5 5, all monetary claims that the Spokane Tribe has or may
6 have against the United States to a fair share of the an-
7 nual hydropower revenues generated by the Grand Coulee
8 Dam project for the past and continued use of land of
9 the Spokane Tribe for the production of hydropower at
10 Grand Coulee Dam shall be extinguished.

11 **SEC. 10. ADMINISTRATION.**

12 Nothing in this Act establishes any precedent or is
13 binding on the Southwestern Power Administration, West-
14 ern Area Power Administration, or Southeastern Power
15 Administration.

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