

Calendar No. 448

113TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 113-202

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

JUNE 26, 2014.—Ordered to be printed

Mr. TESTER, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 1448]

The Committee on Indian Affairs, to which was referred the bill (S. 1448) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 1448 is to provide fair and equitable compensation to the Spokane Tribe for the past and continuing use of tribal lands by the federal government for the generation of hydropower by the Grand Coulee Dam.

BACKGROUND

Planning for the construction of the Grand Coulee Dam began during the period from 1927 to 1931, when the Army Corps of Engineers, at the direction of Congress, investigated the Columbia River and its tributaries to identify sites at which dams could be constructed to produce hydroelectric power at low cost. The Corps recommended that dams be constructed at a number of sites, including the current site of the Grand Coulee Dam. The site chosen for the Grand Coulee Dam consisted, in part, of lands held in trust by the federal government for the benefit of the Colville and Spokane Tribes.

The Corps recommended that construction of Grand Coulee Dam be undertaken by local governments or private utilities under the

authority of the Federal Power Act. The Federal Power Act requires a licensee using Indian lands to pay an annual payment to the Indian tribe for the use of its land. In 1933, an agency of the state of Washington was issued a preliminary permit to construct a dam at the Grand Coulee site by the Federal Power Commission. Several years later, however, the federal government assumed control of the project. Federal dam projects were not subject to the Federal Power Act, and thus the federal government was not obligated to pay the Spokane or Colville Tribes an annual payment for use of their lands.

When the Grand Coulee Dam project was federalized, the federal government recognized that development of the project affected the interests of the Spokane Tribe and the Confederated Tribes of the Colville Reservation and that it would be appropriate for the Spokane and Colville Tribes to receive a share of revenue from the disposition of power produced at Grand Coulee Dam. The Act of June 29, 1940, directed the Secretary of the Interior to provide compensation to the Colville and Spokane Tribes for the use of the land in an amount determined by the Secretary to be just and equitable. Pursuant to that Act, the Secretary paid to the Spokane Tribe, \$4,700, and to the Confederated Tribes of the Colville Reservation, \$63,000.

Recognizing those one time payments were insufficient as compensation for the use of tribal lands, Congress enacted the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act in 1994, to provide further compensation to the Colville Tribes for the use of their lands for the Grand Coulee Dam. The Colville Settlement Act required a payment of \$53,000,000 for past use of the land of the Colville Tribes. For the continued use of Colville Tribal lands, the Act provided annual payments of \$15,250,000, adjusted annually based on revenues from the sale of electric power from the Grand Coulee Dam project by the Bonneville Power Administration.

While the Spokane Tribe suffered harm similar to that suffered by the Colville Tribes, Congress did not include the Spokane Tribe in the 1994 Act. Further, the Spokane Tribe's claims before the Indian Claims Commission had all been fully adjudicated, so the Tribe had no mechanism to litigate its claims regarding the Grand Coulee Dam in federal court. This bill aims to correct this injustice by finally providing fair and equitable compensation to the Spokane Tribe.

S. 1448 would provide the Spokane Tribe with a lump-sum payment for the past use of tribal lands, which are now submerged under the reservoir created by the Grand Coulee Dam. Additionally, the bill would provide the Spokane Tribe with annual payments for the continued use of tribal lands, based on the sale of hydroelectric power generated by the Grand Coulee Dam. The Bonneville Power Administration has stated that these annual payments alone would not necessitate a rate increase for its utility customers.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The Act may be cited as the “Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act”.

Section 2. Findings

Section 2 states the findings of Congress that support the need for the Act.

Section 3. Purpose

Section 3 states the purpose of the Act is to provide fair and equitable compensation to the Spokane Tribe for use of its lands for the generation of hydropower by the Grand Coulee Dam.

Section 4. Definitions

Section 4 defines the key terms used throughout the Act.

Section 5. Spokane Tribe of Indian Recovery Trust Fund

Section 5 establishes a Trust Fund of \$53 million for the Spokane Tribe to be maintained and invested by the Secretary of the Interior until the fund is disbursed to the Tribe upon their request. Section 5 provides that the Tribe must prepare a plan on how it intends to use funds prior to the Tribe’s request for disbursement of the Fund.

Section 6. Payments by Administrator

Section 6 provides for annual payments to the Spokane Tribe for continued use of tribal lands, based on the revenues from the generation of hydroelectric power by the Grand Coulee Dam.

Section 7. Treatment after amounts are paid

Section 7 describes how the Spokane Tribe may use funds provided under sections 5 or 6 of the Act, and states that there is no trust responsibility of the Secretary of the Interior or the Bonneville Power Administrator towards the funds, once they have been paid to the Tribe.

Section 8. Repayment credit

Section 8 allows the Administrator of the Bonneville Power Administration a credit against future interest payments owed to the Secretary of the Treasury.

Section 9. Extinguishment of claims

Section 9 states that upon deposit of the Trust Fund under section 5 of the Act, all claims the Spokane has or may have against the United States will be extinguished.

Section 10. Administration

Section 10 states that the Act is not binding or establishing precedent for other Power Administrations.

LEGISLATIVE HISTORY

S. 1448 was introduced on August 1, 2013, by Senator Maria Cantwell and Senator Patty Murray. The bill was referred to the

Committee on Indian Affairs. On September 10, 2013, the Committee on Indian Affairs held a hearing on the bill. On January 29, 2014, the Committee met to consider the bill. One substitute amendment was offered, and the bill as amended was adopted and ordered favorably reported to the Senate by voice vote.

SUMMARY OF THE AMENDMENTS

Senator Cantwell offered an amendment in the nature of a substitute. The amendment states that annual payments from the Bonneville Power Administration to the Spokane Tribe under Section 6(b) will be offset by reductions in expenditures by the Administration. The amendment also makes a technical correction to update a fiscal year citation, necessary due to the lapse of a fiscal year since the bill's introduction.

COMMITTEE RECOMMENDATION

On January 29, 2014, the Senate Committee on Indian Affairs held a business meeting to consider S. 1448 and other measures. Senator Cantwell introduced a substitute amendment, which was accepted by voice vote. The Committee ordered the bill, as amended, reported to the full Senate with the recommendation that it do pass.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated April 18, 2014, was prepared for S. 1448:

APRIL 18, 2014.

Hon. JON TESTER,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1448, the Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Martin von Gnechten and Kathleen Gramp.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1448—Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act

Summary: S. 1448 would provide compensation to the Spokane Tribe of Indians for tribal lands used in the construction of the Grand Coulee Dam in Washington. The bill would establish the Spokane Tribe of Indians Recovery Trust Fund and would require the Bonneville Power Administration (BPA) to make annual payments to the tribe from receipts generated from the sale of electricity. CBO estimates that enacting S. 1448 would increase net direct spending by \$56 million over the 2015–2024 period. Because enacting S. 1448 would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

S. 1448 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would extinguish the monetary claims of the Spokane Tribe of Indians against the United States for hydropower revenues and for past and continued use of the tribe's land. CBO estimates that the cost of the mandate would not exceed the annual threshold established in that act (\$76 million in 2014, adjusted annually for inflation).

S. 1448 contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary effect of S. 1448 is shown in the following table. The costs of this legislation fall within budget functions 450 (community and regional development) and 270 (energy).

	By fiscal year, in millions of dollars—											
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2015– 2019	2015– 2024
CHANGES IN DIRECT SPENDING												
Spokane Tribe of Indians Recovery Trust Fund												
Budget Authority	53	0	0	0	0	0	0	0	0	0	53	53
Estimated Outlays	53	0	0	0	0	0	0	0	0	0	53	53
Effects on BPA												
Estimated Budget Authority	11	–11	0	0	0	0	0	0	0	3	0	3
Estimated Outlays	11	–11	0	0	0	0	0	0	0	3	0	3
Total Changes												
Estimated Budget Authority	64	–11	0	0	0	0	0	0	0	3	53	56
Estimated Outlays	64	–11	0	0	0	0	0	0	0	3	53	56

Note: BPA = Bonneville Power Administration.

Basis of estimate: For this estimate, CBO assumes that this bill will be enacted near the end of 2014.

Spokane Tribe of Indians Recovery Trust Fund

S. 1448 would create the Spokane Tribe of Indians Recovery Trust Fund to provide compensation for land taken from the tribe by the federal government to build the Grand Coulee Dam. S. 1448 would require that \$53 million be deposited to that trust fund on the first day of the first fiscal year after enactment. Under the bill, the Spokane Tribal Business Council would have 18 months to prepare a plan detailing how the trust fund would be used before the amounts deposited in the trust fund, as well as any accrued interest, could be spent.

Payments to certain tribal trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes are treated as payments to a nonfederal entity. As a result, CBO expects that the entire amount deposited to this trust fund would be recorded as budget authority and outlays at the time of the deposit. The Secretary of the Interior would be required to invest the funds in government securities until those funds are expended by the tribe.

Budgetary effects on the Bonneville Power Administration

The legislation also would require BPA to make an annual payment to the Spokane Tribe of Indians. Beginning in 2014 and extending through 2024, that payment would equal 25 percent of the

annual payment that BPA makes under current law to the Confederated Tribes of the Colville Reservation. After 2024, the annual payment to the Spokane Tribe would increase to 32 percent of the payment to the Confederated Tribes. CBO estimates that payments would total about \$5 million annually until 2024 and then increase to about \$8 million. Under the legislation, those payments would continue as long as electricity is generated at the Grand Coulee Dam.

Because BPA's operating costs are driven primarily by market and environmental conditions that are difficult to control, CBO expects that the agency would not be able to offset the cost of this bill by reducing operating expenses. Instead, we anticipate that BPA would increase the rates it charges customers for electricity to cover that cost. Therefore, those payments would generally be offset by an equivalent increase in the revenue collected from customers. However, because BPA has already set the rates it will charge customers for electricity through 2015, CBO expects that the agency would use reserve funds to make payments to the tribe for 2014 and 2015. CBO expects that BPA would use \$11 million of reserves for payments to the tribe in 2015 and that the agency would adjust its rates in 2016 to replenish the reserves. Beginning in 2016, CBO expects that the additional annual payment would become part of BPA's cost structure and would be fully offset by an increase in rates for electricity. Therefore, CBO estimates no net effect of the annual payments and rate increases after 2016.

In addition, starting in 2024, S. 1448 would reduce BPA's interest payments to the Treasury by \$2.7 million in the years that BPA makes payments to the tribe. Because those payments offset direct spending, such reductions would have the effect of increasing direct spending by \$2.7 million a year indefinitely, starting in 2024.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net change in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 1448, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON INDIAN AFFAIRS ON JANUARY 29, 2014

	By fiscal year, in millions of dollars—												
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014– 2019	2014– 2024
	NET INCREASE OR DECREASE (–) IN THE DEFICIT												
Statutory Pay-As-You-Go Effect	0	64	–11	0	0	0	0	0	0	0	3	53	56

Estimated impact on state, local, and tribal governments: S. 1448 contains an intergovernmental mandate as defined in UMRA. Upon deposit of funds into the trust for the tribe, monetary claims against the United States for hydropower revenues and for past and continued use of the tribe's land would be extinguished. Eliminating an existing right of action is a mandate because the right to seek redress and recover damages beyond what is provided in the bill would be lost. Based on information from the tribe, CBO expects it is unlikely that the tribe would pursue such claims. Therefore, CBO estimates that the cost, if any, of the mandate

would not exceed the annual threshold established in that act (\$76 million in 2014, adjusted annually for inflation).

Estimated impact on the private sector: S. 1448 contains no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Martin von Gnechten and Kathleen Gramp; Effect on state, local, and tribal governments: Melissa Merrell; Effect on the private sector: Marin Burnett.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1448 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1448.

CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 1448 will not make any changes in existing law.

