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SENATE

{ REPORT
{ 114-377

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

NOVEMBER 16, 2016.—Ordered to be printed

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

R E P O R T

[To accompany S. 2739]

The Committee on Indian Affairs, to which was referred the bill (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, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The bill, S. 2739, would provide fair and equitable compensation to the Spokane Tribe of Indians of the Spokane Reservation (Spokane Tribe) for the past and continued use of their tribal lands by the Federal government for the production of hydroelectric power generation by the Grand Coulee Dam in the state of Washington.

Specifically, S. 2739 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.

BACKGROUND

From 1927 to 1931, the United States Army Corps of Engineers (Corps), at the direction of Congress, investigated the Columbia River and its tributaries to identify sites where dams could be con-

structed to produce hydroelectric power at low cost.¹ During this time, the Corps recommended a number of sites where dams could be constructed, including the site where the Grand Coulee Dam is now located. 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 Spokane Tribe and the Confederated Tribes of the Colville Reservation (Colville Tribes).

The Federal Power Act and its Effect on Indian tribes. The Corps recommended the construction of the Grand Coulee Dam be undertaken by local governments or private utilities, as a licensee, under the authority of the Federal Power Act.² When tribal lands are involved, licensing procedures require the licensee to pay an annual payment to Indian tribes who have jurisdiction over the tribal lands.³ In 1933, the Federal Power Commission issued a preliminary permit to the Columbia Basin Commission to construct a dam at the recommended Grand Coulee site. During the mid-1930s, the Federal government federalized the Grand Coulee Dam project and began construction of the dam. The Federal government is not subject to the Federal Power Act and is not obligated to make annual payments to Indian tribes when tribal lands are used for projects such as the Grand Coulee Dam project.⁴

Compensation to the Tribes. The Spokane Tribe and Colville Tribes' interests were affected when the Federal government federalized the Grand Coulee Dam project. The Federal government acknowledged the effects and determined that both tribes should receive a share of revenue from the disposition of power produced by the Grand Coulee Dam. The *Act of June 29, 1940* directed the Secretary of the Interior (Secretary) to provide compensation to the Spokane Tribe and Colville Tribes for the use of tribal lands in an amount determined by the Secretary to be just and equitable.⁵ The Secretary paid to the Spokane Tribe, \$4,700, and to the Colville Tribes, \$63,000.

The Indian Claims Commission. Prior to Congress enacting the *Indian Claims Commission Act* in 1946, Indian tribes needed Congressional action to pursue claims against the Federal government. The purpose of the 1946 Act was to establish a forum, the Indian Claims Commission (ICC), for Indian tribes to pursue historic claims, dating before August 13, 1946, against the Federal government. The ICC did not have authority to grant or restore lands to Indian tribes and was only able to award monetary compensation. Under the 1946 Act, Indian tribes had a five year statute of limitations to file claims with the ICC.

Both the Spokane Tribe and the Colville Tribes filed separate, unrelated land claims prior to the August 13, 1951 deadline. During the five year period to file claims with the ICC, neither the Spokane nor the Colville Tribes filed claims for compensation for the use of tribal lands to construct the Grand Coulee Dam.

The Spokane Tribes' land claims before the ICC had all been fully adjudicated by 1967. By settling the land claims against the Federal government, the Spokane Tribe had no further mechanism

¹Federal Power Act of 1920 § 4, 16 U.S.C. § 797 (1920).

²*Id.*

³Federal Power Act of 1920 § 10, 16 U.S.C. § 803(e) (1920).

⁴*Id.*

⁵Act of June 29, 1940 § 2, 16 U.S.C. § 835d (1940).

to litigate claims over the Grand Coulee Dam project in Federal court due, in part, to the 5-year statute of limitations set in the *Indian Claims Commission Act*.

The Colville Settlement Agreement. In 1976, against objection by the United States because of the cessation of the ICC, the Colville Tribes were successful in amending their ICC land claim to add the Grand Coulee Dam project, creating an opportunity for the tribe to seek compensation in the 1994 Colville Settlement Agreement.

In 1994, to halt this litigation pending under the *Indian Claims Commission Act*, Congress ratified the Colville Settlement Agreement (Agreement) requiring a payment of \$53 million to the Colville Tribes for the past use of tribal lands.⁶ Additionally under the Agreement, the Colville Tribes are provided annual payments of \$15,250,000, adjusted annually based on revenues from the sale of electric power from the Grand Coulee Dam project and the transmission of that power by the Bonneville Power Administration, for the continued use of Colville tribal lands.⁷ Unlike the Colville Tribes, the Spokane Tribes were not likewise compensated under the Agreement for the continued use of their tribal lands.

NEED FOR LEGISLATION

The Spokane Tribe has been affected by the construction and operation of the Grand Coulee Dam. The bill, S. 2739, would provide fair and equitable compensation to the Spokane Tribe by requiring payments from the Federal government to the Spokane Tribe for past and continued use of tribal lands in generating hydropower from the Grand Coulee Dam in the state of Washington. With no further opportunity to litigate lands claims of the Spokane Tribe in federal court, legislation is necessary to provide fair and equitable compensation that the Spokane Tribe is seeking for the use of their lands.

LEGISLATIVE HISTORY

On March 17, 2016, Senator Cantwell with Senator Murray introduced S. 2739, to provide for equitable compensation to the Spokane Tribe of Indians of the Spokane Reservation for the use of tribal land, and for the production of hydropower by the Grand Coulee Dam, and for other purposes (also known as the *Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act*). At this time, there is no House companion bill. A legislative hearing was not held on this bill in the 114th Congress, although one has been held on predecessor bills in prior Congresses. On May 11, 2016, the Committee held a duly called business meeting to consider S. 2739. The Committee ordered the bill to be reported favorably without amendment.

Prior Congresses

113th Congress. On August 1, 2013, Senators Cantwell and Murray introduced S. 1448, the *Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act*. Senator Begich was added as a cosponsor on February 4, 2014. The Committee held a

⁶ Act of August 13, 1946, omitted 25 U.S.C. § 70 et seq. in that the Indian Claims Commissions was terminated on September 30, 1978 by Pub. L. No. 94-465 (1976).

⁷ Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, Pub. L. No. 103-436, 108 Stat. 4577 (1994).

legislative hearing on September 10, 2013. The Committee held a duly called business meeting on January 29, 2014 to consider S. 1448. The Committee ordered the bill to be reported favorably with an amendment in the nature of a substitute. No further action was taken on the bill.⁸ There was no House companion bill.

112th Congress. On July 11, 2011, Senators Cantwell and Murray introduced S. 1345, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*. A legislative hearing was held on October 20, 2011. The Committee held a duly called business meeting on September 13, 2012 to consider S. 1345. The Committee ordered the bill to be reported favorably with an amendment in the nature of a substitute. No further action was taken on the bill, S. 1345. There was no House companion bill.

111th Congress. On June 25, 2009, Senators Cantwell and Murray introduced S. 1388, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*. Senator Inouye was added as a cosponsor on July 28, 2009. The Committee held a duly called business meeting on September 10, 2009 to consider S. 1388. The bill, S. 1388, was ordered to be reported favorably without amendment. No further action was taken on the bill, S. 1388.

The House companion bill, H.R. 3097, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*, was introduced by Representatives Inslee and Dicks on June 26, 2009. Representative Kildee was added as a cosponsor on October 7, 2009. Representative Richardson was added as a cosponsor on February 3, 2010. The bill, H.R. 3097, was referred to the Committee on Natural Resources of the House of Representatives where no further action was taken on the bill.

110th Congress. On December 17, 2007, Senators Cantwell and Murray introduced S. 2494, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*. Senator Inouye was added as a cosponsor on January 24, 2008. The Committee held a legislative hearing on May 15, 2008. The Committee held a duly called business meeting on June 19, 2008 to consider S. 2494. The bill, S. 2494, was ordered to be reported favorably without amendment.⁹ No further action was taken on the bill.

The House companion bill, H.R. 6547, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*, was introduced by Representatives Inslee and Dicks on July 17, 2008. Representative Kildee was added as a cosponsor on July 29, 2008. The bill, H.R. 6547, was referred to the Committee on Natural Resources of the House of Representatives where no further action was taken on the bill.

109th Congress. On April 21, 2005, Senator Cantwell with Senators Murray, Inouye, and McCain introduced S. 881, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*. Senator Dorgan was added as a cosponsor on May 18, 2005. Senator McCain withdrew as a cosponsor on April 26, 2005. The bill, S. 881, was referred to the

⁸S. Rep. No. 113–202 (2014).

⁹S. Rep. No. 110–450 (2008).

Committee. No legislative hearing was held on the bill. On June 29, 2005, the Committee ordered S. 881 to be reported favorably without amendment. On December 8, 2005, the bill was placed on the Senate Legislative Calendar under general orders. No further action was taken on the bill, S. 881.

The House companion bill, H.R. 1797, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*, was introduced by Representatives McMorris Rodgers, Dicks and Kildee on April 21, 2005. Representative Inslee was added as a cosponsor on May 11, 2005. The bill, H.R. 1797, was referred to the Subcommittee on Water and Power of the Committee on Resources of the House of Representatives. On May 18, 2005, the Subcommittee on Water and Power discharged H.R. 1797 and by unanimous consent ordered the bill to be reported. On June 23, 2005, the Committee on Resources reported H.R. 1797 where the bill was placed on the Union Calendar. On July 25, 2005, Representative McMorris Rodgers moved to suspend the rules and pass the bill, when the House proceeded with forty minutes of debate with the motion to suspend the rules and pass the bill was agreed to by voice vote. On July 26, 2005, H.R. 1797 was received in the Senate. On July 27, 2005, the bill was read a second time and placed on the Senate Legislative Calendar under general orders. No further action was taken on the bill, H.R. 1797.

108th Congress. On July 22, 2003, Senators Cantwell, Murray and Inouye introduced S. 1438, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*. The Committee held a legislative hearing on October 2, 2003. On September 22, 2004, the Committee held a duly called business meeting to consider S. 1438 and ordered the bill to be reported favorably with an amendment in the nature of a substitute. On October 8, 2004, Senator Campbell reported the bill with an amendment in the nature of a substitute and an amendment to the title, where the bill was placed on Senate Legislative Calendar under general orders.¹⁰ On November 19, 2004, the Senate passed S. 1438 with an amendment and an amendment to the title by unanimous consent. The House received the bill, S. 1438, on November 20, 2004. The bill, S. 1438, was referred to Committee on Resources of the House of Representatives. On December 1, 2004, the bill, S. 1438, was referred to the Subcommittee on Water and Power of the Committee on Resources of the House of Representatives. No further action was taken on the bill, S. 1438.

The House companion bill, H.R. 1753, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*, was introduced by Representatives Nethercutt and Dicks on April 10, 2003. Representative Kildee was added as a cosponsor on July 17, 2003. The bill, H.R. 1753, was referred to the Subcommittee on Water and Power of the Committee on Resources of the House of Representatives. On October 2, 2003, the Subcommittee on Water and Power held a legislative hearing on the bill. No further action was taken the bill.

107th Congress. On May 23, 2002, Senators Murray, Cantwell and Inouye introduced S. 2567, *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation*

¹⁰ S. Rep. No. 108-397 (2004).

Settlement Act. The bill, S. 2567, was referred to the Committee. No further action was taken on the bill, S. 2567.

The House companion bill, H.R. 4859, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*, was introduced by Representative Nethercutt on June 4, 2002. The bill, H.R. 4859, was referred to the Committee on Resources of the House of Representatives. No further action was taken on the bill.

106th Congress. On August 5, 1999, Senators Murray and Inouye introduced S. 1525, *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*. The bill, S. 1525, was referred to the Committee and no further action was taken on the bill.

The House companion bill, H.R. 2664, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*, was introduced by Representative Nethercutt on July 30, 1999. Representative Dicks was added as a cosponsor on August 5, 1999. The bill, H.R. 2664, was referred to the Committee on Resources of the House of Representatives. No further action was taken on the bill, H.R. 2664.

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 Indians 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 trust 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 revenue from the generation of hydroelectric power by the Grand Coulee Dam.

Section 7. Treatment after amounts are paid

Section 7 describes how the Tribe may use funds provided under sections 5 or 6 of the Act, and states that there is no trust responsi-

bility of the Secretary of the Interior or the Bonneville Power Administrator for the funds once they are 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 the deposit of amounts in the Fund described in Section 5, all monetary claims the Spokane Tribe has or may have regarding the Grand Coulee Dam 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.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated September 16, 2016, was prepared for S. 2739:

SEPTEMBER 16, 2016.

Hon. JOHN BARRASSO,
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. 2739, 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 contact is Robert Reese.

Sincerely,

KEITH HALL.

Enclosure.

S. 2739—Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act

Summary: S. 2739 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 the legislation would increase net direct spending by \$56 million over the 2017–2026 period; therefore, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2027.

S. 2739 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by extinguishing the monetary claims of the Spokane Tribe of Indians against the United States for hydropower revenues and for past and continued

use of their land. CBO estimates that the cost of the mandate would not exceed the annual threshold established in that act (\$77 million in 2016, adjusted annually for inflation).

S. 2739 contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary effect of S. 2739 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—											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017– 2021	2017– 2026
INCREASES IN DIRECT SPENDING												
Spokane Tribe of Indians Recovery Trust												
Fund:												
Budget Authority	0	53	0	0	0	0	0	0	0	0	53	53
Estimated Outlays	0	53	0	0	0	0	0	0	0	0	53	53
Budgetary Effects on the Bonneville												
Power Administration:												
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	3	0	3
Estimated Outlays	0	0	0	0	0	0	0	0	0	3	0	3
Total Changes:												
Estimated Budget Authority	0	53	0	0	0	0	0	0	0	3	53	56
Estimated Outlays	0	53	0	0	0	0	0	0	0	3	53	56

Basis of estimate: For this estimate, CBO assumes that S. 2739 will be enacted before the end of calendar year 2016.

Spokane Tribe of Indians Recovery Trust Fund

S. 2739 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. 2739 would require that \$53 million be deposited into 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 in 2018. 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 2017 and extending through 2026, that payment would equal 25 percent of the annual payment that BPA makes under current law to the Confederated Tribes of the Colville Reservation. Beginning in 2027, the annual payment to the Spokane Tribe would increase to 32 percent of the payment to the Confederated Tribes. CBO estimates that those payments would total about \$5 million annually until 2026

and then increase to about \$8 million beginning in 2027. 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 costs of the annual payments by reducing operating expenses. Instead, we anticipate that BPA would increase the rates it charges customers for electricity to cover those costs. Therefore, those payments would generally be offset by an equivalent increase in the revenue collected from customers. CBO expects that the additional annual payment would become part of BPA's cost structure starting in 2018 and would be fully offset by an increase in rates for electricity. Therefore, CBO estimates there would be no net effect on the budget from the annual payments and rate increases in 2018 and subsequent years.

In addition, starting in 2026, S. 2739 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 2026.

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 changes 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. 2739, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON INDIAN AFFAIRS ON MAY 11, 2016

	By fiscal year, in millions of dollars—														2016– 2021	2016– 2026
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026					
NET INCREASE IN THE DEFICIT																
Statutory Pay-As-You-Go	0	0	53	0	0	0	0	0	0	0	0	3	53	56		

Increase in long-term direct spending and deficits: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than \$5 billion in at least one of the four consecutive 10-year periods beginning in 2027.

Estimated impact on state, local, and tribal governments: S. 2739 would impose an intergovernmental mandate as defined in UMRA by extinguishing the monetary claims of the Spokane Tribe of Indians against the United States for hydropower revenues and for past and continued use of their land. 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 assumes it is unlikely that the tribe would, absent the provision extinguishing claims, pursue such claims if the bill were enacted. Therefore, CBO estimates that the cost, if any, of the mandate would not exceed the annual threshold established in UMRA (\$77 million in 2016, adjusted annually for inflation). Overall, the tribe would benefit from payments authorized for the tribe from both the federal government and the Bonneville Power Administration.

Estimated impact on the private sector: S. 2739 contains no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Robert Reese and Kathy Gramp; Impact on State, Local, and Tribal Governments: Rachel Austin; Impact on the Private Sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, 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. 2739 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 2739.

CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the bill, S. 2739, as ordered reported, would make no changes in existing law.

