

## Calendar No. 193

115TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
115-143

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TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO ASSESS SANITATION AND SAFETY CONDITIONS AT BUREAU OF INDIAN AFFAIRS FACILITIES THAT WERE CONSTRUCTED TO PROVIDE AFFECTED COLUMBIA RIVER TREATY TRIBES ACCESS TO TRADITIONAL FISHING GROUNDS AND EXPEND FUNDS ON CONSTRUCTION OF FACILITIES AND STRUCTURES TO IMPROVE THOSE CONDITIONS, AND FOR OTHER PURPOSES

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AUGUST 2, 2017.—Ordered to be printed

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

### R E P O R T

[To accompany S. 669]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 669) to authorize the Secretary of Interior to assess sanitation and safety conditions at Bureau of Indian Affairs (“BIA”) facilities that were constructed to provide affected Columbia River Treaty tribes access to traditional fishing grounds and expend funds on construction of facilities and structures to improve those conditions, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of this bill, S. 669, is to improve safety and sanitary conditions at 27 tribal fishing sites located along the Columbia River by authorizing the BIA to assess conditions and execute improvements at the 27 In-Lieu and Treaty Fishing Access Sites that the BIA manages on both sides of the Columbia River.

This effort would be done in coordination with the four tribes outlined by statute<sup>1</sup> and with whom the sites served—the Confederated Tribes and Bands of the Yakima Nation (WA), the Nez Perce Tribe (ID), the Confederated Tribes of the Warm Springs Indian Reservation of Oregon (OR) and the Confederated Tribes of

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<sup>1</sup>See Pub. L. No. 100-581 (102 Stat. 2944).

the Umatilla Indian Reservation (OR) (collectively, the Columbia River Treaty Tribes).

#### NEED FOR LEGISLATION

The bill, S. 669, will improve safety and sanitary conditions at 27 tribal fishing sites located along the Columbia River by authorizing the BIA to assess conditions and execute improvements at the 27 In-Lieu and Treaty Fishing Access Sites that the BIA manages on both sides of the Columbia River.

#### BACKGROUND

The Columbia River Treaty Tribes, through a series of treaties in 1855, established access to “usual and accustomed fishing areas” and ancillary fishing facilities.<sup>2</sup> These rights were secured by various treaties signed between the United States and the Columbia River Treaty Tribes, in 1855.

However, during the 1930s and 1950s the United States began the process of building dams along the Columbia River in order to provide much needed electricity to various communities throughout the states of Washington and Oregon. As a consequence of these dams being constructed, tribal and non-tribal communities were flooded and needed to be relocated.

Congress passed the River and Harbor Act of 1945 to authorize the U.S. Army Corps of Engineers (the Corps) to acquire and replace tribal fishing areas along the Columbia River.<sup>3</sup> Over the next twenty years the Corps acquired five sites.

In Title IV of Public Law 100–581 (102 Stat. 2944) Congress affirmed tribal access to usual and accustomed fishing areas and authorized construction of improvements for ancillary fishing facilities along the Columbia River. Title IV of Public Law 100–581 also directed the Corps to acquire lands from willing sellers to provide unfettered river access for members of the Columbia River Treaty Tribes. Following acquisition of these lands, Congress directed the lands be transferred to the Department of the Interior for the purpose of maintaining the sites and providing law enforcement services.<sup>4</sup>

The flooded tribal lands were later replaced with 31 designated encampments.<sup>5</sup> Since the Corps began acquiring these sites, all but 4 of these 31 encampments have been transferred to the BIA for management.

In response to a 2013 report on the sites’ conditions, the Corps’ Portland District spokeswoman acknowledged the terrible living conditions near these sites.<sup>6</sup>

#### LEGISLATIVE HISTORY

Senator Merkley introduced the bill, S. 669, on March 21, 2017. Senators Wyden, Murray, and Cantwell joined as co-sponsors.

<sup>2</sup>See Yakima Treaty, 1855; Tribes of Middle Oregon Treaty, 1855; Cayuse, Umatilla, and Walla Walla Treaty, 1855; and Nez Perce Treaty, 1855.

<sup>3</sup>Pub. L. No. 79–14 (59 Stat. 22).

<sup>4</sup>*Id.*

<sup>5</sup>*Legislative Hearing to receive testimony on the following bills: S. 2636, S. 3216, S. 3222, S. 3300 Before the S. Comm. on Indian Affairs, 114th Cong.* (2016) (testimony of Paul Lumley, Executive Director Columbia River Inter-Tribal Fish Commission).

<sup>6</sup>*Id.*

During the 114th Congress, Senator Merkley introduced the predecessor bill, S. 3222. The Committee held a legislative hearing on this previous version of the bill on September 14, 2016, at which the Department of the Interior testified on and provided technical corrections to improve the bill. The current bill, S. 669 incorporates these recommendations.

The Columbia River Inter-Tribal Fish Commission also testified at that hearing and supported the predecessor bill, S. 3222.

#### SECTION-BY-SECTION ANALYSIS OF BILL AS ORDERED REPORTED

##### *Section 1. Short title*

Section 1 titles the bill as the “Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act.”

##### *Section 2. Sanitation and safety conditions at certain Bureau of Indian Affairs facilities*

Section 2 provides for the assessment of fishing access facilities and structures maintained by the BIA, establishes the BIA as the sole Federal agency tasked with executing the requirements of the bill, applies the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) to the contracting process for facility assessments, defines the affected Columbia River Treaty Tribes, and authorizes appropriations for assessments of the fishing access sites and facilities.

Section 2(a) provides for the BIA to, in consultation with the Columbia River Treaty Tribes, assess any permanent federal structures and improvements on BIA lands that were set aside to provide the treaty access to traditional grounds.

Section 2(b) provides that the BIA shall be the only Federal agency authorized to carry out the activities in the bill.

Section 2(b) also allows for tribes and tribal organizations to contract the assessment activities of the fishing access sites and facilities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

Section 2(c) defines the affected Columbia River Treaty Tribes as the Nez Perce tribe, the Confederated Tribes of Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Nation.

Section 2(d) authorizes appropriations for the bill, S. 669.

#### COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated July 5, 2017.

JULY 5, 2017.

Hon. JOHN HOEVEN,  
*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. 669, the Columbia River In-Lieu and Treaty Fishing Access Sites Improvement 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.

Summary: S. 669 would authorize the appropriation of whatever amounts are necessary to the Bureau of Indian Affairs (BIA) to assess and improve the sanitation and safety conditions on certain land and facilities used to access traditional fishing areas by the four Columbia River Treaty tribes.

CBO estimates that implementing this legislation would cost \$11 million over the 2018–2022 period, assuming appropriation of the necessary amounts. Enacting S. 669 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 669 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 669 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effect of S. 669 is shown in the following table. The costs of this legislation fall within budget functions 450 (community and regional development).

	By Fiscal Year, in Millions of Dollars—					2018– 2022
	2018	2019	2020	2021	2022	
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level .....	3	2	2	2	2	11
Estimated Outlays .....	3	2	2	2	2	11

Basis of estimate: For this estimate, CBO assumes that S. 669 will be enacted near the end of 2017 and that the necessary amounts will be provided each year.

S. 669 would authorize the appropriation of any amounts necessary for BIA to assess and improve the sanitation and safety conditions on land and facilities to access traditional fishing areas and held in trust by the United States for the four Columbia River Treaty tribes. The Columbia River Treaty tribes include the Nez Perce Tribe, the Confederated Tribes of Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Nation. Currently, BIA pays for the operation and maintenance of 28 fishing sites on the Columbia River used by the tribes.

Based on an analysis of information provided by BIA, CBO estimates that implementing S. 669 would cost \$11 million over the 2018–2022 period. Those costs would include one new staff member to oversee the implementation of the improvement plan and subsequent maintenance work, seven new law enforcement officers to ensure the safety and security of the facilities, and all equipment necessary to upgrade the electric, sewer, and water service at the designated facilities.

Pay-as-You-Go considerations: None.

Increase in long-term direct spending and deficits: CBO estimates that enacting S. 669 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Estimated intergovernmental and private-sector impact: S. 669 contains no intergovernmental or private-sector impacts as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

#### EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 669.

#### 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. 669 will have a minimal impact on regulatory or paperwork requirements.

#### CHANGES IN EXISTING LAW (CORDON RULE)

On January 31, 2017, the Committee on Indian Affairs unanimously approved a motion to waive the Cordon rule. Thus, in the opinion of the committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.