

106TH CONGRESS
1ST SESSION

H. R. 2664

To provide for equitable compensation of the Spokane Tribe of Indians of the Spokane Reservation in settlement of its claims concerning its contribution to the production of hydropower by the Grand Coulee Dam, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 1999

Mr. NETHERCUTT introduced the following bill; which was referred to the Committee on Resources

A BILL

To provide for equitable compensation of the Spokane Tribe of Indians of the Spokane Reservation in settlement of its claims concerning its contribution to 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 Grand Coulee Dam Equi-
6 table Compensation Settlement Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) From 1927 to 1931, at the direction of
4 Congress, the Corps of Engineers investigated the
5 Columbia River and its tributaries to determine sites
6 where power could be produced at low cost.

7 (2) The Corps of Engineers listed a number of
8 sites, including the site where the Grand Coulee
9 Dam is now located, with recommendations that the
10 power development be performed by local govern-
11 mental authorities or private utilities under the Fed-
12 eral Power Act.

13 (3) Under section 10(e) of the Federal Power
14 Act, licensees must pay Indian tribes for the use of
15 reservation lands.

16 (4) The Columbia Basin Commission, an agen-
17 cy of the State of Washington, applied for, and in
18 August 1933 received, a preliminary permit from the
19 Federal Power Commission for water power develop-
20 ment of the Grand Coulee Site.

21 (5) In the mid-1930's, the Federal Government,
22 which is not subject to the Federal Power Act, fed-
23 eralized the Grand Coulee Dam project and began
24 construction of the Grand Coulee Dam.

25 (6) At the time the Grand Coulee Dam project
26 was federalized, the Federal Government knew and

1 recognized that the Spokane Tribe and the Confed-
2 erated Tribes of the Colville Reservation had com-
3 pensable interests in the Grand Coulee Dam project,
4 including but not limited to development of hydro-
5 power, extinguishment of a salmon fishery upon
6 which the Spokane Tribe was almost totally depend-
7 ent, and inundation of lands with loss of potential
8 power sites previously identified by the Spokane
9 Tribe.

10 (7) In an Act dated June 29, 1940 (54 Stat.
11 703; 16 U.S.C. 835d), Congress enacted legislation
12 to grant to the United States all the rights of the
13 Indians in lands of the Spokane Tribe and Colville
14 Indian Reservations required for the Grand Coulee
15 Dam project and various rights-of-way over Indian
16 lands required in connection with the project. The
17 Act provided that compensation for the lands and
18 rights-of-way required shall be determined by the
19 Secretary of the Interior in such amounts as such
20 Secretary determines just and equitable.

21 (8) In furtherance of the Act of June 29, 1940,
22 the Secretary of the Interior paid to the Spokane
23 Tribe the total sum of \$4,700. The Confederated
24 Tribes of the Colville Reservation received a pay-
25 ment of \$63,000.

1 (9) In 1994, following 43 years of litigation be-
2 fore the Indian Claims Commission, the United
3 States Court of Federal Claims and the United
4 States Court of Appeals for the Federal Circuit,
5 Congress ratified an agreement between the Confed-
6 erated Tribes of the Colville Reservation and the
7 United States that provided for past damages and
8 annual payments of \$15,250,000 in perpetuity, ad-
9 justed annually, based on revenues for the sale of
10 electric power and transmission of such power by the
11 Bonneville Power Administration.

12 (10) In legal opinions issued throughout the
13 years by the Department of the Interior Solicitor's
14 Office, a Task Force Study conducted from 1976 to
15 1980 ordered by the Senate Appropriations Com-
16 mittee, and in hearings before the Congress when
17 the Confederated Tribes Act was enacted, it has re-
18 peatedly been recognized that the Spokane Tribe
19 suffered similar damages and had a case legally
20 comparable with that of the Confederated Tribes of
21 the Colville Reservation with the sole exception that
22 the 5-year statute of limitations provided in the In-
23 dian Claims Commission Act of 1946 prevented the
24 Spokane Tribe from bringing its own action for fair
25 and honorable dealings as provided in that Act.

1 (11) The failure of the Spokane Tribe to bring
2 an action of its own before the Indian Claims Com-
3 mission can be attributed to a combination of fac-
4 tors, including the failure of the Bureau of Indian
5 Affairs to carry out its advisory responsibilities as
6 required by the Indian Claims Commission Act (Act
7 of August 13, 1946, ch. 959, 60 Stat. 1050), and
8 an effort of the Commissioner of Indian Affairs to
9 impose improper requirements on claims attorneys
10 retained by Indian tribes which caused delays in re-
11 tention of counsel and full investigation of the Spo-
12 kane Tribe's potential claims.

13 (12) As a consequence of construction of the
14 Grand Coulee Dam project, the Spokane Tribe has
15 suffered the complete loss of the salmon fishery
16 upon which it was dependent, the loss of identified
17 hydropower sites it could have developed, the loss of
18 hydropower revenues it would have received under
19 the Federal Power Act had the project not been fed-
20 eralized, and it continues to lose hydropower reve-
21 nues which the Federal Government recognized the
22 Spokane Tribe was due at the time the project was
23 constructed.

1 (13) Over 39 percent of the Indian-owned lands
2 used for the Grand Coulee Dam project were Spo-
3 kane Tribe lands.

4 **SEC. 3. STATEMENT OF PURPOSE.**

5 The purpose of this Act is to provide fair and equi-
6 table compensation to the Spokane Tribe on a basis that
7 is proportionate to the compensation provided to the Con-
8 federated Tribes of the Colville Reservation for the dam-
9 ages and losses suffered as a consequence of construction
10 and operation of the Grand Coulee Dam project.

11 **SEC. 4. SETTLEMENT FUND ACCOUNT.**

12 (a) ESTABLISHMENT OF ACCOUNT.—There is hereby
13 established in the Treasury an interest bearing account
14 to be known as the “Spokane Tribe of Indians Settlement
15 Fund Account”.

16 (b) DEPOSIT OF AMOUNTS.—

17 (1) INITIAL DEPOSIT.—Upon enactment of this
18 Act and appropriation of funds, the Secretary of the
19 Treasury shall deposit into the Fund Account a sum
20 equal to 39.4 percent of the sum paid to the Confed-
21 erated Tribes of the Colville Reservation in a lump
22 sum pursuant to section 5(a) of the Confederated
23 Tribes Act, adjusted by the consumer price index
24 from the date of that payment to the Confederated
25 Tribes until the date of enactment of this Act, as

1 payment and satisfaction of the Spokane Tribe's
2 claim for use of its lands for generation of hydro-
3 power for the period from 1940 through November
4 2, 1994, the date of the enactment of the Confed-
5 erated Tribes Act.

6 (2) SUBSEQUENT DEPOSITS.—Commencing on
7 September 30 of the first fiscal year following enact-
8 ment of this Act and on September 30 of each of the
9 5 fiscal years following such fiscal year, the Admin-
10 istrator of the Bonneville Power Administration shall
11 pay into the Fund Account a sum equal to 20 per-
12 cent of 39.4 percent of the sum authorized to be
13 paid to the Confederated Tribes of the Colville Res-
14 ervation pursuant to section 5(b) of the Confed-
15 erated Tribes Act through the end of the fiscal year
16 during which this Act is enacted, adjusted by the
17 consumer price index to maintain the purchasing
18 power the Spokane Tribe would have had if annual
19 payments had been made to the Spokane Tribe on
20 the date annual payments commenced and were sub-
21 sequently made to the Confederated Tribes of the
22 Colville Reservation pursuant to section 5(b) of the
23 Confederated Tribes Act.

24 (c) ANNUAL PAYMENTS.—On September 1 of the fis-
25 cal year following the enactment of this Act and of each

1 fiscal year thereafter, payments shall be made by the Bon-
2 neville Power Administration, or any successor thereto, di-
3 rectly to the Spokane Tribe in an amount which is equal
4 to 39.4 percent of the annual payment authorized to be
5 paid to the Confederated Tribes of the Colville Reservation
6 in the operative and each subsequent fiscal year pursuant
7 to section 5(b) of the Confederated Tribes Act.

8 **SEC. 5. USE AND TREATMENT OF SETTLEMENT FUNDS.**

9 (a) TRANSFER OF FUNDS TO TRIBE.—The Secretary
10 of the Treasury shall transfer all or any portion of the
11 settlement funds described in section 4(a) to the Spokane
12 Business Council not later than 60 days after such Sec-
13 retary receives written notice of the adoption by the Spo-
14 kane Business Council of a resolution requesting that such
15 Secretary execute the transfer of such funds. Subsequent
16 requests may be made and funds transferred if not all of
17 the funds are requested at one time.

18 (b) USE OF INITIAL PAYMENT FUNDS.—

19 (1) GENERAL DISCRETIONARY FUNDS.—Twen-
20 ty-five percent of the settlement funds described in
21 section 4 (a) and (b) shall be reserved by the Busi-
22 ness Council and used for discretionary purposes of
23 general benefit to all members of the Spokane Tribe.

1 (2) FUNDS FOR SPECIFIC PURPOSES.—Seventy-
2 five percent of the settlement funds described in sec-
3 tion 4 (a) and (b) shall be used for the following:

4 (A) Resource development program.

5 (B) Credit program.

6 (C) Scholarship program.

7 (D) Reserve, investment, and economic de-
8 velopment programs.

9 (c) USE OF ANNUAL PAYMENT FUNDS.—Annual
10 payments made to the Spokane Tribe pursuant to section
11 4(c) may be used or invested by the Spokane Tribe in the
12 same manner as other tribal governmental funds.

13 (d) APPROVAL OF SECRETARY NOT REQUIRED.—
14 Notwithstanding any other provision of law, the approval
15 of the Secretary of the Treasury or the Secretary of the
16 Interior for any payment, distribution, or use of the prin-
17 cipal, interest, or income generated by any settlement
18 funds transferred or paid to the Spokane Tribe pursuant
19 to this Act shall not be required and such Secretaries shall
20 have no trust responsibility for the investment, super-
21 vision, administration, or expenditure of such funds once
22 such funds are transferred to or paid directly to the Spo-
23 kane Tribe.

24 (e) TREATMENT OF FUNDS FOR CERTAIN PUR-
25 POSES.—The payments or distributions of any portion of

1 the principal, interest, and income generated by the settle-
2 ment funds described in section 4 shall be treated in the
3 same manner as payments or distributions from the In-
4 vestment Fund described in section 6 of Public Law 99-
5 346 (100 Stat. 677).

6 (f) TRIBAL AUDIT.—The settlement funds described
7 in section 4, once transferred or paid to the Spokane
8 Tribe, shall be considered Spokane Tribe governmental
9 funds and, as other tribal governmental funds, be subject
10 to an annual tribal governmental audit.

11 **SEC. 6. REPAYMENT CREDIT.**

12 Beginning in the fiscal year following enactment of
13 this Act and continuing for so long as annual payments
14 are made under this Act, the Administrator of the Bonne-
15 ville Power Administration shall deduct from the interest
16 payable to the Secretary of the Treasury from net pro-
17 ceeds as defined in section 13 of the Federal Columbia
18 River Transmission System Act, a percentage of the pay-
19 ment made to the Spokane Tribe for the prior fiscal year.
20 The actual percentage of such deduction shall be cal-
21 culated and adjusted to ensure that the Bonneville Power
22 Administration receives a deduction comparable to that
23 which it receives for payments made to the Confederated
24 Tribes of the Colville Reservation pursuant to the Confed-
25 erated Tribes Act. Each deduction made under this section

1 shall be credited to the interest payments otherwise pay-
2 able by the Administrator to the Secretary of the Treasury
3 during the fiscal year in which the deduction is made, and
4 shall be allocated pro rata to all interest payments on debt
5 associated with the generation function of the Federal Co-
6 lumbia River Power System that are due during that fiscal
7 year; except that, if the deduction in any fiscal year is
8 greater than the interest due on debt associated with the
9 generation function for the fiscal year, then the amount
10 of the deduction that exceeds the interest due on debt as-
11 sociated with the general function shall be allocated pro
12 rata to all other interest payments due during that fiscal
13 year. To the extent that the deduction exceeds the total
14 amount of any such interest, the deduction shall be applied
15 as a credit against any other payments that the Adminis-
16 trator makes to the Secretary of the Treasury.

17 **SEC. 7. SATISFACTION OF CLAIMS.**

18 Payment under section 4 shall constitute full pay-
19 ment and satisfaction of the Spokane Tribe's claim to a
20 fair share of the annual hydropower revenues generated
21 by the Grand Coulee Dam project from 1940 through the
22 fiscal year prior to the fiscal year during which this Act
23 is enacted and represents the Spokane Tribe's propor-
24 tional entitlement of hydropower revenues based on the
25 lump sum payment for damages from 1940 through 1994

1 and the annual payments by the Bonneville Power Admin-
2 istration to the Colville Tribes commencing in fiscal year
3 1995 through the fiscal year that this Act is enacted.

4 **SEC. 8. DEFINITIONS.**

5 For the purposes of this Act—

6 (1) the term “Confederated Tribes Act” means
7 the Confederated Tribes of the Colville Reservation
8 Grand Coulee Dam Settlement Act (Public Law
9 103–436; 108 Stat. 4577);

10 (2) the term “Fund Account” means the Spo-
11 kane Tribe of Indians Settlement Fund Account es-
12 tablished under section 4(a); and

13 (3) the term “Spokane Tribe” means the Spo-
14 kane Tribe of Indians of the Spokane Reservation.

15 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

16 There are authorized to be appropriated such sums
17 as may be necessary to carry out the purposes of this Act.

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