

Calendar No. 425

111TH CONGRESS
2^D SESSION

S. 1388

[Report No. 111–204]

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

JUNE 25, 2009

Ms. CANTWELL (for herself, Mrs. MURRAY, and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

JUNE 10, 2010

Reported by Mr. DORGAN, without amendment

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Spokane Tribe of Indi-
3 ans of the Spokane Reservation Grand Coulee Dam Equi-
4 table Compensation Settlement Act”.

5 **SEC. 2. FINDINGS.**

6 Congress finds that—

7 (1) from 1927 to 1931, at the direction of Con-
8 gress, the Corps of Engineers investigated the Co-
9 lumbia River and its tributaries to determine sites at
10 which power could be produced at low cost;

11 (2) under section 10(e) of the Federal Power
12 Act (16 U.S.C. 803(e)), when licenses are issued in-
13 volving tribal land within an Indian reservation, a
14 reasonable annual charge shall be fixed for the use
15 of the land, subject to the approval of the Indian
16 tribe having jurisdiction over the land;

17 (3) in August 1933, the Columbia Basin Com-
18 mission, an agency of the State of Washington, re-
19 ceived a preliminary permit from the Federal Power
20 Commission for water power development at the
21 Grand Coulee site;

22 (4) had the Columbia Basin Commission or a
23 private entity developed the site, the Spokane Tribe
24 would have been entitled to a reasonable annual
25 charge for the use of its land;

1 (5) in the mid-1930s, the Federal Government,
2 which is not subject to licensing under the Federal
3 Power Act (16 U.S.C. 792 et seq.)—

4 (A) federalized the Grand Coulee Dam
5 project; and

6 (B) began construction of the Grand Cou-
7 lee Dam;

8 (6) when the Grand Coulee Dam project was
9 federalized, the Federal Government recognized
10 that—

11 (A) development of the project affected the
12 interests of the Spokane Tribe and the Confed-
13 erated Tribes of the Colville Reservation; and

14 (B) it would be appropriate for the Spo-
15 kane and Colville Tribes to receive a share of
16 revenue from the disposition of power produced
17 at Grand Coulee Dam;

18 (7) in the Act of June 29, 1940 (16 U.S.C.
19 835d et seq.), Congress—

20 (A) granted to the United States—

21 (i) in aid of the construction, oper-
22 ation, and maintenance of the Columbia
23 Basin Project, all the right, title, and in-
24 terest of the Spokane Tribe and Colville
25 Tribes in and to the tribal and allotted

land within the Spokane and Colville Reservations, as designated by the Secretary of the Interior from time to time; and

(ii) other interests in such land as required and as designated by the Secretary for certain construction activities undertaken in connection with the project; and

(B) provided that compensation for the land and other interests was to be determined by the Secretary in such amounts as the Secretary determined to be just and equitable;

(8) pursuant to that Act, the Secretary paid—

(A) to the Spokane Tribe, \$4,700; and

(B) to the Confederated Tribes of the Colville Reservation, \$63,000;

(9) in 1994, following litigation under the Act of August 13, 1946 (commonly known as the “Indian Claims Commission Act” (60 Stat. 1049, chapter 959; former 25 U.S.C. 70 et seq.)), Congress ratified the Colville Settlement Agreement, which required—

(A) for past use of the Colville Tribes’ land, a payment of \$53,000,000; and

(B) for continued use of the Colville Tribes’ land, annual payments of \$15,250,000,

1 adjusted annually based on revenues from the
2 sale of electric power from the Grand Coulee
3 Dam project and transmission of that power by
4 the Bonneville Power Administration;

5 (10) the Spokane Tribe, having suffered harm
6 similar to that suffered by the Colville Tribes, did
7 not file a claim within the Indian Claims Commis-
8 sion Act's 5-year statute of limitations;

9 (11) neither the Colville Tribes nor the Spokane
10 Tribe filed claims for compensation for use of their
11 land with the Commission before August 13, 1951,
12 but both Tribes filed unrelated land claims prior to
13 August 13, 1951;

14 (12) in 1976, over objections by the United
15 States, the Colville Tribes were successful in amend-
16 ing their 1951 Claims Commission land claims to
17 add their Grand Coulee claim;

18 (13) the Spokane Tribe had no such claim to
19 amend, having settled its Claims Commission land
20 claims with the United States in 1967;

21 (14) the Spokane Tribe has suffered significant
22 harm from the construction and operation of Grand
23 Coulee Dam;

24 (15) Spokane tribal acreage taken by the
25 United States for the construction of Grand Coulee

1 Dam equaled approximately 39 percent of Colville
 2 tribal acreage taken for construction of the dam;

3 (16) the payments and land transfers made
 4 pursuant to this Act constitute fair and equitable
 5 compensation for the past and continued use of Spo-
 6 kane tribal land for the production of hydropower at
 7 Grand Coulee Dam; and

8 (17) by vote of the Spokane tribal membership,
 9 the Spokane Tribe has resolved that the payments
 10 and land transfers made pursuant to this Act con-
 11 stitute fair and equitable compensation for the past
 12 and continued use of Spokane Tribal land for the
 13 production of hydropower at Grand Coulee Dam.

14 **SEC. 3. PURPOSE.**

15 The purpose of this Act is to provide fair and equi-
 16 table compensation to the Spokane Tribe for the use of
 17 its land for the generation of hydropower by the Grand
 18 Coulee Dam.

19 **SEC. 4. DEFINITIONS.**

20 In this Act:

21 (1) ADMINISTRATOR.—The term “Adminis-
 22 trator” means the Administrator of the Bonneville
 23 Power Administration or the head of any successor
 24 agency, corporation, or entity that markets power
 25 produced at Grand Coulee Dam.

1 (2) COLVILLE SETTLEMENT AGREEMENT.—The
2 term “Colville Settlement Agreement” means the
3 Settlement Agreement entered into between the
4 United States and the Colville Tribes, signed by the
5 United States on April 21, 1994, and by the Colville
6 Tribes on April 16, 1994, to settle the claims of the
7 Colville Tribes in Docket 181–D of the Indian
8 Claims Commission, which docket was transferred to
9 the United States Court of Federal Claims.

10 (3) COLVILLE TRIBES.—The term “Colville
11 Tribes” means the Confederated Tribes of the
12 Colville Reservation.

13 (4) COMPUTED ANNUAL PAYMENT.—The term
14 “Computed Annual Payment” means the payment
15 calculated under paragraph 2.b. of the Colville Set-
16 tlement Agreement, without regard to any increase
17 or decrease in the payment under section 2.d. of the
18 agreement.

19 (5) CONFEDERATED TRIBES ACT.—The term
20 “Confederated Tribes Act” means the Confederated
21 Tribes of the Colville Reservation Grand Coulee
22 Dam Settlement Act (108 Stat. 4577).

23 (6) FUND.—The term “Fund” means the Spo-
24 kane Tribe of Indians Settlement Fund established
25 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. SETTLEMENT FUND.**

11 (a) ESTABLISHMENT OF FUND.—There is estab-
12 lished in the Treasury of the United States an interest-
13 bearing trust fund to be known as the “Spokane Tribe
14 of Indians Settlement Fund”, consisting of—

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

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

19 (b) DEPOSITS.—From amounts made available under
20 section 11—

21 (1) for fiscal year 2010, the Secretary shall de-
22 posit in the Fund \$23,900,000; and

23 (2) for each of the 4 fiscal years thereafter, the
24 Secretary shall deposit in the Fund \$18,900,000.

1 (c) MAINTENANCE AND INVESTMENT OF FUND.—

2 The Fund shall be maintained and invested by the Sec-
3 retary in accordance with the Act of June 24, 1938 (25
4 U.S.C. 162a).

5 (d) PAYMENT OF FUNDS TO SPOKANE BUSINESS
6 COUNCIL.—

7 (1) REQUEST.—At any time after funds are de-
8 posited in the Fund, the Spokane Business Council
9 may submit to the Secretary written notice of the
10 adoption by the Spokane Business Council of a reso-
11 lution requesting that the Secretary pay all or a por-
12 tion of the amounts in the Fund to the Spokane
13 Business Council.

14 (2) PAYMENT.—Not later than 60 days after
15 receipt of a notice under paragraph (1), the Sec-
16 retary shall pay the amount requested to the Spo-
17 kane Business Council.

18 (e) USE OF FUNDS.—

19 (1) CULTURAL RESOURCE REPOSITORY AND IN-
20 TERPRETIVE CENTER.—

21 (A) IN GENERAL.—Of the initial deposit
22 under subsection (b)(1), \$5,000,000 shall be
23 used by the Spokane Business Council for the
24 planning, design, construction, equipping, and
25 continuing operation and maintenance of a Cul-

tural Resource Repository and Interpretive Center to—

(i) house, preserve, and protect the burial remains and funerary and cultural resources affected by the operation of the Grand Coulee Dam; and

(ii) provide an interpretive and educational facility regarding the culture and history of the Spokane Tribe.

(B) EFFECT.—The funding under subparagraph (A) does not alter or affect any authority, obligation, or responsibility of the United States under—

(i) the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.);

(ii) the Archaeological Resources Protection Act (16 U.S.C. 470aa et seq.);

(iii) the National Historic Preservation Act (16 U.S.C. 470 et seq.); or

(iv) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) OTHER USES.—Of all other amounts deposited in the Fund (including interest generated on those amounts)—

1 (A) 25 percent shall be—

2 (i) reserved by the Spokane Business
3 Council; and

4 (ii) used for discretionary purposes of
5 general benefit to all members of the Spo-
6 kane Tribe; and

7 (B) 75 percent shall be used by the Spo-
8 kane Business Council to carry out—

9 (i) resource development programs;

10 (ii) credit programs;

11 (iii) scholarship programs; or

12 (iv) reserve, investment, and economic
13 development programs.

14 **SEC. 6. PAYMENTS BY ADMINISTRATOR.**

15 (a) INITIAL PAYMENT.—On March 1, 2010, the Ad-
16 ministrator shall pay to the Spokane Tribe an amount
17 equal to 29 percent of the Computed Annual Payment for
18 fiscal year 2009.

19 (b) SUBSEQUENT PAYMENTS.—Not later than March
20 1, 2011, and March 1 of each year thereafter, the Admin-
21 istrator shall pay the Spokane Tribe an amount equal to
22 29 percent of the Computed Annual Payment for the pre-
23 ceding fiscal year.

24 (c) PAYMENT RECOVERY.—In accordance with the
25 payment schedule described in subsection (b), the Admin-

1 istrator shall make commensurate cost reductions in ex-
 2 penditures, on an annual basis, to recover each payment
 3 to the Spokane Tribe under this section.

4 **SEC. 7. TREATMENT AFTER FUNDS ARE PAID.**

5 (a) USE OF PAYMENTS.—Payments made to the Spo-
 6 kane Business Council or Spokane Tribe under section 5
 7 or 6 may be used or invested by the Business Council in
 8 the same manner and for the same purposes as other Spo-
 9 kane Tribe governmental funds.

10 (b) NO TRUST RESPONSIBILITY OF THE SEC-
 11 RETARY.—Neither the Secretary nor the Administrator
 12 shall have any trust responsibility for the investment, su-
 13 pervision, administration, or expenditure of any funds
 14 after the date on which the funds are paid to the Spokane
 15 Business Council or Spokane Tribe under section 5 or 6.

16 (c) TREATMENT OF FUNDS FOR CERTAIN PUR-
 17 POSES.—The payments of all funds to the Spokane Busi-
 18 ness Council and Spokane Tribe under sections 5 and 6,
 19 and the interest and income generated by the funds, shall
 20 be treated in the same manner as payments under section
 21 6 of the Saginaw Chippewa Indian Tribe of Michigan Dis-
 22 tribution of Judgment Funds Act (100 Stat. 677).

23 (d) TRIBAL AUDIT.—After the date on which funds
 24 are paid to the Spokane Business Council or Spokane
 25 Tribe under section 5 or 6, the funds shall—

1 (1) constitute Spokane Tribe governmental
2 funds; and

3 (2) be subject to an annual tribal government
4 audit.

5 **SEC. 8. REPAYMENT CREDIT.**

6 (a) IN GENERAL.—The Administrator shall deduct
7 from the interest payable to the Secretary of the Treasury
8 from net proceeds (as defined in section 13 of the Federal
9 Columbia River Transmission System Act (16 U.S.C.
10 838k))—

11 (1) in fiscal year 2020, \$1,300,000; and

12 (2) in each subsequent fiscal year in which the
13 Administrator makes a payment under section 6,
14 \$1,300,000.

15 (b) CREDITING.—

16 (1) IN GENERAL.—Except as provided in para-
17 graphs (2) and (3), beginning in fiscal year 2020,
18 each deduction made under this section for the fiscal
19 year shall be—

20 (A) a credit to the interest payments oth-
21 erwise payable by the Administrator to the Sec-
22 retary of the Treasury during the fiscal year in
23 which the deduction is made; and

24 (B) allocated pro rata to all interest pay-
25 ments on debt associated with the generation

1 function of the Federal Columbia River Power
2 System that are due during the fiscal year.

3 (2) DEDUCTION GREATER THAN AMOUNT OF
4 INTEREST.—If, in an applicable fiscal year under
5 paragraph (1), the deduction is greater than the
6 amount of interest due on debt associated with the
7 generation function for the fiscal year, the amount
8 of the deduction that exceeds the interest due on
9 debt associated with the generation function shall be
10 allocated pro rata to all other interest payments due
11 during the fiscal year.

12 (3) CREDIT.—To the extent that a deduction
13 exceeds the total amount of interest described in
14 paragraphs (1) and (2), the deduction shall be ap-
15 plied as a credit against any other payments that
16 the Administrator makes to the Secretary of the
17 Treasury.

18 **SEC. 9. TRANSFER OF ADMINISTRATIVE JURISDICTION**
19 **AND RESTORATION OF OWNERSHIP OF LAND.**

20 (a) TRANSFER OF JURISDICTION.—The Secretary
21 shall transfer, in accordance with subsection (c), adminis-
22 trative jurisdiction from the Bureau of Reclamation to the
23 Bureau of Indian Affairs over all land acquired by the
24 United States under the Act of June 29, 1940 (16 U.S.C.
25 835d), that is located within the exterior boundaries of

1 the Spokane Indian Reservation established pursuant to
2 the Executive Order of January 18, 1881.

3 (b) RESTORATION OF OWNERSHIP IN TRUST.—

4 (1) IN GENERAL.—All land transferred under
5 this section—

6 (A) shall be held in trust for the benefit
7 and use of the Spokane Tribe; and

8 (B) shall remain part of the Spokane In-
9 dian Reservation.

10 (2) FEDERAL TRUST RESPONSIBILITY.—The
11 Federal trust responsibility for all land transferred
12 under this section shall be the same as the responsi-
13 bility for other tribal land held in trust within the
14 Spokane Indian Reservation.

15 (c) COLVILLE-SPOKANE RESERVATION BOUND-
16 ARY.—Nothing in this section—

17 (1) establishes or affects—

18 (A) the precise location of the boundary
19 between the Spokane Indian Reservation and
20 the Colville Reservation along the Columbia
21 River; or

22 (B) the agreement between the Colville
23 Tribes and the Spokane Tribe that the common
24 boundary of the Spokane Tribe and Colville
25 Tribes Indian zones established under the Act

1 of June 29, 1940 (16 U.S.C. 835d), shall follow
2 the center line of Lake Roosevelt, without ref-
3 erence to the course of the submerged Columbia
4 River; or

5 (2) affects the rights of the Colville Tribes or
6 the Spokane Tribe to the use of the respective por-
7 tion of each tribe of the Indian zone, as provided in
8 the Act of June 29, 1940 (16 U.S.C. 835d).

9 (d) RESERVATION OF RIGHTS.—

10 (1) IN GENERAL.—The United States reserves
11 a perpetual right, power, privilege, and easement
12 over the land transferred under this section to carry
13 out the Columbia Basin Project under the Columbia
14 Basin Project Act (16 U.S.C. 835 et seq.).

15 (2) RIGHTS INCLUDED.—The rights reserved
16 under paragraph (1) further include the right to op-
17 erate, maintain, repair, and replace boat ramps,
18 docks, and other recreational facilities owned or per-
19 mitted by the United States and existing on the date
20 of enactment of this Act.

21 (3) RETENTION OF NATIONAL PARK SYSTEM
22 STATUS.—

23 (A) IN GENERAL.—Land transferred under
24 this section that, before the date of enactment
25 of this Act, was included in the Lake Roosevelt

1 National Recreation Area shall remain part of
2 the Recreation Area.

3 (B) ADMINISTRATION.—Nothing in this
4 section shall affect the authority or responsi-
5 bility of the National Park Service to admin-
6 ister the Lake Roosevelt National Recreation
7 Area under the Act of August 25, 1916 (39
8 Stat. 535, chapter 408; 16 U.S.C. 1 et seq.).

9 (4) MEMORANDUM OF UNDERSTANDING.—The
10 cognizant agencies of the Department of the Interior
11 shall enter into a memorandum of understanding
12 with the Spokane Tribe to provide for coordination
13 in applying this subsection.

14 **SEC. 10. SATISFACTION OF CLAIMS.**

15 Payment by the Secretary under section 5 and the
16 Administrator under section 6 and restoration of owner-
17 ship of land in trust under section 9 constitute full satis-
18 faction of the claim of the Spokane Tribe to a fair share
19 of the annual hydropower revenues generated by the
20 Grand Coulee Dam project for the past and continued use
21 of land of the Spokane Tribe for the production of hydro-
22 power at Grand Coulee Dam.

23 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

24 There are authorized to be appropriated such sums
25 as are necessary to carry out this Act.

1 **SEC. 12. PRECEDENT.**

2 Nothing in this Act establishes any precedent or is
3 binding on the Southwestern Power Administration, West-
4 ern Area Power Administration, or Southeastern Power
5 Administration.

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