

## Calendar No. 948

110TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 110-450

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PROVIDING 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

SEPTEMBER 9, 2008.—Ordered to be printed

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

### R E P O R T

[To accompany S. 2494]

The Committee on Indian Affairs, to which was referred the bill (S. 2494) 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 purpose of S. 2494 is to provide equitable compensation to the Spokane Tribe for the past and continued use of tribal lands for the generation of hydroelectric power by the Project, located on the main stem of the Columbia River in the State of Washington. The Tribe received compensation in the amount of \$4,700 for the loss of its tribal lands taken for the construction of the Project. S. 2494 would provide additional compensation to the Tribe to better reflect the Tribe's losses, reflect the hydroelectric power value of the lands taken, and be comparable to the payments made to the neighboring Confederated Tribes of the Colville Reservation (Colville Tribes) under the terms of a congressionally approved settlement with the United States for the loss of similar tribal lands for the construction and operation of the Project.

## BACKGROUND

*I. Planning and construction of Grand Coulee Dam and hydroelectric project*

Planning for the construction of the Project began during the period from 1927 to 1931, when the Army Corps of Engineers (Corps), 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 Project.

The Corps recommended that the construction of the Project be undertaken by local governments or private utilities under the authority of the Federal Power Act, 16 U.S.C. §§ 791a et seq. Section 10(e) of that Act (16 U.S.C. § 803(e)) requires that non-federal licensees utilizing Indian lands to generate hydroelectric power pay to the Indian tribe a reasonable annual charge for the use of its land subject to the approval of the tribe. In 1933, an agency of the State of Washington was issued a preliminary permit to construct a hydroelectric project at the Grand Coulee site by the Federal Power Commission. Several years later, however, the Federal government assumed control of the project. Federal dams are not subject to licensing pursuant to the Federal Power Act or the compensation requirements of Section 10(e) of the Act.

*II. Payment of compensation to tribes*

Under the Act of June 29, 1940, in aid of construction of the Project, Congress granted to the United States “all the right, title, and interest of the Indians in and to the tribal and allotted lands within the Spokane and Colville Reservations . . . as may be designated therefor by the Secretary of the Interior from time to time. . . .” See, 16 U.S.C. 835d–h. This Act also provided that the Secretary of the Interior was to determine an amount of “just and equitable compensation for the tribal lands taken.” See, 16 U.S.C. § 835e.

The United States recognized that the Spokane Tribe and the Colville Tribes had compensable interests that would be injured by the Project. These interests included the development of hydroelectric power, a salmon fishery vital to the tribes which would be destroyed by project construction, and the inundation of tribal lands already identified as potential hydroelectric power sites. See, *Id.*

Pursuant to the Secretary of the Interior’s determination under the Act of June 29, 1940, the Tribe was paid \$4,700 in compensation and the Colville Tribes were paid \$63,000. On two occasions, October 2, 2003 and May 15, 2008, the Committee received testimony to the effect that the original payments made to the tribes, \$4,700 and \$63,000 respectively, were not adequate compensation to provide the tribes with “just and equitable compensation” as required by the Act of June 29, 1940, and that for decades the two tribes had gone without the type of compensation to which they would have been entitled had the Project been licensed under the authority of the Federal Power Act.

The Spokane Tribe and the Colville Tribes asserted various claims before the Indian Claims Commission (ICC) under the In-

dian Claims Commission Act of 1946, Pub. L. 79–726 (ICCA). The Colville Tribes eventually asserted two claims related to the Project under the ICCA. First, the Colville Tribes pursued a claim for the loss of their fisheries as a result of the Project and in 1978 settled for \$3,257,000. Second, the Colville Tribes sought compensation for the hydroelectric power value of the lost tribal lands. Pursuant to this litigation, the Colville Tribes secured a judicial determination that under the “fair and honorable dealings” standard of the ICCA, they could assert a claim for compensation for the hydroelectric power value of the lost tribal lands.<sup>1</sup> In 1994, Congress ratified a settlement agreement between the Colville Tribes and the United States providing for payment of \$53,000,000 million in damages and annual installments of \$15,250,000 in perpetuity, adjusted annually based on revenues from the sale of hydroelectric power generated by the Grand Coulee project.<sup>2</sup>

Although the Spokane Tribe settled certain other issues under the ICC, it did not file claims for loss of hydroelectric power values before the ICCA or any other judicial forum. Rather, the Tribe testified that it believed that the United States was already planning, albeit belatedly, to appropriately compensate the Tribe as required by the Act of June 29, 1940 authorizing the Project and requiring “just and equitable compensation for the tribal lands taken.” The Tribe’s testimony is supported by numerous records, beginning in the 1930’s and then resuming in the 1970’s, of high-level agency discussions, Solicitor’s Office Opinions and memoranda, inter-agency proposals and memoranda, congressional findings, hearings, and directives—including a Task Force Study from 1976 to 1980 at the direction of the Senate Committee on Appropriations, and negotiations with the two tribes regarding adequate compensation for the use of tribal lands to generate hydroelectric power by the Project.

These historical and legal records often treat the legal basis for the Spokane Tribe’s claim as the same or comparable to the claims eventually filed by the Colville Tribes under the ICCA. The only difference between the claims of the two tribes is that the Spokane Tribe, relying on discussions with the United States regarding the requirements of the Act of June 29, 1940, and the ICCA, did not file a claim under the ICCA within its five-year statute of limitations.

Based on these circumstances, the General Accounting Office (GAO) previously testified before the Committee that it would be reasonable to settle with the Spokane Tribe in the same manner as the settlement with the Colville Tribes. The GAO testified:

A reasonable case can be made to settle the Spokane tribe’s case along the lines of the Colville settlement—a one-time payment for the U.S. Treasury for past lost payments for water power values and annual payments primarily from Bonneville. Bonneville continues to earn revenues from Spokane reservation lands used to generate hydropower. However, unlike the Colville tribes, the Spokane tribe does not benefit from these revenues. The Spokane

<sup>1</sup> *Confederated Tribes of the Colville Reservation v. United States*, 964 F. 2d 1102 (Fed. Cir. 1992).

<sup>2</sup> Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, Pub. L. No. 103–436, 108 Stat. 4577 (Nov. 2, 1994) (Colville Tribes Settlement Act).

tribe does not benefit because it missed its filing opportunity before the Indian Claims Commission. At that time it was pursuing other avenues to win payments for the value of its land for hydropower. These efforts would ultimately fail. Without congressional action, it seems unlikely that a settlement for the Spokane tribe will occur.<sup>3</sup>

Accordingly, without congressional legislation, the Spokane Tribe may not receive just and equitable compensation for its losses relating to the salmon fishery on which the Tribe was economically dependent, the inundation of identified hydroelectric power sites that the Tribe could have itself developed, and the loss for the ongoing revenue stream the Tribe would have received under the Federal Power Act if the Project had not been put under Federal administration.

#### SUMMARY OF PROVISIONS OF S. 2494

Under the proposed legislation, the Spokane Tribe would be compensated for the use of its lands for the production of hydroelectric power by the Grand Coulee Dam under a formula based in part on that by which the Colville Tribes were compensated in the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, Pub. L. 103-436, 108 Stat. 4577 (November 2, 1994).

The Spokane Tribe lost lands equivalent in area to 39 percent of the lands lost by the Colville Tribes.<sup>4</sup> A settlement based solely on this factor would result in payments to the Spokane Tribe equal to 39 percent of the payments made to the Colville Tribes. However, the Spokane Tribe agreed to reduce this percentage to 29 percent, in recognition of the fact that certain lands located within the boundaries of the Spokane Reservation taken for the construction of the Project are to be restored to the Spokane Tribe under the terms of this legislation.

Under S. 2494, an interest-bearing settlement fund account would be established in the Treasury to be known as the Spokane Tribe of Indians Settlement Fund. Subject to the availability of appropriations the Secretary would deposit in the Fund \$23,900,000 for fiscal year 2008, and for each of the four fiscal years thereafter \$18,900,000. These funds would be held in trust by the Secretary, unless and until the Spokane Business Council submits a written request to the Secretary asking that all or part of the Fund be paid to the Spokane Business Council. In the event such a request is made, \$5,000,000 of the initial deposit would be used for the planning, design, construction, equipping, and operation and maintenance of a Cultural Resource Repository and Interpretive Center to house burial remains, funerary objects, and other cultural resources affected by the operation of the Project and to provide an educational facility addressing the culture and history of the Tribe. Of the remaining assets of the Fund, 25 percent would be used by the Spokane Business Council for discretionary purposes of general benefit to members of the Tribe, and 75 percent for resource devel-

<sup>3</sup>Testimony of Robert A. Robertson, United States General Accounting Office, October 2, 2003, before the Senate Committee on Indian Affairs, at 3, reprinted in S. Hrg. 108-375, at 64.

<sup>4</sup>See, Written Testimony of Richard Sherwood, Chairman, Spokane Tribe of Indians: Hearing before the Senate Committee on Indian Affairs, 110th Cong. 12 (May 15, 2008).

opment, credit, scholarship, or reserve, investment, and economic development programs.

Additionally, on March 1, 2008, the Administrator of the Bonneville Power Administration (Administrator) would pay the Tribe an amount equal to 29 percent of the annual payment due to the Colville Tribes under § 5(b) of the Colville Tribes Settlement Act for fiscal year 2007. On or before March 1 of each year thereafter, the Administrator would make annual payments to the Tribe equal to 29 percent of the Colville Tribes payment for the previous fiscal year. These funds, upon payment to the Tribe, could be used or invested by the Spokane Business Council in the same manner and for the same purposes as other Spokane Tribe government funds.

Expenditure of funds transferred to the Tribe by the Administrator would not require approval by the Secretary of the Interior or the Administrator, and these officials would have no trust responsibility for the investment, administration, or expenditure of those funds.

The Administrator would be authorized to deduct certain sums (\$1,300,000 in each fiscal year in which payments are made to the Spokane Business Council) from the interest otherwise payable to the Secretary of the Treasury from "net proceeds" as defined in section 13 of the Federal Columbia River Transmission Act, 16 U.S.C. § 838k, subject to certain limitations.

The Secretary of the Interior would be directed to transfer administrative jurisdiction for certain lands within the exterior boundaries of the Spokane Indian Reservation to the Bureau of Indian Affairs. Such lands would be held in trust for the benefit of the Spokane Tribe and remain a part of the Spokane Indian Reservation, subject to a reservation of rights and easement on behalf of the United States regarding use of these lands as is necessary for the operation of the Columbia Basin Project, which includes Grand Coulee Dam, and existing recreational facilities owned or permitted by the United States. The lands would also be subject to the execution of a memorandum of understanding between the relevant agencies of the Department of the Interior and the Tribe. Finally, nothing in section 9 or in the transfer of such lands would establish or affect the location of the boundary between the Spokane Indian Reservation and the Colville Reservation along the Columbia River.

The making of the prescribed payments by the Secretary of the Interior and the Administrator, together with the restoration of ownership and the taking of the specified land into trust on behalf of the Tribe, would constitute full satisfaction of the Spokane Tribe's claims for past and continued use of tribal lands and to a fair share of hydroelectric revenues generated as a result of the use of those lands.

The bill would authorize the appropriation of such funds as are necessary to accomplish its purpose.

The bill does not establish any precedent or is binding upon the Southwestern Power Administration, Western Area Power Authority, or Southeastern Power Administration.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

Section 1 states that the Act may be cited as the “Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act.”

*Section 2. Findings*

Section 2 provides findings made by Congress that describe the background and reasons for this legislation. These findings describe the history of site selection and development of the Project, the relationship between the Project and jurisdiction of the Federal Power Act, recognition by the federal government of a need to compensate the tribes, the differing experiences of the tribes working with the United States and seeking claims pursuant to the Indian Claims Commission Act, the harm suffered by the Spokane Tribe in comparison to the harm suffered by the Colville Tribes, and the Spokane Tribe’s commitment to resolve its claims through this legislation.

*Section 3. Purpose*

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

*Section 4. Definitions*

Section 4 provides definitions for various terms used in the Act.

*Section 5. Settlement fund*

Section 5(a) establishes an interest-bearing settlement fund account in the Treasury of the United States to be known as the “Spokane Tribe of Indians Settlement Fund,” consisting of amounts deposited in the Fund under subsection (b) and any interest earned on investment of amounts in the Fund.

Section 5(b) provides that, from amounts made available under section 11, for fiscal year 2008, the Secretary shall deposit in the Fund \$23,900,000, and for each of the 4 fiscal years thereafter, the Secretary shall deposit in the Fund \$18,900,000.

Section 5(c) provides that the Fund shall be maintained and invested by the Secretary in accordance with the Act of June 24, 1938 (25 U.S.C. § 162a).

Section 5(d) provides that at any time after funds are deposited into the Fund, the Spokane Business Council may submit to the Secretary written notice of the adoption by the Spokane Business Council of a resolution requesting that the Secretary pay all or portion of the amounts in the Fund to the Spokane Business Council, and provides further that not later than 60 days after receipt of such notice, the Secretary shall pay the amount requested to the Spokane Business Council.

Section 5(e) provides that, of the initial deposit under subsection (b)(1), \$5,000,000 shall be used by the Spokane Business Council for the planning, design, construction, equipping, and continuing operation and maintenance of a Cultural Resource Repository and Interpretive Center to house, preserve, and protect the burial remains and funerary and cultural resources affected by the oper-

ation of the Grand Coulee Dam, and provide an interpretive and educational facility regarding the culture and history of the Spokane Tribe. The section also provides that the funding of these activities does not alter or affect any authority, obligation, or responsibility of the United States under the Native American Graves Protection and Repatriation Act (25 U.S.C. §§ 3001 et seq.), the Archaeological Resources Protection Act (16 U.S.C. §§ 470aa et seq.), the National Historic Preservation Act (16 U.S.C. §§ 470 et seq.), or the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Of all other amounts deposited in the Fund (including interest generated on those amounts), 25 percent shall be reserved by the Spokane Business Council and used for discretionary purposes of general benefit to all members of the Spokane Tribe, and 75 percent shall be used by the Spokane Business Council to carry out resource development programs, credit programs, scholarship programs, or reserve, investment, and economic development programs.

*Section 6. Payments by the Administrator*

Section 6(a) provides that on March 1, 2008, the Administrator shall pay to the Tribe an amount equal to 29 percent of the Computed Annual Payment for fiscal year 2007.<sup>5</sup>

Section 6(b) provides that not later than March 1, 2009, and March 1 of each year thereafter, the Administrator shall pay the Tribe an amount equal to 29 percent of the Computed Annual Payment for the preceding fiscal year.

Section 6(c) provides that in accordance with the payment schedule described in subsection (b), the Administrator shall make commensurate cost reductions in expenditures, on an annual basis, to recover each payment to the Tribe under this section. This section also provides that this cost reduction plan shall be included in the annual budget submitted by the Administrator to Congress.

*Section 7. Treatment after funds are paid*

Section 7(a) provides that payments made to the Spokane Business Council or Spokane Tribe under section 5 or 6 may be used or invested by the Business Council in the same manner and for the same purposes as the Tribe's other governmental funds.

Section 7(b) provides that neither the Secretary nor the Administrator shall have any trust responsibility for the investment, supervision, administration, or expenditure of any funds after the date on which the funds are paid to the Spokane Business Council or Spokane Tribe under section 5 or 6.

Section 7(c) provides that the payments of all funds to the Spokane Business Council and Spokane Tribe under sections 5 and 6, and the interest and income generated by the funds, shall be treated in the same manner as payments under section 6 of the Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act (100 Stat. 677).<sup>6</sup>

<sup>5</sup>“Computed Annual Payment” is defined in section 4 of the bill as the payment calculated under paragraph 2.b. of the Colville Settlement Agreement, without regard for any increase or decrease in the payment under section 2.d. of the agreement.

<sup>6</sup>Section 6 of the Saginaw Chippewa Act provides that distributions of certain funds paid to that tribe under the Act to its enrolled members are not subject to Federal, State, or local income taxes and that such distributions may not be used as a basis for denying or reducing (1)

Section 7(d) provides that after the date on which funds are paid to the Spokane Business Council or Spokane Tribe under section 5 or 6, the funds shall constitute Spokane Tribe governmental funds and shall be subject to an annual tribal government audit.

*Section 8. Repayment credit*

Section 8(a) provides that the Administrator shall deduct from the interest payable to the Secretary of the Treasury from net proceeds (as defined in section 13 of the Federal Columbia River Transmission System Act (16 U.S.C. 838k)) in fiscal year 2008, \$1,300,000; and in each subsequent fiscal year in which the Administrator makes a payment under section 6, \$1,300,000.

Section 8(b)(1) provides that except as provided in paragraphs (2) and (3), each deduction made under this section shall be a credit to the interest payments otherwise payable by the Administrator to the Secretary of the Treasury during the fiscal year in which the deduction is made, and shall be allocated pro rata to all interest payments on debt associated with the generation function of the Federal Columbia River Power System that are due during the fiscal year. Section 8(b)(2) provides that if, in any fiscal year, the deduction is greater than the amount of interest due on debt associated with the generation function for the fiscal year, the amount of the deduction that exceeds the interest due on debt associated with the generation function shall be allocated pro rata to all other interest payments due during the fiscal year. Section 8(b)(3) provides that to the extent that a deduction exceeds the total amount of interest described in paragraphs (1) and (2), the deduction shall be applied as a credit against any other payments that the Administrator makes to the Secretary of the Treasury.

*Section 9. Transfer of administrative jurisdiction and restoration of ownership of land*

Section 9(a) provides that the Secretary shall transfer administrative jurisdiction from the Bureau of Reclamation to the Bureau of Indian Affairs over all land acquired by the United States under the Act of June 29, 1940 (16 U.S.C. § 835d), that is located within the exterior boundaries of the Spokane Indian Reservation established pursuant to the Executive Order of January 18, 1881.

Section 9(b)(1) provides that all land transferred under this section shall be held in trust for the benefit and use of the Tribe and shall remain part of the Spokane Indian Reservation.

Section 9(b)(2) provides that the Federal trust responsibility for all land transferred under this section shall be the same as the responsibility for other tribal land held in trust within the Spokane Indian Reservation.

Section 9(c) provides that nothing in this section establishes or affects the precise location of the boundary between the Spokane Indian Reservation and the Colville Reservation along the Columbia River and Lake Roosevelt. Any unresolved issues relating to the Tribes' common Reservation boundary would not be affected in any way by the proposed legislation; however, the Committee does rec-

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financial assistance or other benefits under the Social Security Act to such tribal member or the member's household, or (2) any other Federal financial assistance or benefit to which the tribal member or member's household may be otherwise entitled.

ommend that all such issues be resolved through further negotiations between the two tribal sovereigns.

Section 9(d)(1) provides that the United States reserves a perpetual right, power, privilege, and easement over the land transferred under this section to carry out the Columbia Basin Project under the Columbia Basin Project Act (16 U.S.C. §§ 835 et seq.). Section 9(d)(2) provides further that the rights reserved under paragraph (1) further include the right to operate, maintain, repair, and replace boat ramps, docks, and other recreational facilities owned or permitted by the United States and existing on the date of enactment of this Act. Section 9(d)(3) provides that land transferred under this section that, before the date of enactment of this Act, was included in the Lake Roosevelt National Recreation Area shall remain part of the Recreation Area, and further provides that nothing in this section shall affect the authority or responsibility of the National Park Service to administer the Lake Roosevelt National Recreation Area under the Act of August 25, 1916 (39 Stat. 535, chapter 408; 16 U.S.C. §§ 1et seq.). Section 9(d)(4) provides that the cognizant agencies of the Department of the Interior shall enter into a memorandum of understanding with the Tribe to provide for coordination in applying this subsection.

#### *Section 10. Satisfaction of claims*

Section 10 provides that payment by the Secretary under section 5 and by the Administrator under section 6 and restoration of ownership of land in trust under section 9 constitute full satisfaction of the claim of the Tribe to a fair share of the annual hydropower revenues generated by the Grand Coulee Dam project for the past and continued use of land of the Tribe for the production of hydropower at the Dam.

#### *Section 11. Authorization of appropriations*

Section 11 authorizes the appropriation of such sums as are necessary to carry out this Act.

#### *Section 12. Precedent*

Section 12 provides that nothing in this Act establishes any precedent or is binding on the Southwestern Power Administration, Western Area Power Administration, or Southeastern Power Administration.

### LEGISLATIVE HISTORY

Settlement bills relating to the Tribe's claims were introduced in the past five Congresses. At different times, some of these bills passed the Senate and the House, but not in the same Congress. Bills were introduced in the 106th Congress (S. 1525 and H.R. 2664), in the 107th Congress (S. 2567 and H.R. 4859), in the 108th Congress (S. 1438 and H.R. 1753), and in the 109th Congress (S. 881 and H.R. 1797). In the 110th Congress, Senator Cantwell introduced S. 2494 for herself and Senators Inouye and Murray on December 17, 2007.

Two rounds of hearings have also been held on these bills. On October 2, 2003, the Senate Committee on Indian Affairs held a hearing on S. 1438, and on the same date, the Water and Power Subcommittee of the House Committee on Natural Resources held

a hearing on H.R. 1753. On May 15, 2008, the Senate Committee on Indian Affairs held a hearing on S. 2494.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On June 19, 2008, the Committee on Indian Affairs convened a business meeting to consider S. 2494 and other measures. The Committee voted to have the bill favorably reported without amendment.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 2494, as calculated by the Congressional Budget Office, is set forth below:

*S. 2494—Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*

Summary: S. 2494 would provide compensation to the Spokane Tribe of Indians for the use of tribal lands to generate hydroelectric power by the Grand Coulee Dam. The bill would require the Bonneville Power Administration (BPA) to make annual payments to the tribe from receipts generated from the sale of electricity. Those payments to the tribe would be offset by increases in the rates charged to BPA’s customers for electricity, and thus would result in no net cost to the government. Under the bill, BPA also would be relieved from making certain interest payments to the Treasury. CBO estimates that provision would reduce interest payments received by the Treasury by \$13 million over the 2009–2018 period and by \$1.3 million per year after 2018. (Those effects constitute an increase in direct spending.) Finally, the bill would create the Spokane Tribe of Indians Settlement Fund as compensation for land taken to build the Grand Coulee Dam. CBO estimates that implementing this provision would cost \$76 million over the 2009–2012 period, assuming appropriation of the authorized amounts.

S. 2494 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2494 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, in millions of dollars—												
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2009–2013	2009–2018
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Payments to Spokane Tribe												
Settlement Fund Account:												
Authorization Level ....	19	19	19	19	0	0	0	0	0	0	76	76
Estimated Outlays .....	19	19	19	19	0	0	0	0	0	0	76	76
CHANGES IN DIRECT SPENDING												
Interest Credits for BPA:												
Estimated Budget Au-												
thority .....	1	1	1	1	1	1	1	1	1	1	7	13
Estimated Outlays .....	1	1	1	1	1	1	1	1	1	1	7	13

Note: Amounts may not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by the beginning of 2009 and that the authorized amounts will be appropriated beginning that year.

*Spending subject to appropriation*

S. 2494 would create the Spokane Tribe of Indians Settlement Fund as compensation for land taken to build the Grand Coulee Dam. The bill would authorize the appropriation of \$18.9 million annually over the 2009–2012 period to that new tribal trust fund. The Secretary of the Interior would be required to invest those amounts in government securities until those funds are expended. CBO estimates that implementing the bill would cost \$76 million over the 2009–2012 period.

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 the fund in any year would be recorded as budget authority and outlays in that year. Subsequently, the trust fund would be nonbudgetary, and any use of such funds and interest payments to the tribes would have no effect on the federal budget.

*Direct spending*

S. 2494 would require BPA to make annual payments to the Spokane Tribe. Under the bill, such payments would equal 29 percent of the annual payment BPA currently makes to the Colville Tribe. For this estimate, CBO assumes that payments to the Spokane Tribe would begin in 2009 and would average about \$6 million per year. Payments would continue so long as electricity continues to be generated at the Grand Coulee Dam. Although the bill would require that the payments be offset by commensurate cost reductions, CBO expects that those payments would contribute to an increase in costs to the agency. Because BPA is a cost-recovery agency that charges its customers for the electricity it generates, CBO expects that those payments to the tribe would become part of BPA's cost structure and would be offset by an increase in the new electricity rates that the agency plans to impose in 2009. Thus, this annual payment to the tribe would result in no net cost to the government.

The bill also would allow BPA to reduce the amount of interest that it pays to the U.S. Treasury for funds borrowed to construct BPA's infrastructure. The bill would authorize BPA to forgo interest payments of \$1.3 million a year for as long as payments are made to the tribe. Thus, CBO estimates that enacting this provision would increase the Treasury's outlays for net interest by \$13 million over the 2009–2018 period.

Intergovernmental and private-sector impact: S. 2494 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The payments authorized by this bill would benefit the Spokane Tribe.

Estimate prepared by: Federal costs: Leigh Angres and Kathleen Gramp; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: MarDestinee Perez.

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 that each report accompanying a bill evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that the regulatory and paperwork impacts of S. 2494 should be de minimus.

## EXECUTIVE COMMUNICATION

At a May 15, 2008, hearing, the Department of the Interior testified in opposition to S. 2494. The Department questioned whether awarding such a settlement was warranted because the Tribe had not brought a legal claim against the United States. The Department also provided written testimony that stated:

“The Department is also concerned with transferring land and jurisdiction from the Bureau of Reclamation to the Bureau of Indian Affairs for the Tribe absent a prior written agreement to fully address Reclamation’s and National Park Service’s future ability to manage Grand Coulee Dam, Lake Roosevelt, and the Columbia Basin Project. Such a written agreement should clearly address a number of issues associated with transferring land into trust status, such as future liability for damages from shoreline erosion and heavy metal contamination in sediments from upstream mining, as well as issues related to land and recreation management, including consideration of the existing five-party Lake Roosevelt Cooperative Management Agreement. While under the present draft Reclamation would be granted a perpetual easement to operate the Columbia Basin Project, it is imperative that the parties specifically reach agreement on the details of the lands and easement rights involved and how the transferred areas will be managed prior to the passage of this legislation. At a minimum, such an agreement should be required prior to the actual transfer taking place.”

In addition, the views of the Administration on S. 2489 as introduced were provided in a letter from George Skibine, Deputy Assistant Secretary for Policy and Economic Development—Indian Affairs, United States Department of the Interior, dated June 18, 2008, and are set forth below:

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, DC, June 18, 2008.*

Hon. BYRON L. DORGAN,  
*Chairman, Committee on Indian Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The following sets forth the views of the Department of the Interior on S. 2494, the “Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act”. The Department opposes the bill. The Administration has worked with the Spokane Tribe over the last several years on this issue. We believe negotiations to correct several serious issues should continue.

S. 2494 would provide compensation to the Spokane Tribe for the use of its land for the generation of hydropower by the Grand Coulee Dam. Specifically, S. 2494 would require the Secretary of the Interior, subject to the availability of appropriations, to deposit \$99.5 million over five years, \$23,900,000 for fiscal year 2008 and \$18,900,000 for the following four fiscal years, into a trust fund held in the U.S. Treasury and maintained and invested by the Secretary of the Interior for the Spokane Tribe to be known as the "Spokane Tribe of Indians Settlement Fund". S. 2494 would also transfer certain land and administrative jurisdiction from the Bureau of Reclamation (BOR) to Bureau of Indian Affairs (BIA) for the Spokane Tribe. The land transferred would be held in trust for the Spokane Tribe and would become part of the reservation.

The Spokane Tribe has not brought forward a legal claim that would warrant this type of settlement. The Administration questions whether the Tribe has or could bring any legal claim that would entitle it to compensation as contemplated under the bill. In light of the lack of any pending legal claim, the Administration does not believe this legislation is currently justified as a settlement of claims.

The Department is also concerned with transferring land and jurisdiction from the Bureau of Reclamation to the Bureau of Indian Affairs for the Tribe absent a prior written agreement to fully address Reclamation's and National Park Service's future ability to manage Grand Coulee Dam, Lake Roosevelt, and the Columbia Basin Project. Such a written agreement should clearly address a number of issues associated with transferring land into trust status, such as future liability for damages from shoreline erosion and heavy metal contamination in sediments from upstream mining, as well as issues related to land and recreation management, including consideration of the existing five-party Lake Roosevelt Cooperative Management Agreement. While under the present draft Reclamation would be granted a perpetual easement to operate the Columbia Basin Project, it is imperative that the parties specifically reach agreement on the details of the lands and easement rights involved and how the transferred areas will be managed prior to the passage of this legislation. At a minimum, such an agreement should be required prior to the actual transfer taking place.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

GEORGE T. SKIBINE,  
*Deputy Assistant Secretary for Policy and Economic  
Development—Indian Affairs.*

#### CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the enactment of S. 2494 makes no changes to existing law.