

115TH CONGRESS  
1ST SESSION

# S. 995

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.

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IN THE SENATE OF THE UNITED STATES

MAY 1, 2017

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

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## 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,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Spokane Tribe of Indi-  
5       ans of the Spokane Reservation Equitable Compensation  
6       Act”.

7       **SEC. 2. FINDINGS.**

8       Congress finds that—

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

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

11          (3) in August 1933, the Columbia Basin Com-  
12          mission, an agency of the State of Washington, re-  
13          ceived a preliminary permit from the Federal Power  
14          Commission for water power development at the  
15          Grand Coulee site;

16          (4) had the Columbia Basin Commission or a  
17          private entity developed the site, the Spokane Tribe  
18          would have been entitled to a reasonable annual  
19          charge for the use of the land of the Spokane Tribe;

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

23                 (A) federalized the Grand Coulee Dam  
24                 project; and

1 (B) began construction of the Grand Cou-  
2 lee Dam;

3 (6) when the Grand Coulee Dam project was  
4 federalized, the Federal Government recognized  
5 that—

6 (A) development of the project affected the  
7 interests of the Spokane Tribe and the Confed-  
8 erated Tribes of the Colville Reservation; and

9 (B) it would be appropriate for the Spo-  
10 kane and Colville Tribes to receive a share of  
11 revenue from the disposition of power produced  
12 at Grand Coulee Dam;

13 (7) in the Act of June 29, 1940 (16 U.S.C.  
14 835d et seq.), Congress—

15 (A) granted to the United States—

16 (i) in aid of the construction, oper-  
17 ation, and maintenance of the Columbia  
18 Basin Project, all the right, title, and in-  
19 terest of the Spokane Tribe and Colville  
20 Tribes in and to the tribal and allotted  
21 land within the Spokane and Colville Res-  
22 ervations, as designated by the Secretary  
23 of the Interior from time to time; and

24 (ii) other interests in that land as re-  
25 quired and as designated by the Secretary

1           for certain construction activities under-  
2           taken in connection with the project; and

3           (B) provided that compensation for the  
4           land and other interests was to be determined  
5           by the Secretary in such amounts as the Sec-  
6           retary determined to be just and equitable;

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

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

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

11           (9) in 1994, following litigation under the Act  
12           of August 13, 1946 (commonly known as the “In-  
13           dian Claims Commission Act” (60 Stat. 1049, chap-  
14           ter 959; former 25 U.S.C. 70 et seq.)), Congress  
15           ratified the Colville Settlement Agreement, which re-  
16           quired—

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

19                 (B) for continued use of the land of the  
20           Colville Tribes, annual payments of  
21           \$15,250,000, adjusted annually based on reve-  
22           nues from the sale of electric power from the  
23           Grand Coulee Dam project and transmission of  
24           that power by the Bonneville Power Adminis-  
25           tration;

1           (10) the Spokane Tribe, having suffered harm  
2 similar to that suffered by the Colville Tribes, did  
3 not file a claim within the 5-year statute of limita-  
4 tions under the Indian Claims Commission Act;

5           (11) neither the Colville Tribes nor the Spokane  
6 Tribe filed claims for compensation for use of the  
7 land of the respective tribes with the Commission  
8 prior to August 13, 1951, but both tribes filed unre-  
9 lated land claims prior to August 13, 1951;

10           (12) in 1976, over objections by the United  
11 States, the Colville Tribes were successful in amend-  
12 ing the 1951 Claims Commission land claims to add  
13 the Grand Coulee claim of the Colville Tribes;

14           (13) the Spokane Tribe had no such claim to  
15 amend, having settled the Claims Commission land  
16 claims of the Spokane Tribe with the United States  
17 in 1967;

18           (14) the Spokane Tribe has suffered significant  
19 harm from the construction and operation of Grand  
20 Coulee Dam;

21           (15) Spokane tribal acreage taken by the  
22 United States for the construction of Grand Coulee  
23 Dam equaled approximately 39 percent of Colville  
24 tribal acreage taken for construction of the dam;

1           (16) the payments and delegation made pursu-  
2           ant to this Act constitute fair and equitable com-  
3           pensation for the past and continued use of Spokane  
4           tribal land for the production of hydropower at  
5           Grand Coulee Dam; and

6           (17) by vote of the Spokane tribal membership,  
7           the Spokane Tribe has resolved that the payments  
8           and delegation made pursuant to this Act constitute  
9           fair and equitable compensation for the past and  
10          continued use of Spokane tribal land for the produc-  
11          tion of hydropower at Grand Coulee Dam.

12 **SEC. 3. PURPOSE.**

13          The purpose of this Act is to provide fair and equi-  
14          table compensation to the Spokane Tribe for the use of  
15          the land of the Spokane Tribe for the generation of hydro-  
16          power by the Grand Coulee Dam.

17 **SEC. 4. DEFINITIONS.**

18          In this Act:

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

24           (2) COLVILLE SETTLEMENT AGREEMENT.—The  
25           term “Colville Settlement Agreement” means the

1 Settlement Agreement entered into between the  
2 United States and the Colville Tribes, signed by the  
3 United States on April 21, 1994, and by the Colville  
4 Tribes on April 16, 1994, to settle the claims of the  
5 Colville Tribes in Docket 181–D of the Indian  
6 Claims Commission, which docket was transferred to  
7 the United States Court of Federal Claims.

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

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

17 (5) CONFEDERATED TRIBES ACT.—The term  
18 “Confederated Tribes Act” means the Confederated  
19 Tribes of the Colville Reservation Grand Coulee  
20 Dam Settlement Act (Public Law 103–436; 108  
21 Stat. 4577).

22 (6) FUND.—The term “Fund” means the Spo-  
23 kane Tribe of Indians Recovery Trust Fund estab-  
24 lished 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. SPOKANE TRIBE OF INDIANS RECOVERY TRUST**  
11 **FUND.**

12           (a) ESTABLISHMENT OF FUND.—There is estab-  
13 lished in the Treasury of the United States a separate ac-  
14 count to be known as the “Spokane Tribe of Indians Re-  
15 covery Trust Fund”, consisting of—

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

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

20           (b) DEPOSITS.—On October 1 of the first fiscal year  
21 after the date of enactment of this Act, the Secretary of  
22 the Treasury shall, from the general fund of the Treasury,  
23 deposit in the Fund \$53,000,000.

24           (c) MAINTENANCE AND INVESTMENT OF FUND.—  
25 The Fund shall be maintained and invested by the Sec-



1 retary in accordance with the Act of June 24, 1938 (25  
2 U.S.C. 162a).

3 (d) PAYMENTS TO THE SPOKANE TRIBE.—

4 (1) IN GENERAL.—At any time after the date  
5 on which the Spokane Business Council has adopted  
6 a plan described in subsection (e) and after amounts  
7 are deposited in the Fund, the Spokane Business  
8 Council may request that all or a portion of the  
9 amounts in the Fund be disbursed to the Spokane  
10 Tribe by submitting to the Secretary written notice  
11 of the adoption by the Spokane Business Council of  
12 a resolution requesting the disbursement.

13 (2) PAYMENT.—Not later than 60 days after  
14 the date on which the Secretary receives notice  
15 under paragraph (1), the Secretary shall disburse  
16 the amounts requested from the Fund to the Spo-  
17 kane Tribe.

18 (e) PLAN.—

19 (1) IN GENERAL.—Not later than 18 months  
20 after the date of enactment of this Act, the Spokane  
21 Business Council shall prepare a plan that describes  
22 the manner in which the Spokane Tribe intends to  
23 use amounts received under subsection (d) to pro-  
24 mote—

25 (A) economic development;

1 (B) infrastructure development;

2 (C) educational, health, recreational, and  
3 social welfare objectives of the Spokane Tribe  
4 and the members of the Spokane Tribe; or

5 (D) any combination of the activities de-  
6 scribed in subparagraphs (A) through (C).

7 (2) REVIEW AND REVISION.—

8 (A) IN GENERAL.—The Spokane Business  
9 Council shall make available to the members of  
10 the Spokane Tribe for review and comment a  
11 copy of the plan before the date on which the  
12 plan is final, in accordance with procedures es-  
13 tablished by the Spokane Business Council.

14 (B) UPDATES.—The Spokane Business  
15 Council may update the plan on an annual  
16 basis, subject to the condition that the Spokane  
17 Business Council provides the members of the  
18 Spokane Tribe an opportunity to review and  
19 comment on the updated plan.

20 **SEC. 6. PAYMENTS BY ADMINISTRATOR.**

21 (a) INITIAL PAYMENT.—On March 1, 2020, the Ad-  
22 ministrator shall pay to the Spokane Tribe an amount  
23 equal to 25 percent of the Computed Annual Payment for  
24 fiscal year 2019.

25 (b) SUBSEQUENT PAYMENTS.—

1           (1) IN GENERAL.—Not later than March 1,  
2           2021, and March 1 of each year thereafter through  
3           March 1, 2029, the Administrator shall pay the Spo-  
4           kane Tribe an amount equal to 25 percent of the  
5           Computed Annual Payment for the preceding fiscal  
6           year.

7           (2) MARCH 1, 2030, AND SUBSEQUENT YEARS.—  
8           Not later than March 1, 2030, and March 1 of each  
9           year thereafter, the Administrator shall pay the Spo-  
10          kane Tribe an amount equal to 32 percent of the  
11          Computed Annual Payment for the preceding fiscal  
12          year.

13 **SEC. 7. TREATMENT AFTER AMOUNTS ARE PAID.**

14          (a) USE OF PAYMENTS.—Payments made to the Spo-  
15          kane Business Council or Spokane Tribe under section 5  
16          or 6 may be used or invested by the Spokane Business  
17          Council in the same manner and for the same purposes  
18          as other Spokane Tribe governmental amounts.

19          (b) NO TRUST RESPONSIBILITY OF THE SEC-  
20          RETARY.—Neither the Secretary nor the Administrator  
21          shall have any trust responsibility for the investment, su-  
22          pervision, administration, or expenditure of any amounts  
23          after the date on which the funds are paid to the Spokane  
24          Business Council or Spokane Tribe under section 5 or 6.

1 (c) TREATMENT OF FUNDS FOR CERTAIN PUR-  
2 POSES.—The payments of all amounts to the Spokane  
3 Business Council and Spokane Tribe under sections 5 and  
4 6, and the interest and income generated by those  
5 amounts, shall be treated in the same manner as payments  
6 under section 6 of the Saginaw Chippewa Indian Tribe  
7 of Michigan Distribution of Judgment Funds Act (100  
8 Stat. 677).

9 (d) TRIBAL AUDIT.—After the date on which  
10 amounts are paid to the Spokane Business Council or Spo-  
11 kane Tribe under section 5 or 6, the amounts shall—

12 (1) constitute Spokane Tribe governmental  
13 amounts; and

14 (2) be subject to an annual tribal government  
15 audit.

16 **SEC. 8. REPAYMENT CREDIT.**

17 (a) IN GENERAL.—The Administrator shall deduct  
18 from the interest payable to the Secretary of the Treasury  
19 from net proceeds (as defined in section 13 of the Federal  
20 Columbia River Transmission System Act (16 U.S.C.  
21 838k))—

22 (1) in fiscal year 2030, \$2,700,000; and

23 (2) in each subsequent fiscal year in which the  
24 Administrator makes a payment under section 6,  
25 \$2,700,000.

1 (b) CREDITING.—

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

5 (A) a credit to the interest payments oth-  
6 erwise payable by the Administrator to the Sec-  
7 retary of the Treasury during the fiscal year in  
8 which the deduction is made; and

9 (B) allocated pro rata to all interest pay-  
10 ments on debt associated with the generation  
11 function of the Federal Columbia River Power  
12 System that are due during the fiscal year.

13 (2) DEDUCTION GREATER THAN AMOUNT OF  
14 INTEREST.—If, in an applicable fiscal year under  
15 paragraph (1), the deduction is greater than the  
16 amount of interest due on debt associated with the  
17 generation function for the fiscal year, the amount  
18 of the deduction that exceeds the interest due on  
19 debt associated with the generation function shall be  
20 allocated pro rata to all other interest payments due  
21 during the fiscal year.

22 (3) CREDIT.—To the extent that a deduction  
23 exceeds the total amount of interest described in  
24 paragraphs (1) and (2), the deduction shall be ap-  
25 plied as a credit against any other payments that

1 the Administrator makes to the Secretary of the  
2 Treasury.

3 **SEC. 9. EXTINGUISHMENT OF CLAIMS.**

4 On the deposit of amounts in the Fund under section  
5 5, all monetary claims that the Spokane Tribe has or may  
6 have against the United States to a fair share of the an-  
7 nual hydropower revenues generated by the Grand Coulee  
8 Dam project for the past and continued use of land of  
9 the Spokane Tribe for the production of hydropower at  
10 Grand Coulee Dam shall be extinguished.

11 **SEC. 10. ADMINISTRATION.**

12 Nothing in this Act establishes any precedent or is  
13 binding on the Southwestern Power Administration, West-  
14 ern Area Power Administration, or Southeastern Power  
15 Administration.

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