

Calendar No. 34

116TH CONGRESS } 1st Session }	SENATE	{ REPORT 116-4
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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

MARCH 7, 2019.—Ordered to be printed

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

R E P O R T

[To accompany S. 216]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 216) 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, reports favorably thereon without amendment, and recommends that the bill do pass.

PURPOSE

The bill, S. 216, would provide fair and equitable compensation to the Spokane Tribe of Indians of the Spokane Reservation (Spokane Tribe) for past and continued use of their tribal lands by the Federal government for the production of hydroelectric power generation by the Grand Coulee Dam in the state of Washington.

The bill would provide the Spokane Tribe with annual payments for the continued use of tribal lands, based on the sale of hydroelectric power generated by the Grand Coulee Dam.

BACKGROUND

From 1927 to 1931, the United States Army Corps of Engineers (Corps), at the direction of Congress, investigated the Columbia River and its tributaries to identify sites where dams could be constructed to produce hydroelectric power at low cost.¹ During this time, the Corps recommended a number of sites where dams could

¹ Federal Power Act of 1920 Sec. 4, 16 U.S.C. Sec. 797 (1920).

be constructed, including the site where the Grand Coulee Dam is now located. The site chosen for the Grand Coulee Dam consisted, in part, of lands held in trust by the Federal government for the benefit of the Spokane Tribe and the Confederated Tribes of the Colville Reservation (Colville Tribes).

The Federal Power Act and its Effect on Indian Tribes. The Corps recommended the construction of the Grand Coulee Dam be undertaken by local governments or private utilities, as a licensee, under the authority of the *Federal Power Act*.² When tribal lands are involved, licensing procedures require the licensee to pay an annual payment to Indian tribes who have jurisdiction over the tribal lands.³ In 1933, the Federal Power Commission issued a preliminary permit to the Columbia Basin Commission to construct a dam at the recommended Grand Coulee site. During the mid-1930s, the Federal government federalized the Grand Coulee Dam project and began construction of the dam. The Federal government is not subject to the Federal Power Act and is not obligated to make annual payments to Indian tribes when tribal lands are used for projects such as the Grand Coulee Dam project.⁴

Compensation to the Tribes. The Spokane Tribe and Colville Tribes' interests were affected when the Federal government federalized the Grand Coulee Dam project. The Federal government acknowledged the effects and determined that both tribes should receive a share of revenue from the disposition of power produced by the Grand Coulee Dam. *The Act of June 29, 1940* directed the Secretary of the Interior (Secretary) to provide compensation to the Spokane Tribe and Colville Tribes for the use of tribal lands in an amount determined by the Secretary to be just and equitable.⁵ The Secretary paid to the Spokane Tribe, \$4,700, and to the Colville Tribes, \$63,000.

The Indian Claims Commission. Prior to Congress enacting the *Indian Claims Commission Act* in 1946, Indian tribes needed Congressional action to pursue claims against the Federal government. The purpose of the 1946 Act was to establish a forum, the Indian Claims Commission (ICC), for Indian tribes to pursue historic claims, dating before August 13, 1946, against the Federal government. The ICC did not have authority to grant or restore lands to Indian tribes and was only able to award monetary compensation. Under the 1946 Act, Indian tribes had a 5-year statute of limitations to file claims with the ICC.

Both the Spokane Tribe and the Colville Tribes filed separate, unrelated land claims prior to the August 13, 1951 deadline. During the five year period to file claims with the ICC, neither the Spokane nor the Colville Tribes filed claims for compensation for the use of tribal lands to construct the Grand Coulee Dam.

Those unrelated land claims of the Spokane Tribe before the ICC had all been fully adjudicated by 1967. By settling the land claims against the Federal government, the Spokane Tribe had no further mechanism to litigate claims over the Grand Coulee Dam project in Federal court due, in part, to the 5-year statute of limitations set in the *Indian Claims Commission Act*.

² *Id.*

³ Federal Power Act of 1920 Sec. 10, 16 U.S.C. Sec. 803(e) (1920).

⁴ *Id.*

⁵ Act of June 29, 1940 Sec. 2, 16 U.S.C. Sec. 835d (1940).

The *Colville Settlement Agreement*. In 1976, against objection by the United States because of the cessation of the ICC, the Colville Tribes were successful in amending their ICC land claim to add the Grand Coulee Dam project, creating an opportunity for the tribe to seek compensation and leading to the 1994 Colville Settlement Agreement.

In 1994, to halt this litigation pending under the *Indian Claims Commission Act*, Congress ratified the *Colville Settlement Agreement* (Agreement) requiring a payment of \$53 million to the Colville Tribes for the past use of tribal lands.⁶ Additionally under the Agreement, the Colville Tribes are provided annual payments of \$15,250,000, adjusted annually based on revenues from the sale of electric power from the Grand Coulee Dam project and the transmission of that power by the Bonneville Power Administration, for the continued use of Colville tribal lands.⁷ Unlike the Colville Tribes, the Spokane Tribes were not compensated for the continued use of their tribal lands.

NEED FOR LEGISLATION

The Spokane Tribe has been affected by the construction and operation of the Grand Coulee Dam. The bill, S. 216, would provide fair and equitable compensation to the Spokane Tribe by requiring payments from the Federal government to the Spokane Tribe for past and continued use of tribal lands in generating hydropower from the Grand Coulee Dam in the state of Washington. With no further opportunity to litigate the lands claims of the Spokane Tribe in Federal court, legislation is necessary to provide fair and equitable compensation.

LEGISLATIVE HISTORY

On January 24, 2019, Senator Cantwell with Senator Murray introduced the *Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act*. On January 29, 2019, by voice vote, the Senate Committee on Indian Affairs ordered the bill to be reported favorably to the Senate. A companion bill has not been introduced in the House of Representatives.

115th Congress. On May 1, 2017, Senators Cantwell and Murray introduced S. 995, a bill to provide for equitable compensation to the Spokane Tribe of Indians of the Spokane Reservation for the use of tribal land, and for the production of hydropower by the Grand Coulee Dam, and for other purposes (also known as the *Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act*). A legislative hearing was not held on this bill. A companion bill was not introduced in the House of Representatives.

On February 14, 2018, by voice vote, the Senate Committee on Indian Affairs ordered the bill, as amended, to be reported favorably to the Senate. The amendment, offered by Senator Cantwell, removed the ‘Spokane Tribe of Indians Recovery Trust Fund’ of the bill and included conforming, technical amendments. The amendment eliminated the \$53 million upfront payment, but retained the provisions for annual payments. On October 4, 2018, the Senate

⁶ Act of August 13, 1946, omitted 25 U.S.C. Sec. 70 et seq. in that the Indian Claims Commissions was terminated on September 30, 1978 by Pub. L. No. 94-465 (1976).

⁷ *Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act*, Pub. L. No. 103-436, 108 Stat. 4577 (1994).

passed the bill by voice vote. It was then referred to the Committee on Natural Resources in the House of Representatives. No further action was taken.

114th Congress. On March 17, 2016, Senators Cantwell and Murray introduced S. 2739, a legislative hearing was not held on this bill. On May 11, 2016, the Committee held a duly called business meeting to consider S. 2739. The Committee ordered the bill to be reported favorably without amendment. No further action was taken.

113th Congress. On August 1, 2013, Senators Cantwell and Murray introduced S. 1448, the *Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act*. Senator Begich was added as a cosponsor on February 4, 2014. The Committee held a legislative hearing on September 10, 2013. The Committee held a duly called business meeting on January 29, 2014 to consider S. 1448. The Committee ordered the bill to be reported favorably with an amendment in the nature of a substitute. No further action was taken on the bill.⁸ There was no companion bill in the House of Representatives.

112th Congress. On July 11, 2011, Senators Cantwell and Murray introduced S. 1345, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*. A legislative hearing was held on October 20, 2011. The Committee held a duly called business meeting on September 13, 2012 to consider S. 1345. The Committee ordered the bill to be reported favorably with an amendment in the nature of a substitute. No further action was taken on the bill, S. 1345. There was no companion bill in the House of Representatives.

111th Congress. On June 25, 2009, Senators Cantwell and Murray introduced S. 1388, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*. Senator Inouye was added as a cosponsor on July 28, 2009. The Committee held a duly called business meeting on September 10, 2009 to consider S. 1388. The bill, S. 1388, was ordered to be reported favorably without amendment. No further action was taken on the bill, S. 1388.

The companion bill, H.R. 3097, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*, was introduced in the House of Representatives by Representatives Inslee and Dicks on June 26, 2009. Representative Kildee was added as a cosponsor on October 7, 2009. Representative Richardson was added as a cosponsor on February 3, 2010. The bill, H.R. 3097, was referred to the Committee on Natural Resources of the House of Representatives where no further action was taken on the bill.

110th Congress. On December 17, 2007, Senators Cantwell and Murray introduced S. 2494, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*. Senator Inouye was added as a cosponsor on January 24, 2008. The Committee held a legislative hearing on May 15, 2008. The Committee held a duly called business meeting on June 19, 2008 to consider S. 2494. The bill, S. 2494, was ordered to be

⁸S. Rep. No. 113–202 (2014).

reported favorably without amendment.⁹ No further action was taken on the bill.

The companion bill, H.R. 6547, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*, was introduced in the House of Representatives by Representatives Inslee and Dicks on July 17, 2008. Representative Kildee was added as a cosponsor on July 29, 2008. The bill, H.R. 6547, was referred to the Committee on Natural Resources of the House of Representatives where no further action was taken on the bill.

109th Congress. On April 21, 2005, Senator Cantwell with Senators Murray, Inouye, and McCain introduced S. 881, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*. Senator Dorgan was added as a cosponsor on May 18, 2005. Senator McCain withdrew as a cosponsor on April 26, 2005. The bill, S. 881, was referred to the Committee. No legislative hearing was held on the bill. On June 29, 2005, the Committee ordered S. 881 to be reported favorably without amendment. On December 8, 2005, the bill was placed on the Senate Legislative Calendar under general orders. No further action was taken on the bill, S. 881.

The companion bill, H.R. 1797, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*, was introduced in the House of Representatives by Representatives McMorris-Rodgers, Dicks, and Kildee on April 21, 2005. Representative Inslee was added as a cosponsor on May 11, 2005. The bill, H.R. 1797, was referred to the Subcommittee on Water and Power of the Committee on Resources of the House of Representatives. On May 18, 2005, the Subcommittee on Water and Power discharged H.R. 1797 and by unanimous consent ordered the bill to be reported. On June 23, 2005, the Committee on Resources reported H.R. 1797 where the bill was placed on the Union Calendar. On July 25, 2005, Representative Rodgers moved to suspend the rules and pass the bill, when the House of Representatives proceeded with forty minutes of debate and then the motion to suspend the rules and pass the bill was agreed to by voice vote. On July 26, 2005, H.R. 1797 was received in the Senate. On July 27, 2005, the bill was read a second time and placed on the Senate Legislative Calendar under general orders. No further action was taken on the bill, H.R. 1797.

108th Congress. On July 22, 2003, Senators Cantwell, Murray and Inouye introduced S. 1438, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*. The Committee held a legislative hearing on October 2, 2003. On September 22, 2004, the Committee held a duly called business meeting to consider S. 1438 and ordered the bill to be reported favorably with an amendment in the nature of a substitute. On October 8, 2004, the Committee reported the bill with an amendment in the nature of a substitute and an amendment to the title, where the bill was placed on Senate Legislative Calendar under general orders.¹⁰

⁹S. Rep. No. 110–450 (2008).

¹⁰S. Rep. No. 108–397 (2004).

On November 19, 2004, the Senate passed S. 1438 with an amendment and an amendment to the title by unanimous consent. The House of Representatives received the bill, S. 1438, on November 20, 2004. The bill, S. 1438, was referred to Committee on Resources of the House of Representatives. On December 1, 2004, the bill, S. 1438, was referred to the Subcommittee on Water and Power of the Committee on Resources of the House of Representatives. No further action was taken on the bill, S. 1438.

The companion bill, H.R. 1753, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*, was introduced in the House of Representatives by Representatives Nethercutt and Dicks on April 10, 2003. Representative Kildee was added as a cosponsor on July 17, 2003. The bill, H.R. 1753, was referred to the Subcommittee on Water and Power of the Committee on Resources of the House of Representatives. On October 2, 2003, the Subcommittee on Water and Power held a legislative hearing on the bill. No further action was taken the bill.

107th Congress. On May 23, 2002, Senators Murray, Cantwell, and Inouye introduced S. 2567, *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*. The bill, S. 2567, was referred to the Committee. No further action was taken on the bill, S. 2567.

The companion bill, H.R. 4859, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*, was introduced in the House of Representatives by Representative Nethercutt on June 4, 2002. The bill, H.R. 4859, was referred to the Committee on Resources of the House of Representatives. No further action was taken on the bill.

106th Congress. On August 5, 1999, Senators Murray and Inouye introduced S. 1525, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*. The bill, S. 1525, was referred to the Committee and no further action was taken on the bill.

The companion bill, H.R. 2664, the *Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act*, was introduced in the House of Representatives by Representative Nethercutt on July 30, 1999. Representative Dicks was added as a cosponsor on August 5, 1999. The bill, H.R. 2664, was referred to the Committee on Resources of the House of Representatives. No further action was taken on the bill, H.R. 2664.

SECTION-BY-SECTION ANALYSIS FOR S. 216

Section 1. Short title

This section sets forth the short title as the “Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act”.

Section 2. Findings

This section sets forth the findings of Congress that support the need for the Act.

Section 3. Purpose

This section states the purpose of the Act is to provide fair and equitable compensation to the Spokane Tribe for use of its lands for the generation of hydropower by the Grand Coulee Dam.

Section 4. Definitions

This section defines the key terms used throughout the Act.

Section 5. Payments by Administrator

This section provides for annual payments to the Spokane Tribe for continued use of tribal lands, based on the revenue from the generation of hydroelectric power by the Grand Coulee Dam.

Section 6. Treatment after amounts are paid

This section describes how the Spokane Tribe may use funds provided under sections 5 of the Act, and states that there is no trust responsibility of the Secretary of the Interior or the Bonneville Power Administrator for the funds once they are paid to the Tribe.

Section 7. Repayment credit

This section allows the Administrator of the Bonneville Power Administration a credit against future interest payments owed to the Secretary of the Treasury.

Section 8. Extinguishment of claims

This section states that upon the deposit of amounts in the Fund described in Section 5, all monetary claims the Spokane Tribe has or may have regarding the Grand Coulee Dam against the United States will be extinguished.

Section 9. Administration

This section states that the Act is not binding or establishing precedent for other power administrations.

COST AND BUDGETARY CONSIDERATIONS

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 14, 2019.

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. 216, the Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

KEITH HALL,
Director.

Enclosure.

S. 216—Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act

S. 216 would compensate the Spokane Tribe of Indians for the use of tribal lands in the construction of the Grand Coulee Dam in Washington State. Beginning in 2022, the bill would require the federal Bonneville Power Administration (BPA) to make annual payments to the tribe out of receipts from the sale of electricity. Starting in 2030, BPA could offset a portion of those payments by paying less interest to the Treasury.

Payments to the tribe would total about \$6 million annually through 2029, CBO estimates. However, the net effect on direct spending would not be significant because CBO anticipates that BPA would raise its electricity rates to cover those costs. Thus, payments to the tribe would generally be offset by an equivalent increase in receipts from BPA's electricity customers, which are recorded in the budget as reductions in direct spending.

Starting in 2030, S. 216 would increase payments to the tribe to about \$8 million annually and would reduce the amount that BPA makes in interest payments to the Treasury each year by \$2.7 million. CBO anticipates that BPA would reduce rates to mirror that lower interest payment. Thus, CBO estimates that the expected reduction in receipts under the bill would indefinitely increase annual direct spending by \$2.7 million starting in 2030.

S. 216 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by extinguishing the monetary claims of the Spokane Tribe of Indians against the United States for hydropower revenues and for past and continued use of their land. Eliminating an existing right of action is a mandate because the right to seek redress and recover damages beyond what is provided in the bill would be lost. Using information from the tribe, CBO expects that the tribe would, probably not absent the provision extinguishing those claims, pursue such claims if the bill were enacted. Therefore, CBO estimates that the cost, if any, of the mandate would not exceed the annual threshold established in UMRA (\$82 million in 2019, adjusted annually for inflation). Overall, the tribe would benefit from the payments authorized for the tribe from the Bonneville Power Administration.

The CBO staff contacts for this estimate are Kathleen Gramp (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The Committee has received no communication from the Executive Branch regarding S. 216.

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. 216 will have minimal impact on regulatory or paperwork requirements.

CHANGES IN EXISTING LAW

In compliance with the Standing Rules of the Senate and the Committee Rules, subsection 12 of rule XXVI of the Standing Rules of the Senate is waived. 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.

