

112TH CONGRESS
1ST SESSION

S. 1345

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

JULY 11, 2011

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

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 Grand Coulee Dam Equi-
6 table Compensation Settlement 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 un-
9 related 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 Settlement Fund established
24 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 2012, 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 amounts are
8 deposited in the Fund, the Spokane Business Coun-
9 cil 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-

1 tural Resource Repository and Interpretive Cen-
2 ter to—

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

7 (ii) provide an interpretive and edu-
8 cational facility regarding the culture and
9 history of the Spokane Tribe.

10 (B) EFFECT.—The funding under sub-
11 paragraph (A) does not alter or affect any au-
12 thority, obligation, or responsibility of the
13 United States under—

14 (i) the Native American Graves Pro-
15 tection and Repatriation Act (25 U.S.C.
16 3001 et seq.);

17 (ii) the Archaeological Resources Pro-
18 tection Act (16 U.S.C. 470aa et seq.);

19 (iii) the National Historic Preserva-
20 tion Act (16 U.S.C. 470 et seq.); or

21 (iv) the National Environmental Pol-
22 icy Act of 1969 (42 U.S.C. 4321 et seq.).

23 (2) OTHER USES.—Of all other amounts depos-
24 ited in the Fund (including interest generated on
25 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, 2012, the Ad-
16 ministrator shall pay to the Spokane Tribe an amount
17 equal to 25 percent of the Computed Annual Payment for
18 fiscal year 2011.

19 (b) SUBSEQUENT PAYMENTS.—

20 (1) IN GENERAL.—Not later than March 1,
21 2013, and March 1 of each year thereafter through
22 March 1, 2021, the Administrator shall pay the Spo-
23 kane Tribe an amount equal to 25 percent of the
24 Computed Annual Payment for the preceding fiscal
25 year.

1 (2) MARCH 1, 2022, AND SUBSEQUENT YEARS.—
2 Not later than March 1, 2022, and March 1 of each
3 year thereafter, the Administrator shall pay the Spo-
4 kane Tribe an amount equal to 32 percent of the
5 Computed Annual Payment for the preceding fiscal
6 year.

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

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

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

19 (c) TREATMENT OF FUNDS FOR CERTAIN PUR-
20 POSES.—The payments of all amounts to the Spokane
21 Business Council and Spokane Tribe under sections 5 and
22 6, and the interest and income generated by those
23 amounts, shall be treated in the same manner as payments
24 under section 6 of the Saginaw Chippewa Indian Tribe

1 of Michigan Distribution of Judgment Funds Act (100
2 Stat. 677).

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

6 (1) constitute Spokane Tribe governmental
7 amounts; and

8 (2) be subject to an annual tribal government
9 audit.

10 **SEC. 8. REPAYMENT CREDIT.**

11 (a) IN GENERAL.—The Administrator shall deduct
12 from the interest payable to the Secretary of the Treasury
13 from net proceeds (as defined in section 13 of the Federal
14 Columbia River Transmission System Act (16 U.S.C.
15 838k))—

16 (1) in fiscal year 2022, \$2,700,000; and

17 (2) in each subsequent fiscal year in which the
18 Administrator makes a payment under section 6,
19 \$2,700,000.

20 (b) CREDITING.—

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

24 (A) a credit to the interest payments oth-
25 erwise payable by the Administrator to the Sec-

1 retary of the Treasury during the fiscal year in
2 which the deduction is made; and

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

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

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

22 **SEC. 9. DELEGATION OF AUTHORITY; RESERVATION**
23 **BOUNDARY; RETENTION OF AUTHORITY.**

24 (a) DELEGATION OF AUTHORITY.—The delegation by
25 the Secretary to the Spokane Tribe under the authority

1 of the following, with respect to land that is located within
2 the exterior boundaries of the Spokane Indian Reserva-
3 tion, is confirmed:

4 (1) The Act of June 17, 1902 (43 U.S.C. 373).

5 (2) The Act of June 29, 1940 (16 U.S.C.
6 835d).

7 (3) Section 15 of the Act of August 4, 1939
8 (43 U.S.C. 485i).

9 (4) The Lake Roosevelt Cooperative Manage-
10 ment Agreement concluded in April 1990 among the
11 Department of the Interior, the Spokane Tribe, and
12 the Confederated Tribes of the Colville Reservation,
13 over all land acquired by the United States pursuant
14 to the Act of June 29, 1940 (16 U.S.C. 835d), also
15 known as the Reservation or Indian Zone.

16 (b) COLVILLE-SPOKANE RESERVATION BOUND-
17 ARY.—Nothing in this section—

18 (1) establishes or affects—

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

23 (B) the agreement between the Colville
24 Tribes and the Spokane Tribe that the common
25 boundary of the Spokane Tribe and Colville

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

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

10 (c) RETENTION OF AUTHORITY BY THE UNITED
11 STATES.—Nothing in this Act alters or affects the author-
12 ity or responsibility of—

13 (1) the United States to carry out the Columbia
14 Basin Project under the Columbia Basin Project Act
15 (16 U.S.C. 835 et seq.); or

16 (2) the National Park Service to administer the
17 Lake Roosevelt National Recreation Area under the
18 Act of August 25, 1916 (39 Stat. 535, chapter 408;
19 16 U.S.C. 1 et seq.).

20 **SEC. 10. SATISFACTION OF CLAIMS.**

21 Payment by the Secretary under section 5 and the
22 Administrator under section 6 and delegation under sec-
23 tion 9 constitute full satisfaction of the claim of the Spo-
24 kane Tribe to a fair share of the annual hydropower reve-
25 nues generated by the Grand Coulee Dam project for the

1 past and continued use of land of the Spokane Tribe for
2 the production of hydropower at Grand Coulee Dam.

3 **SEC. 11. ADMINISTRATION.**

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

8 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

9 There are authorized to be appropriated such sums
10 as are necessary to carry out this Act.

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