

Calendar No. 425

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
111-204

TO PROVIDE FOR EQUITABLE COMPENSATION TO THE SPOKANE TRIBE OF INDIANS OF THE SPOKANE RESERVATION FOR THE USE OF TRIBAL LAND FOR THE PRODUCTION OF HYDROPOWER BY THE GRAND COULEE DAM, AND FOR OTHER PURPOSES

JUNE 10, 2010.—Ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1388]

The Committee on Indian Affairs, to which was referred the bill (S. 1388) 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. 1388 is to provide fair and equitable compensation to the Spokane Tribe for the past and continued use of tribal lands by the federal government for the generation of hydroelectric power at the Grand Coulee Dam and Hydroelectric Project (Project), located on the main stem of the Columbia River in the State of Washington. S. 1388 would provide additional compensation for the Tribe's losses, including the value of the land as a hydroelectric site, and make payments comparable to those made to the neighboring Confederated Tribes of the Colville Reservation (Colville Tribes) under their congressionally approved settlement with the United States for similar losses caused by the Project.

BACKGROUND

I. Planning and construction of Grand Coulee Dam

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, located on the main stem of the Columbia River in the State of Washington.

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. (FPA). If the Project had been constructed by a local government or a private utility, section 10(e) of the FPA (16 U.S.C. § 803(e)) would have required that the non-federal licensees pay the Tribe a reasonable annual charge, subject to the approval of the Tribe, for the use of its land to generate hydropower. In 1933, a non-federal entity was issued a preliminary permit to construct a hydroelectric project at the current site of the Project by the Federal Power Commission.

Several years later, however, the Federal government assumed control of the project. Consequently, the FPA did not ultimately apply to the Project because federal dams are not subject to licensing pursuant to the FPA. This included section 10(e) of the FPA which would have provided compensation to the Tribe for the use of its lands by a non-federal licensee.

II. Payment of compensation to tribes

As a part of constructing the Project, under the Act of June 29, 1940, 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. . . .”¹ The Act also 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 by the tribes, 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. The Act provided that the Secretary of the Interior was to determine an amount of “just and equitable compensation for the tribal lands taken.”²

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 that the original payments made to the tribes, \$4,700 and \$63,000 respectively, were not adequate compensation. The testimony emphasized requirement of the Act of June 29, 1940, that the tribes were to be provided “just and equitable compensation.” The

¹ See 16 U.S.C. § 835d-h.

² See 16 U.S.C. § 835e.

testimony also noted the decades of lost compensation to the tribes because the Project had not been licensed by a non-federal entity under the FPA.

III. Claims for compensation before the Indian Claims Commission

Both the Spokane Tribe and the Colville Tribes asserted various claims before the Indian Claims Commission (ICC) under the Indian Claims Commission Act of 1946, Pub. L. 79-726 (ICCA). The ICCA included a requirement that all claims be filed within five years of the passage of the ICCA. Neither tribe asserted claims specifically related to the Project prior to the expiration of the ICCA's five year statute of limitations.

However, after the ICCA's statute of limitations had run, the Colville Tribes asserted specific claims related to the Project. In 1956, the Colville Tribes' original ICC claim was divided into four separate claims, at that time, the Colville Tribes added specific fishery and hydropower claims to their original claim. Twenty years later, in 1976, the ICC ruled on the addition of these more specific claims. The ICC ruled that the Colville Tribes could amend their original claim even though the ICCA's five year statute of limitations had run. The ICC determined that the Colville Tribes specific hydropower claims could "relate back" to the filing of their more general original claims and would not be barred by the ICCA statute of limitations.³

Litigation over the Colville Tribes additional claims continued until 1992, when the United States Court of Appeals for the Federal Circuit finally held that the ICCA's "fair and honorable dealings" standard allowed the Colville Tribes to pursue its hydropower related claims against the United States.⁴ This decision led to negotiations between the Colville Tribes and the United States to settle the claims. 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 Project.⁵ The fiscal year 2008 annual payment to the Colville Tribes for the sale of hydroelectric power generated by Project was \$18.2 million.

Meanwhile, the Spokane Tribe did not attempt to amend its original ICC claims with more specific claims after the ICCA's statute of limitations had run. And, in 1967, the Spokane Tribe settled its ICCA claims. The Spokane Tribe settled its various ICC claims (in 1967) long before the ICC ruled (in 1976) that the Colville Tribes and other tribes could amend their claims even though the ICCA statute of limitations had run. The Spokane Tribe also settled long before the federal courts held (in 1992) that these claims could be pursued against the United States under the "fair and honorable dealings" standard of the ICCA.

None of the Spokane Tribes settled claims specifically addressed the loss of compensation for the generation of hydroelectric power

³ *Confederated Tribes of the Colville Reservation v. United States*, 39 Ind. Cl. Comm. 159, 163 (Nov. 18, 1976).

⁴ *Confederated Tribes of the Colville Reservation v. United States*, 964 F. 2d 1102 (Fed. Cir. 1992).

⁵ *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).

by the Project. As the Tribe testified before the Committee,⁶ when it settled its claims, it believed that the United States was still planning to appropriately compensate the Tribe as set out in the Act of June 29, 1940, which authorized the Project and required “just and equitable compensation for the tribal lands taken.”⁷

IV. Discussions to appropriately compensate the Spokane Tribe

Numerous records, beginning in the 1930’s and then again in the 1970’s, support the Spokane Tribe’s testimony that the United States was planning, albeit belatedly, to appropriately compensate the Tribe as required by the Act of June 29, 1940 authorizing the Project. These records include high-level agency discussions, Solicitor’s Office Opinions and memoranda, interagency 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.⁸ These historical and legal records often treat the legal basis for the Spokane Tribe’s claim as having the same validity as the claims that the Colville Tribes litigated under the ICCA.

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 [Power Administration]. 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 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.⁹

LEGISLATIVE HISTORY

Settlement bills relating to the Tribe’s claims were introduced in the past five Congresses. At different times, some of these bills either passed the Senate or the House, but never 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), in the 109th Congress (S.

⁶Hearing on S. 1080, H.R. 2120, S. 2494, H.R. 2963, S. 531 Before the S. Comm. on Indian Affairs, 110th Cong. 21 (2008) (written testimony of Richard Sherwood, Chairman, Spokane Tribe of Indians).

⁷See 16 U.S.C. § 835e.

⁸See *id.*

⁹Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act: Hearing on S. 1438 Before the S. Comm. on Indian Affairs, 108th Cong. 64 (2003) (testimony of Robert A. Robertson, United States General Accounting Office).

881 and H.R. 1797) and in the 110th Congress (S. 2494 and H.R. 6547). In the 111th Congress, Senator Cantwell introduced S. 1388 for herself and Senator Murray on June 25, 2009.

Three hearings have been held on the Tribe's compensation 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.

On some of these occasions, the Committee received views on the introduced version of the bill and from the Administrations in place at that time. On June 28, 2005, the Bureau of Reclamation provided the Committee a letter with its views on S. 881. And, at the May 15, 2008, the then-Director of the Bureau of Indian Affairs testified on S. 2494. The Committee understands that the bill it is currently reporting, S. 1388, reflects discussions with the Administration based on this prior correspondence.

SUMMARY OF PROVISIONS OF S. 1388

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's lands being used by the Project are equivalent in area to 39 percent of the Colville Tribes' lands being used.¹⁰ 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. 1388, an interest-bearing settlement fund 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 2010, and for each of the next four fiscal years \$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 development, credit,

¹⁰ Hearing on S. 1080, H.R. 2120, S. 2494, H.R. 2963, S. 531 Before the S. Comm. on Indian Affairs, 110th Cong. 21 (2008) (written testimony of Richard Sherwood, Chairman, Spokane Tribe of Indians).

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

In addition, under S. 1388, beginning on March 1, 2010, 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 2009. 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.

Beginning in fiscal year 2020, S. 1388 would allow the Administrator to take a \$1,300,000 credit against these payments to the Tribe in most years. The credit would come from funds that the Administrator would otherwise owe the Department of Treasury.

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.

Section 9 discusses the transfer of administrative jurisdiction and restoration of ownership of certain lands. Sections 9(a) and (b) provide that the Secretary of the Interior is directed to transfer administrative jurisdiction for certain lands within the exterior boundaries of the Spokane Indian Reservation from the Bureau of Reclamation to the Bureau of Indian Affairs and that such lands would be held in trust for the benefit of the Spokane Tribe and remain a part of the Spokane Indian Reservation. These lands would be subject to the same trust responsibility as other tribal land held in trust within the Reservation. These lands would also be subject to a reservation of perpetual rights and easement on behalf of the United States regarding the 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.

Because the lands involved in section 9 include a boundary between the Spokane Tribe and the Confederated Tribes of the Colville Reservation, section 9(c) provides that nothing in section 9 establishes or affects the precise location of the actual boundary between the Spokane Indian Reservation and the Colville Reservation along the Columbia River, the respective use rights of each Tribe in Lake Roosevelt as reserved by the Act of June 29, 1940 (16 U.S.C. § 835d), or the common boundary of the Indian zones established pursuant to the 1940 Act.

Section 9(c) also recognizes an agreement between the Spokane Tribe and the Confederated Tribes of the Colville Reservation that was formalized in a Joint Resolution adopted by the two Tribes on September 17, 1973. The Joint Resolution provides—

- (1) that the common boundary of the enlarged Indian zones between the Spokane and Colville Reservations follow the center line of Roosevelt Lake without reference to the course of the submerged Columbia River so that the Spokane Indian

zone will be to the east of said center line and the Colville Indian zone to the west;

(2) that the Tribes establish a policy of reciprocity within both Indian zones where they are adjacent to each other with the cross deputization of game wardens, patrols, and other officers and uniformity in the administration of tribal rights and jurisdiction in that area.

(3) that there be reserved for later negotiations and accord the question of where the actual common boundary between the two reservations exists on the bottom of the Roosevelt Lake, that is, whether it is at the center line or the west bank of the submerged Columbia River.

Finally, to help ensure coordinated and consistent management of the Project, the Recreation Area, and the tribal lands, Section 9(d) also directs the Tribe and the relevant agencies of the Department of the Interior to enter into a memorandum of understanding regarding the lands. A similar agreement has already been reached between the Tribe and the State of Washington Department of Fish and Wildlife for management of law enforcement activities on acreage covered by the Act.

Section 10 provides that 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.

Section 11 would authorize the appropriation of such funds as are necessary to accomplish its purpose.

Section 12 states that the Act would not establish any precedent or is binding upon the Southwestern Power Administration, Western Area Power Authority, or Southeastern Power Administration.

SECTION-BY-SECTION OF S. 1388

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.

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 2010, 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 operation 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, 2010, the Administrator shall pay to the Tribe an amount equal to 29 percent of the Computed Annual Payment for fiscal year 2009.¹¹

Section 6(b) provides that not later than March 1, 2011, 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 com-

¹¹“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.

mensurate cost reductions in expenditures, on an annual basis, to recover each payment to the Tribe under this section.

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).¹²

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 2020, \$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.

¹²Section 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) 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.

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 or the agreements and rights established and provided for in the Act of June 29, 1940 (16 U.S.C. § 835d).

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. §§ 1 *et 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.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On September 10, 2009, the Committee on Indian Affairs convened a business meeting to consider S. 1388 and other measures. By voice vote, the Committee voted to have the bill favorably reported without amendment.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1388, as calculated by the Congressional Budget Office, is set forth below:

S. 1388—Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act

Summary: S. 1388 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. CBO estimates that those payments would increase direct spending by \$8 million over the 2010–2019 period.

The bill also 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 \$100 million over the 2010–2014 period, assuming appropriation of the authorized amounts.

Finally, beginning in 2020, the bill would reduce BPA’s interest payments to the Treasury by \$1.3 million annually for as long as BPA makes payments to the tribe. Such reductions would increase direct spending by \$1.3 million a year starting in 2020.

S. 1388 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. 1388 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 year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010–2014	2010–2019	
CHANGES IN DIRECT SPENDING													
Estimated Budget Authority ..	6	6	–4	0	0	0	0	0	0	0	8	8	
Estimated Outlays	6	6	–4	0	0	0	0	0	0	0	8	8	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Authorization Level	24	19	19	19	19	0	0	0	0	0	100	100	
Estimated Outlays	24	19	19	19	19	0	0	0	0	0	100	100	

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2010 and that the authorized amounts will be appropriated each year.

Direct spending

S. 1388 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 Tribes. Those payments would continue so long as electricity continues to be generated at the Grand Coulee Dam. CBO estimates that payments to the Spokane Tribe would begin in 2010 and would average about \$6 million per year. Because BPA's operating costs are driven by market and environmental conditions that are difficult to control, CBO expects that the agency would not be able to offset the cost of this bill by reducing operating expenses as directed by the bill. Instead, we anticipate that BPA would increase the rates it charges for electricity to cover those costs.

Because BPA has already set the rates it will charge customers for electricity in 2010 and 2011, CBO expects that the agency would use reserve funds to make payments to the tribe in those years. Information from BPA indicates that the agency has already collected roughly \$8 million to cover a portion of payments the agency anticipated it might be obligated to make to the tribe if legislation similar to S. 1388 were enacted. CBO expects that, under the bill, BPA would spend \$12 million of reserves for payments to the tribe in 2010 and 2011 and that the agency would raise its rates in 2012 to replenish the portion of reserves paid to the tribe that was not specifically collected for that purpose (about \$4 million). CBO expects that, under current law, BPA would not spend reserve funds currently designated for making payments to the tribe because the agency has no authority or requirement to do so.

Beginning in 2012, CBO expects that the \$6 million annual payment to the Spokane tribe would become part of BPA's cost structure and would be fully offset by an increase in the rates it charges for electricity.

Spending subject to appropriation

S. 1388 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 \$100 million over the 2010–2014 period to that fund. Assuming appropriation of the authorized amounts, CBO estimates that implementing S. 1388 would cost \$100 million over the 2010–2014 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. The Secretary of the Interior would be required to invest the appropriated funds in government securities until those funds are expended by the tribe. 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.

Intergovernmental and private-sector impact: S. 1388 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: Jeff LaFave; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Marin Randall.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATION

The Committee has not received an executive communication from the Administration on the provisions of S. 1388.

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. 1388 should be de minimis.

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. 1388 makes no changes to existing law.

ADDITIONAL VIEWS OF SENATOR CANTWELL

The following sets forth Senator Cantwell's views concerning the effect of section 9 on the boundary between the reservations of the Spokane and Colville tribes:

Section 9 also provides that nothing in this section establishes or affects the precise location of the actual boundary between the Spokane Indian Reservation and the Colville Reservation along the Columbia River, the respective use rights of each Tribe in Lake Roosevelt as reserved by the 1940 Act, or the common boundary of the Indian zones established pursuant to the 1940 Act in a Joint Resolution adopted by the two Tribes on September 17, 1973.

That agreement provides:

1. That the common boundary of the enlarged Indian zones between the Spokane and Colville Reservations follow the center line of Roosevelt Lake without reference to the course of the submerged Columbia River so that the Spokane Indian zone will be to the east of said center line and the Colville Indian zone to the west.

2. That the Tribes establish a policy of reciprocity within both Indian zones where they are adjacent to each other with the cross deputization of game wardens, patrols, and other officers and uniformity in the administration of tribal rights and jurisdiction in that area.

3. That there be reserved for later negotiations and accord the question of where the actual common boundary between the two reservations exists on the bottom of the Roosevelt Lake, that is, whether it is at the center line or the west bank of the submerged Columbia River.

Nothing in this section affects these rights and agreement inter se. It is recognized that the actual boundary between the two Reservations on the Columbia River and Lake Roosevelt is a matter to be resolved by further negotiation and accord between the Spokane and Colville Tribes. Accordingly, it is recommended that any unresolved issues regarding the common Reservation boundary should be a matter to be resolved through further negotiations between the two Tribes and are not affected in any way by the proposed legislation.

MARIA CANTWELL.

○