

SPOKANE TRIBE OF INDIANS OF THE SPOKANE RES-
ERVATION GRAND COULEE DAM EQUITABLE COM-
PENSATION SETTLEMENT ACT

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JUNE 23, 2005.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
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Mr. POMBO, from the Committee on Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1797]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1797) 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, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1797 is 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.

BACKGROUND AND NEED FOR LEGISLATION

Grand Coulee Dam was built in the late 1930s and early 1940s. The accompanying reservoir inundated approximately 2,500 acres of the Spokane Indian Reservation. Under the Indian Claims Commission Act of 1946, all tribes were given five years to file land claims against the federal government. Although the Spokane

Tribe filed a claim at the time and settled in 1967, lands related to the Dam were not included in the claim. For the Tribe to recover damages associated with the Dam through litigation, a federal law allowing them to file a new legal claim would be required. Rather than focusing on litigation, the Spokane Tribe has pursued direct settlement funding by legislative means.

COMMITTEE ACTION

H.R. 1797 was introduced on April 21, 2005, by Representative Cathy McMorris (R-WA). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Water and Power. On May 18, 2005, the Full Resources Committee met to consider the bill. The Subcommittee on Water and Power was discharged from further consideration of the bill by unanimous consent. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

The short title of the Act is the “Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act.”

Section 2. Findings

This section lists a number of findings that detail the reasons for the bill.

Section 3. Purpose

The purpose of this act is to provide the Spokane Tribe with fair and equitable compensation for the use of its land for generation of hydropower by Grand Coulee Dam.

Section 4. Definitions

This section defines various terms in the Act.

Section 5. Settlement Fund

The Spokane Tribe of Indians Settlement Fund is established in the United States Treasury. Deposits by the Secretary of the Interior into the fund will be \$17,800,000 in 2006 and \$12,800,000 in each of the four years thereafter. Funds will be available to the Spokane Business Council (the governing body of the Spokane Tribe) upon request. The first \$5 million deposited will be used for establishing and maintaining a Cultural Resource Repository and Interpretive Center.

Section 6. Payments by the Administrator

Annual payments will be made to the Tribe by the Administrator of the Bonneville Power Administration (BPA) through 2033. A sunset provision caps these annual payments at 25 years. All Native American land and water rights settlements signed into public law prior to this legislation have settled legal claims. This bill does not settle litigation and rests solely on settling moral claims. As such, the Committee strongly agrees with the need for a sunset on

expenditures that do not settle longstanding legal claims. The first payment, to be made in 2007, will cover 2005 and 2006. The payment for each year will be equal to 29 percent of that year's payment to the Colville Tribes. Since this section requires BPA to make commensurate cost reductions to cover these annual payments, the Committee believes that the agency must not include these payments in its current rate base or any future rate adjustment case.

Section 7. Treatment After Funds Are Paid

The Spokane Tribe may use funds from these payments in the same manner and for the same purposes as other Spokane Tribe governmental funds. The Secretary of the Interior and Administrator of BPA will have no trust responsibility over these funds.

Section 8. Repayment Credit

The BPA Administrator will deduct the following amounts from its interest payments to the Treasury: \$2,600,000 in 2007, and \$1,300,000 in each year it makes a payment under section 6 of the bill.

Section 9. Transfer of Administrative Jurisdiction and Restoration of Ownership of Land

Lands within the boundary of the Spokane Indian Reservation acquired by the United States under the 1940 Act and other lands shall be transferred from the Bureau of Reclamation to the Bureau of Indian Affairs, to be held in trust for the benefit and use of the Spokane Tribe and become part of the Spokane Indian Reservation. The United States reserves the right to use these transferred lands to carry out the Columbia Basin Project, for uses including recreational facilities. Transferred lands that were included in the Lake Roosevelt National Recreation Area shall remain part of the Recreation Area.

Section 10. Satisfaction of Claims

Payments and land transfers under this Act will constitute full satisfaction of the moral claim of the Spokane Tribe to a share of Grand Coulee Dam hydropower revenues.

Section 11. Authorization of Appropriations

Appropriations as necessary to carry out this Act are authorized.

Section 12. Precedent

Nothing in this Act establishes precedent or is binding on the Southwestern Power Administration, Western Area Power Administration, or Southeastern Power Administration.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in tax expenditures. According to the Congressional Budget Office, enactment of this bill would result in reduced offsetting receipts.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is 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.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 1797—Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act

Summary: H.R. 1797 would establish and authorize funds to be appropriated to the Spokane Tribe of Indians Settlement Fund to compensate the Spokane Tribe of Indians for the use of its land by the Grand Coulee Dam project in Washington. Starting in 2007, the bill would require the Bonneville Power Administration (BPA) to make annual payments to the tribe from receipts generated from the sale of electricity. Those payments to the tribe would be offset by increases in the rates charged to BPA's customers for electricity sales, and thus would result in no net cost to the government. Under the bill, BPA also would be relieved from making certain interest payments to the Treasury for funds borrowed on BPA's behalf. CBO estimates that provision would reduce receipts collected by BPA by \$13 million over the 2007–2015 period, and by \$1.3 million per year after 2015. (Those effects constitute an increase in direct spending.)

Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost \$69 million over the 2006–2010 period for payments into the Spokane Tribe of Indians Settlement Fund, H.R. 1797 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform

Act (UMRA). The payments authorized by this bill would benefit the Spokane Tribe.

Estimated Cost to the Federal Government: The estimated budgetary impact of H.R. 1797 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—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION										
Payments to Spokane Tribe Settlement:										
Fund Account:										
Authorization Level	18	13	13	13	13	0	0	0	0	0
Estimated Outlays	18	13	13	13	13	0	0	0	0	0
CHANGES IN DIRECT SPENDING										
Interest Credits for BPA:										
Estimated Budget Authority	0	3	1	1	1	1	1	1	1	1
Estimated Outlays	0	3	1	1	1	1	1	1	1	1

Basis of Estimate: For this estimate, CBO assumes that the bill will be enacted by the end of fiscal year 2005 and that the authorized amounts will be appropriated for each year.

Spending Subject to Appropriation

This bill would authorize the appropriation of payments to the Spokane Tribe as compensation for land taken to build the Grand Coulee Dam. The bill would authorize the appropriation of \$18 million in 2006 and \$13 million annually over the 2007–2010 period to a new tribal trust fund. Thus, CBO estimates that implementing the bill would cost \$18 million in 2006 and \$69 million over the 2006–2010 period.

Payments to certain 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. Because the trust funds would be nonbudgetary, the subsequent use of such funds by the tribe would not affect federal outlays.

Direct Spending

H.R. 1797 would require BPA to make annual payments to the Spokane Tribe. Under the bill, such payments would be equal to 29 percent of the annual payment BPA currently makes to the Colville Tribe, and would be made for 25 years. The payments would begin in 2007 and would total about \$5 million per year, except in 2007 when BPA would be required to make two payments. Although the bill would require that the payments be offset by commensurate cost reductions, CBO expects that these payments would contribute to an increase in costs to the agency. Because BPA is a cost-recovery agency that charges its customers for the electricity it generates, CBO assumes that these payments to the tribe would become part of BPA's cost structure, and would be offset by an increase in the new electricity rates that the agency plans to impose

in 2007. Thus, this annual payment to the tribe would result in no net cost to the government.

The bill also would allow BPA to reduce the amount of interest costs that it transfers to the U.S. Treasury for funds borrowed to construct BPA's infrastructure. The bill would authorize BPA to forgo interest payments of \$2.6 million in 2007, and \$1.3 million each year thereafter for as long as payments are made to the tribe. As a cost-recovery agency, BPA would reduce its annual collections from electricity ratepayers by the amount of these forgone interest payments. Thus, CBO estimates that BPA collections, which are recorded in the budget as offsetting receipts, would be reduced by \$2.6 million in 2007 and about \$13 million over the 2007–2015 period.

Intergovernmental and private-sector impact: H.R. 1797 contains no intergovernmental or private-sector mandates as defined in UMRA. The payments authorized by this bill would benefit the Spokane Tribe.

Estimate prepared by: Federal Costs: Mike Waters, Lisa Cash Driskill, and Jimin Chung. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Selena Caldera.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

ADDITIONAL VIEWS

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

Grand Coulee Dam was authorized during the depths of the Great Depression as a high profile public works project, a key feature of the Bureau of Reclamation's Columbia Basin Project. When construction began in the 1930's, the purpose was to jump-start the national economy and provide jobs for large numbers of unemployed laborers. While the dam has brought enormous water supply, flood control, and hydroelectric power benefits to the Pacific Northwest, the project has had devastating impacts on the Spokane and Colville people, their tribal economies, social fabric and way of life.

Grand Coulee Dam blocked migration of anadromous fish in the mainstem of the Columbia River, the Spokane River and tributaries. These fish runs were the Spokane Tribe's primary source of subsistence, employment and basis for a way of life that had sustained tribal people since time immemorial.

Tribal communities, including homes, schools, roads, telecommunication systems and other infrastructure, were inundated by the water impounded by Grand Coulee Dam. Some residents were displaced without relocation assistance or compensation and, as the water began rising behind the Dam, many tribal people were forced to flee their homes, leaving their personal belongings behind.

Thousands of tribal burial sites located along the bluffs above the River were of special concern for the tribes but efforts to relocate human remains and associated funeral objects from thousands of known sites on tribal lands were halted due to looting and theft. These and many other unidentified burial sites were flooded when the Dam was constructed.

Under a 1940 act, the federal government paid \$63,000 and \$4,700 to the Colville and Spokane Tribes, respectively, for the land used for the dam and reservoir. Subsequently, the Colville Tribes pursued additional claims for their lost fisheries and for "water power values" and in 1994 (P.L. 103-436) were awarded a lump sum payment of \$53 million and, beginning in 1996, annual payments that have ranged between \$14 million to \$21 million. The Spokane Tribe did not file a claim within the Indian Claims Commission Act's 5-year statute of limitations. As a result, the Spokane Tribe did not receive a settlement comparable to that of the Colville Tribe, and the Spokane Tribe is seeking to change that situation with the enactment of H.R. 1797.

H.R. 1797 will provide the Spokane Tribe of Indians with compensation which is proportional to (29% of) the compensation pro-

vided the Colville Tribes through enactment of P.L. 103-436 in 1994. Legislation similar to H.R. 1797 was passed by the Senate in the 108th Congress (S. 1438). H.R. 1797, however, differs in one very important aspect: the inclusion of a “sunset” provision on funding from the Bonneville Power Administration in Section 6 of the bill.

Section 6 of H.R. 1797 directs the Administrator of the Bonneville Power Administration to pay to the Spokane Tribe of Indians an amount equal to 29 percent of the Colville’s Computed Annual Payment (CAP) for FY 2005, adjusted for inflation; 29 percent of the CAP for FY 2006; and, on or before March 1, 2008, and each following March 1, 29 percent of the CAP for the previous fiscal year. However, unlike S. 1438 as passed by the Senate in the 108th Congress, or S. 881 introduced by Senator Cantwell in the 109th Congress, Section 6 of H.R. 1797 includes a sunset provision that would terminate this requirement for payment by BP A in 25 years.

H.R. 1797 is premised on the past and continued use of Spokane tribal lands for the production of hydropower at the Grand Coulee Dam. At the end of 25 years, the Spokane Tribe of Indians’ lands will continue to be used to generate hydropower, supply water for irrigators, provide extensive flood control benefits, and to assist in meeting incremental flow requirements for recovery of anadromous fish. The Spokane Tribe has agreed to the sunset provision in this bill with the understanding that, in the future, the Tribe may seek an amendment to extend or modify this sunset provision or otherwise seek reauthorization of BP A’s annual payments post-2030. With this understanding, and in the interest of moving this legislation forward and thereby providing long overdue relief to this Tribe, we do not object to the inclusion of the sunset provision in this bill and we urge passage of this bill by the full U.S. House of Representatives.

NICK J. RAHALL, II.
GRACE F. NAPOLITANO.

