

103^D CONGRESS
2^D SESSION

S. 2259

[Report No. 103-356]

To provide for the settlement of the claims of the Confederated Tribes of the Colville Reservation concerning their contribution to the production of hydropower by the Grand Coulee Dam, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 30 (legislative day, JUNE 7), 1994

Mrs. MURRAY (for herself, Mr. HATFIELD, Mr. GORTON, Mr. INOUE, and Mr. BRADLEY) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

JULY 26 (legislative day, JULY 20), 1994

Ordered, that when the Committee on Indian Affairs reports the bill, it then be referred to the Committee on Energy and Natural Resources for a period not to exceed 10 days

AUGUST 23 (legislative day, AUGUST 18), 1994

Reported by Mr. INOUE, with amendments

[Omit the part struck through and insert the part printed in italic]

AUGUST 23 (legislative day, AUGUST 18), 1994

Referred to the Committee on Energy and Natural Resources pursuant to the order of July 26, 1994

A BILL

To provide for the settlement of the claims of the Confederated Tribes of the Colville Reservation concerning their contribution to 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 “Confederated Tribes
5 of the Colville Reservation Grand Coulee Dam Settlement
6 Act”.

7 **SEC. 2. DEFINITIONS.**

8 As used in this Act:

9 (1) ADMINISTRATOR.—The term “Adminis-
10 trator” means the Administrator of the Bonneville
11 Power Administration.

12 (2) BONNEVILLE POWER ADMINISTRATION.—
13 The term “Bonneville Power Administration” means
14 the Bonneville Power Administration of the Depart-
15 ment of Energy or any successor agency, corpora-
16 tion, or entity that markets power produced at the
17 Dam.

18 (3) DAM.—The term “Dam” means the Grand
19 Coulee Dam—

20 (A) operated by the Bureau of Reclama-
21 tion of the Department of the Interior, and

22 (B) with respect to which power is mar-
23 keted by the Bonneville Power Administration
24 of the Department of Energy.

1 (4) CONFEDERATED TRIBES V. UNITED
2 STATES.—The term “Confederated Tribes v. United
3 States” means the case pending before the United
4 States Court of *Federal* Claims arising from the
5 claim filed with the Indian Claims Commission with
6 the docket number 181–D that—

7 (A) was transferred to the United States
8 Court of *Federal* Claims pursuant to the Fed-
9 eral Courts Improvement Act of 1982 (96 Stat.
10 25) as *Confederated Tribes v. United States*
11 (20 Cl. Ct. 31);

12 (B) with respect to which an appeal was
13 filed in the United States Court of Appeals,
14 Federal Circuit (964 F.2d 1102) (Fed. Cir.
15 1992); and

16 (C) on the basis of the appeal, was re-
17 manded in part by the United States Court of
18 Appeals to the United States Court of *Federal*
19 Claims.

20 (5) MINOR.—The term “minor” means a child
21 who has not attained the age of 18.

22 (6) SECRETARY.—The term “Secretary” means
23 the Secretary of the Interior.

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

1 Agreement entered into between the United States
2 and the Confederated Tribes of the Colville Reserva-
3 tion, signed by the United States on April 21, 1994,
4 and by the Tribe on April 16, 1994, to settle the
5 claims of the Tribe under *Confederated Tribes v.*
6 *United States*.

7 (8) **TRIBE.**—“Tribe” means the Confederated
8 Tribes of the Colville Reservation, a federally recog-
9 nized Indian tribe.

10 **SEC. 3. FINDINGS AND PURPOSE.**

11 (a) **FINDINGS.**—Congress finds the following:

12 (1) An action by the Confederated Tribes of the
13 Colville Reservation against the United States is
14 pending before the United States Court of Federal
15 Claims.

16 (2) In such action, the Tribe seeks to recover
17 damages under section 2(5) of the Indian Claims
18 Commission Act (60 Stat. 1050 (formerly 25 U.S.C.
19 70a(5))) relating to fair and honorable dealings.

20 (3) Although the matter that is the subject of
21 such action is in dispute, the potential liability of the
22 United States is substantial.

23 (4) The claim filed by Tribe with respect to
24 such action alleges that—

1 (A) after the construction of the Grand
2 Coulee Dam, the United States has used land
3 located in the Colville Reservation in connection
4 with the generation of electric power;

5 (B) the United States will continue to use
6 such land during such time as the Grand Cou-
7 lee Dam produces power; and

8 (C) the United States has promised to pay
9 the Tribe for the use referred to in subpara-
10 graph (A), but has failed to make such pay-
11 ment.

12 (5) After years of litigation, the United States
13 has negotiated a Settlement Agreement with the
14 Tribe that was signed by the appropriate officials of
15 the Department of Justice, the Bonneville Power
16 Administration, and the Department of the Interior.

17 (6) The Settlement Agreement is contingent on
18 the enactment of enabling legislation to approve and
19 ratify the Settlement Agreement.

20 (7) Upon the enactment of this Act, the Settle-
21 ment Agreement will—

22 (A) provide mutually agreeable compensa-
23 tion for the past use (as determined under such
24 Agreement) of land of the Colville Reservation

1 in connection with the generation of electric
2 power at Grand Coulee Dam;

3 (B) establish a method to ensure that the
4 Tribe will be compensated for future use (as de-
5 termined under such Agreement) of land of the
6 Colville Reservation in the generation of electric
7 power at Grand Coulee Dam; ~~and approved;~~
8 and

9 (C) settle the claims of the Tribe against
10 the United States brought under the Indian
11 Claims Commission Act.

12 (b) PURPOSES.—The purposes of this Act are as
13 follows:

14 (1) To approve and ratify the Settlement
15 Agreement entered into by the United States and
16 the Tribe.

17 (2) To direct the Bonneville Power Administra-
18 tion to carry out the obligations of the Bonneville
19 Power Administration under the Settlement Agree-
20 ment.

21 **SEC. 4. APPROVAL, RATIFICATION AND IMPLEMENTATION**
22 **OF SETTLEMENT AGREEMENT.**

23 (a) IN GENERAL.—The Settlement Agreement is
24 hereby approved and ratified.

1 (b) DUTIES OF THE BONNEVILLE POWER ADMINIS-
2 TRATION.—The Bonneville Power Administration shall—

3 (1) on an annual basis, make payments to the
4 Tribe in a manner consistent with the Settlement
5 Agreement; and

6 (2) carry out any other obligation of the Bonne-
7 ville Power Administration under the Settlement
8 Agreement.

9 (c) IMPLEMENTATION OF SETTLEMENT AGREE-
10 MENT.—

11 (1) IN GENERAL.—In a manner consistent with
12 the negotiated terms of the Settlement Agreement,
13 the United States shall join in the motion that the
14 Tribe has agreed to file in *Confederated Tribes of*
15 ~~Colville Reservation~~ *v. United States*, for the entry
16 of a compromise final judgment in the amount of
17 \$53,000,000.00.

18 (2) REQUIREMENTS FOR PAYMENT.—The
19 United States shall pay the amount specified in
20 paragraph (1) from funds appropriated pursuant to
21 section 1304 of title 31, United States Code. The
22 amount paid as a judgment may not be ~~not~~ reim-
23 bursed by the Bonneville Power Administration.

1 **SEC. 5. DISTRIBUTION OF THE SETTLEMENT FUNDS.**

2 (a) LUMP SUM PAYMENT.—The payment made
3 under section 4(c)(1) (including any interest that accrues
4 on the payment) shall be deposited by the Secretary of
5 the Treasury in a trust fund established for the Tribe pur-
6 suant to Public Law 93–134 (25 U.S.C. 1401 et seq.) for
7 use by the tribal governing body of the Confederated
8 Tribes of the Colville Reservation, pursuant to a distribu-
9 tion plan developed by the Tribe and approved by the Sec-
10 retary of the Interior pursuant to section 3 of Public Law
11 93–134 (25 U.S.C. 1403), except that—

12 (1) under the distribution plan developed pursu-
13 ant to this subsection any payment to be made to a
14 minor shall be held by the United States in trust for
15 the minor until the later of—

16 (A) the date the minor attains the age of
17 18; or

18 (B) the date of graduation of the second-
19 ary school class with respect to which the minor
20 is scheduled to be a member; and

21 (2) the Secretary may, pursuant to regulations
22 prescribed by the Secretary relating to the adminis-
23 tration of the Bureau of Indian Affairs, authorize
24 the emergency use of trust funds for the benefit of
25 a minor.

1 (b) ANNUAL PAYMENTS.—In addition to the lump
2 sum payment described in subsection (a), the appropriate
3 official of the Federal Government shall make annual pay-
4 ments directly to the Tribe in accordance with the Settle-
5 ment Agreement. The Tribe may use any amount received
6 as an annual payment under this subsection in the same
7 manner as the Tribe may use any other income received
8 by the Tribe from the lease or sale of natural resources.

9 **SEC. 6. REPAYMENT CREDIT.**

10 (a) IN GENERAL.—Beginning with fiscal year 2000,
11 and ending at the end of the last fiscal year during which
12 the Tribe receives an annual payment pursuant to the Set-
13 tlement Agreement, the Administrator shall deduct from
14 the interest payable to the Secretary of the Treasury from
15 net proceeds (as defined in section 13(b) of the Federal
16 Columbia River Transmission System Act (16 U.S.C.
17 838(b)) an amount equal to 26 percent of the payment
18 made to the Tribe for the immediately preceding fiscal
19 year.

20 (b) CREDIT OF INTEREST.—

21 (1) IN GENERAL.—Each deduction made under
22 this section shall—

23 (A) be credited to the amount of interest
24 payments that would otherwise be payable by
25 the Administrator to the Secretary of the

1 Treasury during the fiscal year in which the de-
2 duction is made; and

3 (B) be allocated on a pro rata basis to all
4 interest payments on debt associated with the
5 generation function of the Federal Columbia
6 River Power System that are payable during
7 the fiscal year specified in subparagraph (A).

8 (2) SPECIAL ALLOCATION RULE.—If, for any
9 fiscal year a deduction calculated pursuant to ~~para-~~
10 ~~graph (1) subsection (a)~~ would be greater than the
11 amount of interest due on debt associated with the
12 generation function described in paragraph (1)(B)
13 for such fiscal year, the amount by which the deduc-
14 tion exceeds the interest due on debt associated with
15 the generation function shall be allocated on a pro
16 rata basis as a credit ~~for~~ to the payment of any
17 other interest that is payable by the Administrator
18 ~~by~~ to the Secretary of the Treasury for such fiscal
19 year.

20 **SEC. 7. MISCELLANEOUS PROVISIONS.**

21 (a) LIENS AND FORFEITURES.—Funds paid or de-
22 posited to the credit of the Tribe pursuant to the Settle-
23 ment Agreement or this Act, any interest or investment
24 income earned or received on such funds, any payment au-
25 thorized by the Tribe or the Secretary of the Interior to

1 be made from such funds to members of the Tribe, and
2 any interest or investment income earned on any such pay-
3 ment earned or received and deposited in a trust pursuant
4 to this section for a member of the Tribe, may not be sub-
5 ject to any levy, execution, forfeiture, garnishment, lien,
6 encumbrance, seizure, or taxation by ~~the Federal Govern-~~
7 ~~ment or~~ a State or political subdivision of a State.

8 (b) ELIGIBILITY FOR FEDERAL AND FEDERALLY
9 FUNDED PROGRAMS.—None of the funds described in
10 subsection (a) may be treated as income or resources or
11 otherwise used as the basis for denying or reducing the
12 financial assistance or other benefits to which the Tribe,
13 a member of the Tribe, or a household of the Tribe would
14 otherwise be entitled under the Social Security Act (42
15 U.S.C. 301 et seq.) or any program of the Federal Govern-
16 ment or program that receives assistance from the Federal
17 Government.

18 (c) TRUST RESPONSIBILITY.—This Act and the Set-
19 tlement Agreement may not be construed to affect the
20 trust responsibility of the United States to the Tribe or
21 to any of the members of the Tribe.