

**TESTIMONY OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON
S. 1448, SPOKANE TRIBE OF INDIANS OF THE SPOKANE RESERVATION
EQUITABLE COMPENSATION ACT**

SEPTEMBER 10, 2013

Chairwoman Cantwell, Vice-Chairman Barrasso, and Members of the Committee, my name is Kevin Washburn, and I am the Assistant Secretary for Indian Affairs at the Department of the Interior. Thank you for the opportunity to present the Department's views on S. 1448, the Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act.

S. 1448 would provide a measure of justice for a historical wrong by providing equitable compensation to the Spokane Tribe for water power values from riverbed and upstream lands taken by the United States as part of the Grand Coulee Dam development in the 1930s and 1940s. The Tribe's claim is an equitable one because the Tribe missed its opportunity to make a legal claim with the Indian Claims Commission. In 1994, Congress remedied similar claims by the Confederated Tribes of the Colville Reservation which had been pending before the Indian Claims Commission. Although the Colville Tribes received compensation for their lost water power values, the Spokane Tribe never received similar compensation because they were foreclosed from doing so. While this outcome can be explained legally, it is difficult to justify morally.

S. 1448 utilizes a compensatory framework similar to the Colville settlement in an attempt to compensate the Spokane Tribe for the same type of damages for which the Colville Tribe was already compensated. Similar to the resolution achieved for Colville, S. 1448 would establish a Trust Fund in the Department of the Treasury and require the Secretary of the Interior to maintain, invest and distribute the amounts in the Trust Fund to the Spokane Tribe. S. 1448 provides a fair result for the Spokane Tribe. S.1448 does not set a precedent for any other Federal hydropower facilities or installations because of the unique fact set presented by the development of Grand Coulee Dam as explained further below. The Administration supports S. 1448.

Background

The Colville and Spokane Indian reservations were established in 1872 and 1877, respectively, on land that was later included in the state of Washington. The 155,000 acre Spokane Reservation was created by an agreement between agents of the federal government and certain Spokane chiefs on August 18, 1877. That Agreement was later confirmed by President Hayes' executive order of January 18, 1881.

The Grand Coulee Dam was constructed on the Columbia River in northeastern Washington State from 1933 to 1942 and when finished, the 550-foot high dam was the largest concrete dam in the world. It is still the largest hydroelectric facility in the United States. Lake Roosevelt, the reservoir created behind the dam, extends over 130 miles up the Columbia River and about 30 miles east along the Spokane River. The reservoir covers land on the Spokane Reservation along both the Columbia and Spokane rivers. The federal government, under a 1940 act, paid \$63,000 to the Colville Tribes, and \$4,700 to the Spokane Tribe for tribal land used for the dam and reservoir.

Subsequently, the Spokane Tribe and the Colville Tribes appeared before the Indian Claims Commission (ICC). The ICC was created on August 13, 1946, to adjudicate Indian claims, including "claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity." Under section 12 of the Act, all claims had to be filed by August 13, 1951. Settlement awards of ICC claims were paid out of the U.S. Treasury.

The Spokane Tribe filed a claim with the ICC just days before the statutory deadline. The claim sought compensation for land ceded to the United States under an agreement dated March 18, 1887. It also asserted a general accounting claim. Both claims were jointly settled in 1967 for \$6.7 million and neither of the claims referenced the Grand Coulee Dam.

The Colville Tribes' claims with the ICC, also filed in 1951 and designated as Docket No. 181, included broad, general language seeking damages for unlawful trespass on reservation lands and for compensation or other benefits from the use of the Tribes' land and other property. The Tribes' original petition did not specifically mention the Grand Coulee Dam. In November 1976, over 25 years after the original filing of Docket No. 181, and nearly a decade after the Spokane had settled its claims, the ICC allowed the Colville Tribes to amend their 1951 petition to seek just and equitable compensation for the water power values of certain riverbed and upstream lands that had been taken by the United States as part of the Grand Coulee Dam development.

In 1994, Congress recognized that the water power values were compensable and settled with the Colville Tribes, enacting the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (P.L. 103-436, Nov. 2, 1994). The Act settled the claims filed in 1976 by the Tribes' amended petition. The Act provided the Colville Tribes a lump sum payment from the U.S. Treasury of \$53 million for lost hydropower revenues and, beginning in 1996, annual payments that have ranged between \$14 million and \$21 million for their water power values claim. The cost of the annual payments is shared between the Bonneville Power Administration, which markets the power generated at the dam, and the Treasury.

There is no dispute that the Spokane Tribe suffered a loss arising out of the same set of actions by the United States that formed the basis of the Colville Tribes' amended claims filed in 1976. The Spokane Tribe had settled its ICC claim nearly 10 years before the Colville Tribes were allowed to amend their ICC claims to include a specific water power values claim. Thus, when these water power claims were recognized by Congress in 1994 as valid, compensable claims, the Spokane Tribe's case had long since been settled and thus there was no vehicle for the Spokane Tribes to raise a similar claim. As a result, it is partly an accident of history that the Colville Tribes received compensation and the Spokane Tribe did not.

S. 1448

S. 1448, the Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act, is designed to provide the Spokane Tribe with an equitable and comparable compensation similar to compensation the Colville Tribes received almost two decades ago from the federal government for the Colville Tribe's lost water power values. S. 1448 establishes a Recovery Trust Fund and directs the Secretary for the Department of the Treasury to deposit \$53 million into the fund. The Secretary of the Department of the Interior is directed to maintain, invest, and distribute the funds to the Spokane Tribe after the Spokane Tribe submits a distribution plan to the Secretary of the Department of the Interior. We note that expenditure of these funds would be subject to the Statutory Pay-As-You-Go Act of 2010.

S. 1448 provides that the Bonneville Power Administration (Bonneville) shall pay to the Spokane Tribe an annual amount equal to 25% of the Computed Annual Payment, defined in the bill as certain payments calculated pursuant to provisions of the Coleville Settlement Agreement, for FY2013 and provides for subsequent payments to the Spokane Tribe, from 2015 to 2023, 25% of the Computed Annual Payment for the preceding fiscal year, and from 2024 and each year thereafter, an amount equal to 32% of the Computed Annual Payment for the preceding fiscal year. The bill, starting in 2023, also provides Bonneville with \$2.7 million in interest credits from the Department of the Treasury for every year that Bonneville pays the Spokane Tribe pursuant to this legislation. These percentage payments by Bonneville and interest credits to Bonneville are the same as in the previous versions of the bill and therefore the Department has no concern related to these percentages or interest credits, nor the duration of payments to be made by Bonneville to the Spokane Tribe. Finally, the bill includes a provision extinguishing all monetary claims by the Spokane Tribe regarding the Grand Coulee Dam project.

In the 112th Congress, the Department expressed concern with Section 9(a) of S. 1345, which was the bill introduced during the 112th Congress to address this issue. While the Department supported the concept of providing a clear delegation of authority to the Tribe to achieve its law enforcement goals, the Department was concerned that the language was broad and could be construed to delegate more than just the authority intended by the Tribe. The Department's concern has been addressed with the removal of former Section 9(a) of S. 1345.

Although the Administration did not support previous legislation, in part, because the Tribe had not established a legal claim to settle, the Administration supports equitably compensating the Spokane Tribe for the losses it sustained as a result of the federal development of hydropower at Grand Coulee Dam. The facts and history show that as a matter of equity the Spokane Tribe has a moral claim to receive compensation for its loss. The compensation provided by S. 1448 is commensurate with the compensation provided to the Colville Tribes for the losses arising out of the same actions. The Department supports S. 1448.

This concludes my statement and I am happy to answer any questions the Committee may have.