

**Senate Report 108-397 - PROVIDING 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**

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PROVIDING 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

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October 8, 2004.--Ordered to be printed

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

R E P O R T

[To accompany S. 1438]

The Committee on Indian Affairs, to which was referred the bill (S. 1438) to provide for equitable compensation to the Spokane Tribe of Indians of the Spokane Reservation in settlement of claims of the tribe concerning the contribution of the tribe to the production of hydropower by the Grand Coulee Dam, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute with an amendment to the title and recommends that the bill, as amended, do pass.

Purpose

The purpose of S. 1438 is to provide equitable compensation to the Spokane Tribe for a fair share of the annual hydropower revenues for the use of tribal lands for the generation of hydropower by the Grand Coulee Dam, located on the main stem of the Columbia River in northcentral Washington State. The Tribe has received compensation in the amount of \$4,700 for the loss of tribal lands taken for the construction of the Dam, an amount that is inadequate to properly compensate the Tribe for

its losses and that is not comparable to the payments made to the neighboring Confederated Tribes of the Colville Reservation for their loss of similar tribal lands for the construction and operation of the Dam.

## Background

### PLANNING AND CONSTRUCTION OF GRAND COULEE DAM

Planning for the construction of the Grand Coulee Dam began during the period from 1927 to 1931, when the Army Corps of Engineers (ACE), 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 ACE recommended that dams be constructed at a number of sites, including the current site of the Grand Coulee Dam.

The ACE recommended that construction of Grand Coulee Dam should be undertaken by local governments or private utilities under the authority of the Federal Power Act, 16 U.S.C. Sec. 791a et seq. Under section 10(e) of that Act, 16 U.S.C. Sec. 803(e), any licensee using Indian lands must pay to the Indian tribe an annual payment for the use of its land.

In 1933, an agency of the State of Washington was issued a preliminary permit to construct a dam at the Grand Coulee site by the Federal Power Commission. Several years later, however, the Federal government assumed control of the project. Federal dam projects were not subject to the Federal Power Act.

### PAYMENT OF COMPENSATION TO TRIBES

Under the Act of June 29, 1940, Pub. L. No. 76-690 (codified as amended at 16 U.S.C. Sec. 835d-835h), in aid of the construction of the Grand Coulee Dam project, 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. . . ." This Act also provided that the Secretary of the Interior was to determine the amount of "just and equitable compensation for the tribal lands taken." *Id.*, codified as amended at 16 U.S.C. Sec. 835e.

At the time the Dam project came under Federal administration, the United States recognized that the Spokane Tribe and the Confederated Tribes of the Colville Reservation had compensable interests that would be injured by the project, including interests in the development of hydropower, in a salmon fishery vital to the tribes which would be destroyed by the dam construction, and in tribal lands already identified as potential hydropower sites that would be inundated as a result of the construction of the Grand Coulee Dam.

Pursuant to the Secretary of the Interior's determination,

the Spokane Tribe was paid \$4,700 in compensation, and the Confederated Tribes of the Colville Reservation were paid \$63,000 in compensation. The Committee received testimony at its hearing on October 2, 2003, to the effect that the original payments made to the tribes were not in fact adequate to provide them with ``just and equitable compensation'' and were not comparable to the payments which would have been made had the Dam been constructed under the authority of the Federal Power Act.

The Confederated Tribes of the Colville Reservation pursued additional claims for the loss of their fisheries, and in 1978 settled those claims for about \$3,300,000. The Confederated Tribes also initiated litigation under the Indian Claims Commission Act of 1946, Pub. L. No. 79-726 (ICCA), and secured a judicial determination that under the ``fair and honorable dealings'' standard of the ICCA they could assert a claim for compensation for the water power values of lost tribal lands (i.e., a share of hydropower revenues generated by the Dam from the use of the tribal lands). *Confederated Tribes of the Colville Reservation v. United States*, 964 F.2d 1102 (Fed. Cir. 1992). In 1994, Congress ratified an agreement between the Confederated Tribes of the Colville Reservation and the United States providing for payment of damages and annual installments of \$15,250,000 in perpetuity, adjusted annually, based on revenues from the sale of electric power generated by the Grand Coulee Dam project. *Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act*, Pub. L. No. 103-436, 108 Stat. 4577 (November 2, 1994) (``Confederated Tribes Act'').

Although the Spokane Tribe litigated certain other issues under the ICCA, it did not litigate its claims regarding loss of water power values in that forum or elsewhere. Nevertheless, legal opinions issued by the Office of the Solicitor of the Department of the Interior, a Task Force Study conducted from 1976 to 1980 at the direction of the Senate Committee on Appropriations, and hearings at the time of the enactment of the Colville Confederated Tribes Act all recognized that the Spokane Tribe suffered injuries similar in nature to those suffered by the Colville Confederated Tribes. It was also recognized that the Spokane Tribe and would have a claim to compensation that is legally comparable to that of the Colville Confederated Tribes were it not for the five-year statute of limitations applicable under the ICCA that the United States contends bars the Spokane Tribe from bringing a civil action for damages under that Act or under any other provision of law.

As the General Accounting Office testified before the Committee:

A reasonable case can be made to settle the Spokane tribe's case along the lines of the Colville settlement--a one-time payment from the U.S. Treasury for past lost payments for water power values and

annual payments primarily from Bonneville. Bonneville continues to earn revenues from the 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.\1\

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\1\ Testimony of Robert A. Robertson, United States General Accounting Office, October 2, 2003, before the Senate Committee on Indian Affairs, at 3, reprinted in S. Hrg. 108-375, at 64.

Testimony was received by the Committee from Tribal Chairman Warren Seyler indicating that, while the Spokane Tribe failed to assert its claim in a timely manner, that failure may be considered excusable because it resulted in part from the failure of the Bureau of Indian Affairs to carry out its advisory responsibilities under the ICCA and because the Commissioner of Indian Affairs hindered the Spokane Tribe in retaining counsel necessary to fully investigate its potential claims and to represent the Tribe in asserting its claims under the ICCA. Accordingly, the Spokane Tribe has not received just and equitable compensation for its losses relating to the salmon fishery on which the Tribe was economically dependent, the inundation of identified hydropower sites that the Tribe could itself have developed, and the loss for the ongoing revenue stream the Tribe would have received under the Federal Power Act if the project had not been put under Federal administration. The lands lost by the Spokane Tribe were equal to more than 39% of the Colville tribal lands lost to construction and operation of the Grand Coulee Dam and associated reservoir.

#### SUMMARY OF PROVISIONS OF S. 1438

Under the proposed legislation, the Spokane Tribe would be compensated for the use of its lands for the production of hydropower by the Grand Coulee Dam under a formula based in part on that by which the Confederated Tribes of the Colville Reservation 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 lost lands equivalent in areato 39% of the lands lost by the Colville Confederated Tribes, and a settlement based solely on this factor would result in payments to the Spokane Tribe equal to 39% of the payments made to the Confederated Colville Tribes; this percentage has been reduced to 29%, however, in recognition of the fact that certain lands located within, as well as contiguous to, the boundaries

of the Spokane Indian Reservation taken for construction of the Grand Coulee Dam are to be restored to the Spokane Tribe under the terms of this legislation.

Under S. 1438, an interest-bearing settlement fund account would be established in the Treasury to be known as the Spokane Tribe of Indians Settlement Fund. Subject to the availability of appropriations, for fiscal year 2006, the Secretary would deposit \$17,800,000 into the Fund, and for each of the four fiscal years thereafter, the Secretary would deposit into the Fund the sum of \$12,800,000. 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 Grand Coulee Dam and to provide an educational facility addressing the culture and history of the Spokane Tribe. Of the remaining assets of the Fund, 25% would be used by the Spokane Business Council for discretionary purposes of general benefit to members of the Spokane Tribe, while 75% would be used by the Council to carry out resource development, credit, scholarship, or reserve, investment, and economic development programs.

Additionally, on March 1, 2007, the Administrator of the Bonneville Power Administration ('`Administrator'') would pay the Spokane Tribe an amount equal to 29% of the annual payment due to the Colville Confederated Tribes under Sec. 5(b) of the Colville Confederated Tribes Act for the 2005 and 2006 fiscal years. On or before March 1 of each year thereafter, the Administrator would make annual payments to the Tribe equal to 29% of the Colville payment for the previous fiscal year. Upon payment to the Tribe, these funds could be used or invested by the Spokane Business Council in the same manner and for the same purposes as other Spokane Tribe governmental funds.

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.

The Administrator would be authorized to deduct certain sums (\$2,600,000 in fiscal year 2007 and \$1,300,000 each fiscal year thereafter in which payments are made to the Spokane Business Council) from the interest otherwise payable to the Secretary of the Treasury from ``net proceeds'' as defined in section 13 of the Federal Columbia River Transmission Act, 16 U.S.C. Sec. 838k, subject to certain limitations.

The Secretary of the Interior would be directed to transfer administrative jurisdiction for certain lands along the shores of the Columbia River and the Spokane River and its reservoirs,

and located within as well as contiguous to the exterior boundaries of the Spokane Indian Reservation, to the Bureau of Indian Affairs. Such lands are to be held in trust for the Spokane Tribe and to be included within the Spokane Indian Reservation as those Reservation lands were originally held for the Tribe, subject to a reservation of rights and easement on behalf of the United States regarding such use of these lands as is necessary for the operation of the Columbia Basin Project and existing recreational facilities owned or permitted by the United States. The lands would also be subject to the execution of a memorandum of agreement between the relevant agencies of the Department of the Interior and the Spokane Tribe to provide for the coordination of such activities.

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 and added to the Reservation on behalf of the Spokane 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 hydropower revenues generated as a result of the use of those lands.

The bill would authorize the appropriation of such funds as are necessary to accomplish its purpose.

#### Explanation of Amendments

The title of S. 1438 has been amended to more properly reflect the scope of the claims that are to be resolved by this legislation.

The substitute amendment contains numerous changes from the bill as introduced. The legislative findings have been substantially rewritten, and six of the nine definitions are new.

The amount of the payments to be made into the Spokane Tribe of Indians Settlement Fund is substantially reduced from that set forth in the bill as introduced (to a total of \$69,000,000, paid over 5 years), and the amount of annual payments to be made to the Spokane Tribe is reduced below the rate originally proposed (now 29% of the analogous payments made to the Confederated Tribes of the Colville Reservation, a reduction from 39.4% in the bill as introduced), in recognition of the restoration of lands, both within the Reservation and ceded land contiguous to the Reservation, previously taken from the Spokane Tribe. The provisions of sections 5 and 6 of the bill as introduced ('`Settlement Fund Account'' and ``Use and Treatment of Settlement Funds,'' respectively) have been modified and rearranged as sections 5, 6, and 7 ('`Settlement Fund,'' ``Payments by the Administrator,'' and ``Treatment After Funds are Paid'').

Provisions contained in the substitute amendment regarding the effect of this legislation on interest payments payable to the Treasury of the United States by the Bonneville Power

Administration (Section 8, ``Repayment Credit,`` authorizing the Administrator to deduct certain sums from annual payments of interest made to the U.S. Treasury) and the transfer from the Bureau of Reclamation to the Bureau of Indian Affairs of certain lands along the shoreline of the reservoir behind Grand Coulee Dam to be held in trust for the Spokane Tribe as part of the Spokane Indian Reservation (Section 9, ``Transfer of Administrative Jurisdiction,``) are new and were not included in the legislation as introduced.

Section 7 (``Satisfaction of Claims``) of the original legislation has been amended and renumbered as section 10.

### Legislative History

The Congress considered settlement proposals relating to the Spokane Tribe's claims in the 106th Congress (S. 1525 and H.R. 2664) and in the 107th Congress (S. 2567 and H.R. 4859). In the 108th Congress, S. 1438 was introduced on July 22, 2003, by Senator Cantwell, for herself and Senators Inouye and Murray, and was referred to the Committee on Indian Affairs. Related legislation, H.R. 1753, sponsored by Representative George Nethercutt and cosponsored by Representatives Norman Dicks and Dale Kildee, is now pending in the House of Representatives. The Senate Committee on Indian Affairs held a hearing on S. 1438 on October 2, 2003, and received testimony or written statements from Sen. Cantwell, Sen. Murray, Steven G. Hickok, Deputy Administrator, Bonneville Power Administration, Warren Seyler, Chairman, Spokane Tribal Business Council (accompanied by Howard Funke, Esq., Funke and Work Law Offices, Coeur d' Alene, Idaho, and Charles E. Pace, President and CEO, Regional Services, Challis, Idaho), and Robert A. Robinson, Managing Director, Natural Resources and Environment, General Accounting Office. S. Hrg. 108-375. A similar hearing on H.R. 1753 was held on the same day before the Water and Power Subcommittee of the House Resource Committee.

### Committee Recommendation and Tabulation of Vote

The Committee on Indian Affairs, in an open business session on September 22, 2004, adopted an amendment to the title and an amendment in the nature of a substitute to S. 1438 by voice vote and ordered the bill, as amended, reported favorably to the Senate.

### Section-by-Section Analysis

#### 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



Section 2--Findings

Section 2 states that Congress finds that--

(1) From 1927 to 1931, at the direction of Congress, the Corps of Engineers investigated the Columbia River and its tributaries to determine sites at which power could be produced at low cost.

(2) Under section 10(e) of the Federal Power Act (16 U.S.C. Sec. 803(e)), when licenses are issued involving tribal land within an Indian reservation, a reasonable annual charge shall be fixed for the use of the land, subject to the approval of the Indian tribe having jurisdiction over the land.

(3) In August 1933, the Columbia Basin Commission, an agency of the State of Washington, received a preliminary permit from the Federal Power Commission for water power development at the Grand Coulee site.

(4) Had the Columbia Basin Commission or a private entity developed the site, the Spokane Tribe would have been entitled to a reasonable annual charge for the use of the land.

(5) In the mid-1930s, the Federal Government, which is not subject to the licensing requirements of the Federal Power Act (16 U.S.C. Sec. 792 et seq.), federalized the Grand Coulee Dam project and began construction of the Grand Coulee Dam.

(6) When the Grand Coulee Dam project was federalized, the Federal Government recognized that development of the project affected the interests of the Spokane Tribe and the Confederated Tribes of the Colville Reservation and that it would be appropriate for the Spokane and Colville Tribes to receive a share of the revenue from the disposition of power produced at Grand Coulee Dam.

(7) In the Act of June 29, 1940 (16 U.S.C. Sec. 835d et seq.), Congress granted to the United States, in aid of the construction, operation, and maintenance of the Columbia River project, all the right, title, and interest of the Spokane Tribe and the Colville Tribes in and to tribal and allotted land within the Spokane and Colville Reservations, as designated by the Secretary of the Interior from time to time, and other interests in such land as required and as designated by the Secretary for certain construction activities undertaken in connection with the project and provided that compensation for the land and other interests was to be determined by the Secretary in such amounts as the Secretary determined to be just and equitable.

(8) Pursuant to that Act, the Secretary paid \$4,700 to the Spokane Tribe and \$63,000 to the Confederated Tribes of the Colville Reservation.

(9) In 1994, following litigation under the Act of August 13, 1946, commonly known as the Indian Claims Commission Act (60 Stat. 1049, chapter 959; former 25 U.S.C. Sec. Sec. 70 et seq.), Congress ratified the Colville Settlement Agreement,

which required a payment of \$53,000,000 for past use of the Colville Tribes' land and, for continued use of the Colville Tribes' land, annual payments of \$15,250,000, adjusted annually based on revenues from the sale of electric power from the Grand Coulee Dam project and transmission of that power to the Bonneville Power Administration.

(10) The Spokane Tribe, having suffered harm similar to that suffered by the Colville Tribes, did not file a claim within the Indian Claims Commission Act's 5-year statute of limitations.

(11) Neither the Colville Tribes nor the Spokane Tribe filed claims for compensation for use of their land with the Claims Commission before August 13, 1951, but both Tribes filed unrelated land claims prior to August 13, 1951.

(12) In 1976, over objections by the United States, the Colville Tribes were successful in amending their 1951 Claims Commission land claims to add their Grand Coulee claim.

(13) The Spokane Tribe had no such claim to amend, having settled its Claims Commission land claims with the United States in 1967.

(14) The Spokane Tribe has suffered significant harm from the construction and operation of Grand Coulee Dam.

(15) Spokane tribal acreage taken by the United States for the construction of Grand Coulee Dam equaled approximately 39 percent of Colville tribal acreage taken for construction of the dam.

(16) The payments and land transfers made pursuant to this Act constitute fair and equitable compensation for the past and continued use of Spokane tribal land for the production of hydropower at Grand Coulee Dam.

(17) By vote of the Spokane tribal membership, the Spokane Tribe has resolved that the payments and land transfers made pursuant to this Act constitute fair and equitable compensation for the past and continued use of Spokane Tribal land for the production of hydropower at Grand Coulee Dam.

### Section 3--Purpose

Section 3 states that the purpose of this Act is to provide fair and equitable compensation to the Spokane 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 the terms ``Administrator,`` ``Colville Settlement Agreement,`` ``Colville Tribes,`` ``Computed Annual Payment,`` ``Confederated Tribes Act,`` ``Fund,`` ``Secretary,`` ``Spokane Business Council,`` and ``Spokane Tribe.``

### Section 5--Settlement fund

Section 5(a) provides for the establishment in the Treasury of the United States of an interest-bearing trust fund 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 2006, the Secretary shall deposit in the Fund \$17,800,000, and for each of the 4 fiscal years thereafter, the Secretary shall deposit in the Fund \$12,800,000.

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. Sec. 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 a 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 a 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, funerary objects, and other cultural resources affected by the operation of the Grand Coulee Dam; the funding of these activities does not however alter or affect any authority, obligation, or responsibility of the United States under Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. Sec. 3001 et seq.), the Archaeological Resources Protection Act (16 U.S.C. Sec. Sec. 470aa et seq.), the National Historic Preservation Act (16 U.S.C. Sec. Sec. 470 et seq.), or the National Environmental Policy Act of 1969 (42 U.S.C. Sec. Sec. 4321 et seq.). Of all other amounts deposited in the Fund (including interest generated on these 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, 2007, the Administrator shall pay to the Spokane Tribe the amount that is

equal to 29 percent of the Computed Annual Payment for fiscal year 2005, adjusted to reflect the change in the Consumer Price Index for all urban consumers published by the Department of Labor, from the date on which the payment for fiscal year 2005 was made to the Colville Tribes to the date on which payment is made to the Spokane Tribe under this provision, and the amount that is equal to 29 percent of the Computed Annual Payment for fiscal year 2006.

Section 6(b) provides that on or before March 1, 2008, and March 1 of each year thereafter, the Administrator shall pay to the Spokane Tribe the amount that is equal to 29 percent of the Computed Annual Payment for the previous fiscal year.

#### Section 7--Treatment after funds are paid

Section 7(a) provides that payments made to the Spokane Business Council of Spokane Tribe under section 5 or 6 may be used or invested by the Spokane Business Council in the same manner and for the same purposes as other Spokane Tribe 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 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 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).

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 Administrator shall deduct from the interest payable to the Secretary of the Treasury from net payments (as defined in section 13 of the Federal Columbia River Transmission System Act (16 U.S.C. Sec. 838k)) \$2,600,000 in fiscal year 2007 and \$1,300,000 in each subsequent fiscal year in which the Administrator makes a payment under section 6.

Section 8(b)(1) provides that except as provided in paragraphs 8(b)(2) and 8(b)(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 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)(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.

#### Section 9--Transfer of administrative jurisdiction

Subsection 9(a) provides that the Secretary of the Interior 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. Sec. 835d), that is located within the exterior boundaries of the Spokane Indian Reservation established pursuant to the Executive Order of January 18, 1881, and all land on the south bank of the Spokane River that extends westerly from Little Falls Dam to the confluence of the Spokane River and the Columbia River and that is located at or below contour elevation 1290 feet above sea level.

Subsection 9(b) provides that all land transferred under this section shall be held in trust for the benefit and use of the Spokane Tribe and shall become part of the Spokane Indian Reservation.

Subsection 9(c) 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. Sec. Sec. 835 bet seq.), further including 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, and further providing that the cognizant agencies of the Department of the Interior shall enter into a memorandum of understanding with the Spokane 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 the Administrator under section 6 and transfer of administrative jurisdiction and restoration of ownership of land in trust and added to the Reservation under section 9

constitute full satisfaction of the claim of the Spokane Tribe to a fair share of the annual hydropower revenues generated by the Grand Coulee Dam project for the past and continued use of the land of the Spokane Tribe for the production of hydropower at Grand Coulee Dam.

#### Section 11--Authorization of appropriations

Section 11 authorizes the appropriation of such funds as are necessary to carry out this Act.

#### Cost and Budgetary Considerations

The cost estimate for S. 1438, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. Congress,  
Congressional Budget Office,  
Washington, DC, October 7, 2004.

Hon. Ben Nighthorse Campbell,  
Chairman, Committee on Indian Affairs,  
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared to the enclosed cost estimate for S. 1438, the Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mike Waters.

Sincerely,

Elizabeth M. Robinson  
(For Douglas Holtz-Eakin, Director).

Enclosure.

#### S. 1438--Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act

Summary: S. 1438 would establish and authorize funds to be appropriated to the Spokane Tribe of Indians Settlement Fund ('`the 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 of 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 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 \$12 million over the 2007-2014 period, and by \$1.3 million a year after 2014. (Those effects constitute an increase in direct spending.)

Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would add \$56 million to discretionary costs over the 2005-2009 period to fund the Spokane Tribe of Indians Settlement Fund, and an additional \$13 million in 2010. S. 1438 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 S. 1438 is shown in the following table. The costs of this legislation fall within budget functions 450 (community and regional development) and 270 (energy).

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By fiscal year, in millions

of dollars--

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-----	2005	2006	2007	2008	2009	2010
2011    2012    2013    2014						

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CHANGES IN SPENDING SUBJECT TO APPROPRIATION

Payments to Spokane Tribe Settlement Fund

Account:

Authorization Level.....									
0    0    0    0	0	18	13	13	13	13	13	13	13
Estimated Outlays.....									
0    0    0    0	0	18	13	13	13	13	13	13	13

CHANGES IN DIRECT SPENDING

Interest Credits for BPA:

Budget Authority.....									
1    1    1    1	0	0	3	1	1	1	1	1	1
Estimated Outlays.....									
1    1    1    1	0	0	3	1	1	1	1	1	1

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

Spending subject to appropriation

This bill would authorize 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

S. 1436 would require BPA to make annual payments to the Spokane Tribe. Under the bill such payments would be made for many decades--as long as electricity is generated at the Grand Coulee Dam and sold by BPA. Under the bill this payment would be 29 percent of the annual payment BPA currently makes to the Colville Tribe. Such 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. BPA is a cost-recovery agency that charges its customers for electricity. Because it is scheduled to change its rates in 2007, this payment 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 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 many decades--as long as electricity is generated at the Grand Coulee Dam and sold by BPA. As a cost-recovery agency, BPA would reduce its annual collections from electricity rate payers 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 \$12 million over the 2007-2014 period.

Intergovernmental and private-sector impact: S. 1438 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: Lisa Cash Driskill and Mike Waters. 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.



The Committee has not received any communications from the Executive Branch regarding S. 1438.

#### Regulatory and Paperwork Impact

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee finds that the regulatory and paperwork impact of S. 1438, as amended, should be minimal.

#### Changes in Existing Law

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are required to be set forth in the accompanying Committee report.

The Administrator of the Bonneville Power Administration currently makes annual interest payments to the Secretary of the Treasury from ``net payments'' as defined in section 13 of the Federal Columbia River Transmission System Act (16 U.S.C. Sec. 838k). Section 8 of S. 1438 provides that the Administrator shall deduct \$2,600,000 from those payments in Fiscal Year 2007 and shall deduct \$1,300,000 from those payments in each subsequent fiscal year in which a payment is made to the Spokane Tribe pursuant to section 6 of S. 1438.