

116TH CONGRESS
1ST SESSION

S. 1751

To amend the Reclamation Project Act of 1939 to authorize pumped storage hydropower development utilizing multiple Bureau of Reclamation reservoirs.

IN THE SENATE OF THE UNITED STATES

JUNE 5, 2019

Ms. CANTWELL introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Reclamation Project Act of 1939 to authorize pumped storage hydropower development utilizing multiple Bureau of Reclamation reservoirs.

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 “Bureau of Reclamation
5 Pumped Storage Hydropower Development Act”.

6 **SEC. 2. AUTHORITY FOR PUMPED STORAGE HYDROPOWER**
7 **DEVELOPMENT USING MULTIPLE BUREAU OF**
8 **RECLAMATION RESERVOIRS.**

9 Section 9(c) of the Reclamation Project Act of 1939
10 (43 U.S.C. 485h(c)) is amended—

1 (1) in paragraph (1), in the fourth sentence, by
 2 striking “, including small conduit hydropower devel-
 3 opment” and inserting “and reserve to the Secretary
 4 the exclusive authority to develop small conduit hy-
 5 dropower using Bureau of Reclamation facilities and
 6 pumped storage hydropower exclusively using Bu-
 7 reau of Reclamation reservoirs”; and

8 (2) in paragraph (8), by striking “has been
 9 filed with the Federal Energy Regulatory Commis-
 10 sion as of August 9, 2013” and inserting “was filed
 11 with the Federal Energy Regulatory Commission be-
 12 fore August 9, 2013, and is still pending”.

13 **SEC. 3. LIMITATIONS ON ISSUANCE OF CERTAIN LEASES OF**
 14 **POWER PRIVILEGE.**

15 (a) DEFINITIONS.—In this section:

16 (1) COMMISSION.—The term “Commission”
 17 means the Federal Energy Regulatory Commission.

18 (2) DIRECTOR.—The term “Director” means
 19 the Director of the Office of Hearings and Appeals.

20 (3) OFFICE OF HEARINGS AND APPEALS.—The
 21 term “Office of Hearings and Appeals” means the
 22 Office of Hearings and Appeals of the Department
 23 of the Interior.

1 (4) PARTY.—The term “party”, with respect to
2 a study plan agreement, means each of the following
3 parties to the study plan agreement:

4 (A) The proposed lessee.

5 (B) The Tribes.

6 (5) PROJECT.—The term “project” means a
7 proposed pumped storage facility that—

8 (A) would use multiple Bureau of Rec-
9 lamation reservoirs; and

10 (B) as of June 1, 2017, was subject to a
11 preliminary permit issued by the Commission
12 pursuant to section 4(f) of the Federal Power
13 Act (16 U.S.C. 797(f)).

14 (6) PROPOSED LESSEE.—The term “proposed
15 lessee” means the proposed lessee of a project.

16 (7) SECRETARY.—The term “Secretary” means
17 the Secretary of the Interior.

18 (8) STUDY PLAN.—The term “study plan”
19 means the plan described in subsection (d)(1).

20 (9) STUDY PLAN AGREEMENT.—The term
21 “study plan agreement” means an agreement en-
22 tered into under subsection (b)(1) and described in
23 subsection (c).

24 (10) TRIBES.—The term “Tribes” means—

1 (A) the Confederated Tribes of the Colville
2 Reservation; and

3 (B) the Spokane Tribe of Indians of the
4 Spokane Reservation.

5 (b) REQUIREMENT FOR ISSUANCE OF LEASES OF
6 POWER PRIVILEGE.—The Secretary shall not issue a lease
7 of power privilege pursuant to section 9(c)(1) of the Rec-
8 lamation Project Act of 1939 (43 U.S.C. 485h(c)(1)) (as
9 amended by section 2) for a project unless—

10 (1) the proposed lessee and the Tribes have en-
11 tered into a study plan agreement; or

12 (2) the Secretary or the Director, as applicable,
13 makes a final determination for—

14 (A) a study plan agreement under sub-
15 section (c)(2); or

16 (B) a study plan under subsection (d).

17 (c) STUDY PLAN AGREEMENT REQUIREMENTS.—

18 (1) IN GENERAL.—A study plan agreement
19 shall—

20 (A) establish the deadlines for the pro-
21 posed lessee to formally respond in writing to
22 comments and study requests about the project
23 previously submitted to the Commission;

24 (B) allow for the parties to submit addi-
25 tional comments and study requests if any as-

1 pect of the project, as proposed, differs from an
2 aspect of the project, as described in a
3 preapplication document provided to the Com-
4 mission;

5 (C) except as expressly agreed to by the
6 parties or as provided in paragraph (2) or sub-
7 section (d), require that the proposed lessee
8 conduct each study described in—

9 (i) a study request about the project
10 previously submitted to the Commission; or

11 (ii) any additional study request sub-
12 mitted in accordance with the study plan
13 agreement;

14 (D) require that the proposed lessee study
15 any potential adverse economic effects of the
16 project on the Tribes, including effects on—

17 (i) annual payments to the Confed-
18 erated Tribes of the Colville Reservation
19 under section 5(b) of the Confederated
20 Tribes of the Colville Reservation Grand
21 Coulee Dam Settlement Act (Public Law
22 103-436; 108 Stat. 4579); and

23 (ii) annual payments to the Spokane
24 Tribe of Indians of the Spokane Reserva-
25 tion authorized after the date of enactment

1 of this Act, the amount of which derives
2 from the annual payments described in
3 clause (i);

4 (E) establish a protocol for communication
5 and consultation between the parties;

6 (F) provide mechanisms for resolving dis-
7 putes between the parties regarding implemen-
8 tation and enforcement of the study plan agree-
9 ment; and

10 (G) contain other provisions determined to
11 be appropriate by the parties.

12 (2) DISPUTES.—

13 (A) IN GENERAL.—If the parties cannot
14 agree to the terms of a study plan agreement
15 or implementation of those terms, the parties
16 shall submit to the Director, for final deter-
17 mination on the terms or implementation of the
18 study plan agreement, notice of the dispute,
19 consistent with paragraph (1)(F), to the extent
20 the parties have agreed to a study plan agree-
21 ment.

22 (B) INCLUSION.—A dispute covered by
23 subparagraph (A) may include the view of a
24 proposed lessee that an additional study request
25 submitted in accordance with paragraph (1)(B)

1 is not reasonably calculated to assist the Sec-
2 retary in evaluating the potential impacts of the
3 project.

4 (C) TIMING.—The Director shall issue a
5 determination regarding a dispute under sub-
6 paragraph (A) not later than 120 days after the
7 date on which the Director receives notice of
8 the dispute under that subparagraph.

9 (d) STUDY PLAN.—

10 (1) IN GENERAL.—The proposed lessee shall
11 submit to the Secretary for approval a study plan
12 that details the proposed methodology for per-
13 forming each of the studies—

14 (A) identified in the study plan agreement
15 of the proposed lessee; or

16 (B) determined by the Director in a final
17 determination regarding a dispute under sub-
18 section (c)(2).

19 (2) INITIAL DETERMINATION.—Not later than
20 60 days after the date on which the Secretary re-
21 ceives the study plan under paragraph (1), the Sec-
22 retary shall make an initial determination that—

23 (A) approves the study plan;

24 (B) rejects the study plan on the grounds
25 that the study plan—

1 (i) lacks sufficient detail on a pro-
2 posed methodology for a study identified in
3 the study plan agreement; or

4 (ii) is inconsistent with the study plan
5 agreement; or

6 (C) imposes additional study plan require-
7 ments that the Secretary determines are nec-
8 essary to adequately define the potential effects
9 of the project on—

10 (i) the exercise of the paramount
11 hunting, fishing, and boating rights of the
12 Tribes reserved pursuant to the Act of
13 June 29, 1940 (54 Stat. 703, chapter 460;
14 16 U.S.C. 835d et seq.);

15 (ii) the annual payments described in
16 clauses (i) and (ii) of subsection (c)(1)(D);

17 (iii) the Columbia Basin project (as
18 defined in section 1 of the Act of May 27,
19 1937 (50 Stat. 208, chapter 269; 57 Stat.
20 14, chapter 14; 16 U.S.C. 835));

21 (iv) historic properties and cultural or
22 spiritually significant resources; and

23 (v) the environment.

24 (3) OBJECTIONS.—

1 (A) IN GENERAL.—Not later than 30 days
2 after the date on which the Secretary makes an
3 initial determination under paragraph (2), the
4 Tribes or the proposed lessee may submit to the
5 Director an objection to the initial determina-
6 tion.

7 (B) FINAL DETERMINATION.—Not later
8 than 120 days after the date on which the Di-
9 rector receives an objection under subparagraph
10 (A), the Director shall—

11 (i) hold a hearing on the record re-
12 garding the objection; and

13 (ii) make a final determination that
14 establishes the study plan, including a de-
15 scription of studies the proposed lessee is
16 required to perform.

17 (4) NO OBJECTIONS.—If no objections are sub-
18 mitted by the deadline described in paragraph
19 (3)(A), the initial determination of the Secretary
20 under paragraph (2) shall be final.

21 (e) CONDITIONS OF LEASE.—

22 (1) CONSISTENCY WITH RIGHTS OF TRIBES;
23 PROTECTION, MITIGATION, AND ENHANCEMENT OF
24 FISH AND WILDLIFE.—

1 (A) IN GENERAL.—Any lease of power
2 privilege issued by the Secretary for a project
3 under subsection (b) shall contain conditions—

4 (i) to ensure that the project is con-
5 sistent with, and will not interfere with,
6 the exercise of the paramount hunting,
7 fishing, and boating rights of the Tribes
8 reserved pursuant to the Act of June 29,
9 1940 (54 Stat. 703, chapter 460; 16
10 U.S.C. 835d et seq.); and

11 (ii) to adequately and equitably pro-
12 tect, mitigate damages to, and enhance
13 fish and wildlife, including related spawn-
14 ing grounds and habitat, affected by the
15 development, operation, and management
16 of the project.

17 (B) RECOMMENDATIONS OF THE
18 TRIBES.—The conditions required under sub-
19 paragraph (A) shall be based on joint rec-
20 ommendations of the Tribes.

21 (C) RESOLVING INCONSISTENCIES.—

22 (i) IN GENERAL.—If the Secretary de-
23 termines that any recommendation of the
24 Tribes under subparagraph (B) is not rea-
25 sonably calculated to ensure the project is

1 consistent with subparagraph (A) or is in-
2 consistent with the requirements of the
3 Reclamation Project Act of 1939 (43
4 U.S.C. 485 et seq.), the Secretary shall at-
5 tempt to resolve any such inconsistency
6 with the Tribes, giving due weight to the
7 recommendations and expertise of the
8 Tribes.

9 (ii) PUBLICATION OF FINDINGS.—If,
10 after an attempt to resolve an inconsis-
11 tency under clause (i), the Secretary does
12 not adopt in whole or in part a rec-
13 ommendation of the Tribes under subpara-
14 graph (B), the Secretary shall issue each
15 of the following findings, including a state-
16 ment of the basis for each of the findings:

17 (I) A finding that adoption of the
18 recommendation is inconsistent with
19 the requirements of the Reclamation
20 Project Act of 1939 (43 U.S.C. 485 et
21 seq.).

22 (II) A finding that the conditions
23 selected by the Secretary to be con-
24 tained in the lease of power privilege
25 under subparagraph (A) comply with

1 the requirements of clauses (i) and
2 (ii) of that subparagraph.

3 (2) ANNUAL CHARGES PAYABLE BY LI-
4 CENSEE.—

5 (A) IN GENERAL.—Subject to subpara-
6 graph (B), any lease of power privilege issued
7 by the Secretary for a project under subsection
8 (b) shall contain conditions that require the les-
9 see of the project to make direct payments to
10 the Tribes through reasonable annual charges
11 in an amount that recompenses the Tribes for
12 any adverse economic effect of the project iden-
13 tified in a study performed pursuant to the
14 study plan agreement for the project.

15 (B) AGREEMENT.—

16 (i) IN GENERAL.—The amount of the
17 annual charges described in subparagraph
18 (A) shall be established through agreement
19 between the proposed lessee and the
20 Tribes.

21 (ii) CONDITION.—The agreement
22 under clause (i), including any modifica-
23 tion of the agreement, shall be deemed to
24 be a condition to the lease of power privi-

1 lege issued by the Secretary for a project
2 under subsection (b).

3 (C) DISPUTE RESOLUTION.—

4 (i) IN GENERAL.—If the proposed les-
5 see and the Tribes cannot agree to the
6 terms of an agreement under subpara-
7 graph (B)(i), the proposed lessee and the
8 Tribes shall submit notice of the dispute to
9 the Director.

10 (ii) RESOLUTION.—The Director shall
11 resolve the dispute described in clause (i)
12 not later than 180 days after the date on
13 which the Director receives notice of the
14 dispute under that clause.

15 (3) ADDITIONAL CONDITIONS.—The Secretary
16 may include in any lease of power privilege issued by
17 the Secretary for a project under subsection (b)
18 other conditions determined appropriate by the Sec-
19 retary, on the condition that the conditions shall be
20 consistent with the Reclamation Project Act of 1939
21 (43 U.S.C. 485 et seq.).

22 (4) CONSULTATION.—In establishing conditions
23 under this subsection, the Secretary shall consult
24 with the Tribes.

1 (f) DEADLINES.—The Secretary or any officer of the
2 Office of Hearing and Appeals before whom a proceeding
3 is pending under this section may extend any deadline or
4 enlarge any timeframe described in this section—

5 (1) at the discretion of the Secretary or the of-
6 ficer; or

7 (2) on a showing of good cause by any party.

8 (g) JUDICIAL REVIEW.—Any final action of the Sec-
9 retary or the Director made pursuant to this section shall
10 be subject to judicial review in accordance with chapter
11 7 of title 5, United States Code.

12 (h) EFFECT ON OTHER PROJECTS.—Nothing in this
13 section establishes any precedent or is binding on any Bu-
14 reau of Reclamation lease of power privilege, other than
15 for a project.

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