

Calendar No. 260

116TH CONGRESS
1ST SESSION

S. 1751

[Report No. 116–140]

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

OCTOBER 23, 2019

Reported by Ms. MURKOWSKI, with an amendment

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

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”.

1 **SEC. 2. AUTHORITY FOR PUMPED STORAGE HYDROPOWER**
 2 **DEVELOPMENT USING MULTIPLE BUREAU OF**
 3 **RECLAMATION RESERVOIRS.**

4 Section 9(c) of the Reclamation Project Act of 1939
 5 (43 U.S.C. 485h(c)) is amended—

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

13 (2) in paragraph (8), by striking “has been
 14 filed with the Federal Energy Regulatory Commis-
 15 sion as of August 9, 2013 as of the date of the enact-
 16 ment of the Bureau of Reclamation Small Conduit
 17 Hydropower Development and Rural Jobs Act” and
 18 inserting “was filed with the Federal Energy Regu-
 19 latory Commission before August 9, 2013, and is
 20 still pending”.

21 **SEC. 3. LIMITATIONS ON ISSUANCE OF CERTAIN LEASES OF**
 22 **POWER PRIVILEGE.**

23 (a) DEFINITIONS.—In this section:

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

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

3 (3) OFFICE OF HEARINGS AND APPEALS.—The
4 term “Office of Hearings and Appeals” means the
5 Office of Hearings and Appeals of the Department
6 of the Interior.

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

10 (A) The proposed lessee.

11 (B) The Tribes.

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

14 (A) would use multiple Bureau of Rec-
15 lamation reservoirs; and

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

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

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

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

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

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

6 (A) the Confederated Tribes of the Colville
 7 Reservation; and

8 (B) the Spokane Tribe of Indians of the
 9 Spokane Reservation.

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

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

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

19 (A) a study plan agreement under sub-
 20 section (c)(2); or

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

22 (c) STUDY PLAN AGREEMENT REQUIREMENTS.—

23 (1) IN GENERAL.—A study plan agreement
 24 shall—

1 (A) establish the deadlines for the pro-
2 posed lessee to formally respond in writing to
3 comments and study requests about the project
4 previously submitted to the Commission;

5 (B) allow for the parties to submit addi-
6 tional comments and study requests if any as-
7 pect of the project, as proposed, differs from an
8 aspect of the project, as described in a
9 preapplication document provided to the Com-
10 mission;

11 (C) except as expressly agreed to by the
12 parties or as provided in paragraph (2) or sub-
13 section (d), require that the proposed lessee
14 conduct each study described in—

15 (i) a study request about the project
16 previously submitted to the Commission; or

17 (ii) any additional study request sub-
18 mitted in accordance with the study plan
19 agreement;

20 (D) require that the proposed lessee study
21 any potential adverse economic effects of the
22 project on the Tribes, including effects on—

23 (i) annual payments to the Confed-
24 erated Tribes of the Colville Reservation
25 under section 5(b) of the Confederated

1 Tribes of the Colville Reservation Grand
 2 Coulee Dam Settlement Act (Public Law
 3 103–436; 108 Stat. 4579); and

4 (ii) annual payments to the Spokane
 5 Tribe of Indians of the Spokane Reserva-
 6 tion authorized after the date of enactment
 7 of this Act, the amount of which derives
 8 from the annual payments described in
 9 clause (i);

10 (E) establish a protocol for communication
 11 and consultation between the parties;

12 (F) provide mechanisms for resolving dis-
 13 putes between the parties regarding implemen-
 14 tation and enforcement of the study plan agree-
 15 ment; and

16 (G) contain other provisions determined to
 17 be appropriate by the parties.

18 (2) DISPUTES.—

19 (A) IN GENERAL.—If the parties cannot
 20 agree to the terms of a study plan agreement
 21 or implementation of those terms, the parties
 22 shall submit to the Director, for final deter-
 23 mination on the terms or implementation of the
 24 study plan agreement, notice of the dispute,
 25 consistent with paragraph (1)(F), to the extent

1 the parties have agreed to a study plan agree-
2 ment.

3 (B) INCLUSION.—A dispute covered by
4 subparagraph (A) may include the view of a
5 proposed lessee that an additional study request
6 submitted in accordance with paragraph (1)(B)
7 is not reasonably calculated to assist the Sec-
8 retary in evaluating the potential impacts of the
9 project.

10 (C) TIMING.—The Director shall issue a
11 determination regarding a dispute under sub-
12 paragraph (A) not later than 120 days after the
13 date on which the Director receives notice of
14 the dispute under that subparagraph.

15 (d) STUDY PLAN.—

16 (1) IN GENERAL.—The proposed lessee shall
17 submit to the Secretary for approval a study plan
18 that details the proposed methodology for per-
19 forming each of the studies—

20 (A) identified in the study plan agreement
21 of the proposed lessee; or

22 (B) determined by the Director in a final
23 determination regarding a dispute under sub-
24 section (c)(2).

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

5 (A) approves the study plan;

6 (B) rejects the study plan on the grounds
7 that the study plan—

8 (i) lacks sufficient detail on a pro-
9 posed methodology for a study identified in
10 the study plan agreement; or

11 (ii) is inconsistent with the study plan
12 agreement; or

13 (C) imposes additional study plan require-
14 ments that the Secretary determines are nec-
15 essary to adequately define the potential effects
16 of the project on—

17 (i) the exercise of the paramount
18 hunting, fishing, and boating rights of the
19 Tribes reserved pursuant to the Act of
20 June 29, 1940 (54 Stat. 703, chapter 460;
21 16 U.S.C. 835d et seq.);

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

24 (iii) the Columbia Basin project (as
25 defined in section 1 of the Act of May 27,

1 1937 (50 Stat. 208, chapter 269; 57 Stat.
2 14, chapter 14; 16 U.S.C. 835));

3 (iv) historic properties and cultural or
4 spiritually significant resources; and

5 (v) the environment.

6 (3) OBJECTIONS.—

7 (A) IN GENERAL.—Not later than 30 days
8 after the date on which the Secretary makes an
9 initial determination under paragraph (2), the
10 Tribes or the proposed lessee may submit to the
11 Director an objection to the initial determina-
12 tion.

13 (B) FINAL DETERMINATION.—Not later
14 than 120 days after the date on which the Di-
15 rector receives an objection under subparagraph
16 (A), the Director shall—

17 (i) hold a hearing on the record re-
18 garding the objection; and

19 (ii) make a final determination that
20 establishes the study plan, including a de-
21 scription of studies the proposed lessee is
22 required to perform.

23 (4) NO OBJECTIONS.—If no objections are sub-
24 mitted by the deadline described in paragraph

1 (3)(A), the initial determination of the Secretary
2 under paragraph (2) shall be final.

3 (e) CONDITIONS OF LEASE.—

4 (1) CONSISTENCY WITH RIGHTS OF TRIBES;
5 PROTECTION, MITIGATION, AND ENHANCEMENT OF
6 FISH AND WILDLIFE.—

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

10 (i) to ensure that the project is con-
11 sistent with, and will not interfere with,
12 the exercise of the paramount hunting,
13 fishing, and boating rights of the Tribes
14 reserved pursuant to the Act of June 29,
15 1940 (54 Stat. 703, chapter 460; 16
16 U.S.C. 835d et seq.); and

17 (ii) to adequately and equitably pro-
18 tect, mitigate damages to, and enhance
19 fish and wildlife, including related spawn-
20 ing grounds and habitat, affected by the
21 development, operation, and management
22 of the project.

23 (B) RECOMMENDATIONS OF THE
24 TRIBES.—The conditions required under sub-

1 paragraph (A) shall be based on joint rec-
2 ommendations of the Tribes.

3 (C) RESOLVING INCONSISTENCIES.—

4 (i) IN GENERAL.—If the Secretary de-
5 termines that any recommendation of the
6 Tribes under subparagraph (B) is not rea-
7 sonably calculated to ensure the project is
8 consistent with subparagraph (A) or is in-
9 consistent with the requirements of the
10 Reclamation Project Act of 1939 (43
11 U.S.C. 485 et seq.), the Secretary shall at-
12 tempt to resolve any such inconsistency
13 with the Tribes, giving due weight to the
14 recommendations and expertise of the
15 Tribes.

16 (ii) PUBLICATION OF FINDINGS.—If,
17 after an attempt to resolve an inconsis-
18 tency under clause (i), the Secretary does
19 not adopt in whole or in part a rec-
20 ommendation of the Tribes under subpara-
21 graph (B), the Secretary shall issue each
22 of the following findings, including a state-
23 ment of the basis for each of the findings:

24 (I) A finding that adoption of the
25 recommendation is inconsistent with

1 the requirements of the Reclamation
2 Project Act of 1939 (43 U.S.C. 485 et
3 seq.).

4 (II) A finding that the conditions
5 selected by the Secretary to be con-
6 tained in the lease of power privilege
7 under subparagraph (A) comply with
8 the requirements of clauses (i) and
9 (ii) of that subparagraph.

10 (2) ANNUAL CHARGES PAYABLE BY LI-
11 CENSEE.—

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

22 (B) AGREEMENT.—

23 (i) IN GENERAL.—The amount of the
24 annual charges described in subparagraph
25 (A) shall be established through agreement

1 between the proposed lessee and the
2 Tribes.

3 (ii) CONDITION.—The agreement
4 under clause (i), including any modifica-
5 tion of the agreement, shall be deemed to
6 be a condition to the lease of power privi-
7 lege issued by the Secretary for a project
8 under subsection (b).

9 (C) DISPUTE RESOLUTION.—

10 (i) IN GENERAL.—If the proposed les-
11 see and the Tribes cannot agree to the
12 terms of an agreement under subpara-
13 graph (B)(i), the proposed lessee and the
14 Tribes shall submit notice of the dispute to
15 the Director.

16 (ii) RESOLUTION.—The Director shall
17 resolve the dispute described in clause (i)
18 not later than 180 days after the date on
19 which the Director receives notice of the
20 dispute under that clause.

21 (3) ADDITIONAL CONDITIONS.—The Secretary
22 may include in any lease of power privilege issued by
23 the Secretary for a project under subsection (b)
24 other conditions determined appropriate by the Sec-
25 retary, on the condition that the conditions shall be

1 consistent with the Reclamation Project Act of 1939
2 (43 U.S.C. 485 et seq.).

3 (4) CONSULTATION.—In establishing conditions
4 under this subsection, the Secretary shall consult
5 with the Tribes.

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

10 (1) at the discretion of the Secretary or the of-
11 ficer; or

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

13 (g) JUDICIAL REVIEW.—Any final action of the Sec-
14 retary or the Director made pursuant to this section shall
15 be subject to judicial review in accordance with chapter
16 7 of title 5, United States Code.

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

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