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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Bureau of Reclamation Pumped Storage Hydropower Development Act”.

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

Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) is amended—
(1) in paragraph (1), in the fourth sentence, by striking “, including small conduit hydropower development” and inserting “and reserve to the Secretary the exclusive authority to develop small conduit hydropower using Bureau of Reclamation facilities and pumped storage hydropower exclusively using Bureau of Reclamation reservoirs”; and

(2) in paragraph (8), by striking “has been filed with the Federal Energy Regulatory Commission as of August 9, 2013” and inserting “was filed with the Federal Energy Regulatory Commission before August 9, 2013, and is still pending”.

SEC. 3. LIMITATIONS ON ISSUANCE OF CERTAIN LEASES OF POWER PRIVILEGE.

(a) DEFINITIONS.—In this section:

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

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

(3) OFFICE OF HEARINGS AND APPEALS.—The term “Office of Hearings and Appeals” means the Office of Hearings and Appeals of the Department of the Interior.
(4) PARTY.—The term “party”, with respect to a study plan agreement, means each of the following parties to the study plan agreement:

(A) The proposed lessee.

(B) The Tribes.

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

(A) would use multiple Bureau of Reclamation reservoirs; and

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

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

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

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

(9) STUDY PLAN AGREEMENT.—The term “study plan agreement” means an agreement entered into under subsection (b)(1) and described in subsection (e).

(10) TRIBES.—The term “Tribes” means—
(A) the Confederated Tribes of the Colville Reservation; and

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

(b) **Requirement for Issuance of Leases of Power Privilege.**—The Secretary shall not issue a lease of power privilege pursuant to section 9(e)(1) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(e)(1)) (as amended by section 2) for a project unless—

(1) the proposed lessee and the Tribes have entered into a study plan agreement; or

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

(A) a study plan agreement under subsection (c)(2); or

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

(c) **Study Plan Agreement Requirements.**—

(1) **In General.**—A study plan agreement shall—

(A) establish the deadlines for the proposed lessee to formally respond in writing to comments and study requests about the project previously submitted to the Commission;

(B) allow for the parties to submit additional comments and study requests if any as-
pect of the project, as proposed, differs from an aspect of the project, as described in a preapplication document provided to the Commission;

(C) except as expressly agreed to by the parties or as provided in paragraph (2) or subsection (d), require that the proposed lessee conduct each study described in—

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

(ii) any additional study request submitted in accordance with the study plan agreement;

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

(i) annual payments to the Confederated Tribes of the Colville Reservation under section 5(b) of the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (Public Law 103–436; 108 Stat. 4579); and

(ii) annual payments to the Spokane Tribe of Indians of the Spokane Reservation authorized after the date of enactment
of this Act, the amount of which derives
from the annual payments described in
clause (i);

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

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

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

(2) DISPUTES.—

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

(B) INCLUSION.—A dispute covered by
subparagraph (A) may include the view of a
proposed lessee that an additional study request
submitted in accordance with paragraph (1)(B)
is not reasonably calculated to assist the Secretary in evaluating the potential impacts of the project.

(C) Timing.—The Director shall issue a determination regarding a dispute under subparagraph (A) not later than 120 days after the date on which the Director receives notice of the dispute under that subparagraph.

(d) Study Plan.—

(1) In general.—The proposed lessee shall submit to the Secretary for approval a study plan that details the proposed methodology for performing each of the studies—

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

(B) determined by the Director in a final determination regarding a dispute under subsection (c)(2).

(2) Initial determination.—Not later than 60 days after the date on which the Secretary receives the study plan under paragraph (1), the Secretary shall make an initial determination that—

(A) approves the study plan;

(B) rejects the study plan on the grounds that the study plan—
(i) lacks sufficient detail on a proposed methodology for a study identified in the study plan agreement; or

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

(C) imposes additional study plan requirements that the Secretary determines are necessary to adequately define the potential effects of the project on—

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

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

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

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

(v) the environment.

(3) Objections.—
(A) In general.—Not later than 30 days after the date on which the Secretary makes an initial determination under paragraph (2), the Tribes or the proposed lessee may submit to the Director an objection to the initial determination.

(B) Final determination.—Not later than 120 days after the date on which the Director receives an objection under subparagraph (A), the Director shall—

(i) hold a hearing on the record regarding the objection; and

(ii) make a final determination that establishes the study plan, including a description of studies the proposed lessee is required to perform.

(4) No objections.—If no objections are submitted by the deadline described in paragraph (3)(A), the initial determination of the Secretary under paragraph (2) shall be final.

(e) Conditions of lease.—

(1) Consistency with rights of tribes; protection, mitigation, and enhancement of fish and wildlife.—
(A) IN GENERAL.—Any lease of power privilege issued by the Secretary for a project under subsection (b) shall contain conditions—

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

(ii) to adequately and equitably protect, mitigate damages to, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development, operation, and management of the project.

(B) RECOMMENDATIONS OF THE TRIBES.—The conditions required under subparagraph (A) shall be based on joint recommendations of the Tribes.

(C) RESOLVING INCONSISTENCIES.—

(i) IN GENERAL.—If the Secretary determines that any recommendation of the Tribes under subparagraph (B) is not reasonably calculated to ensure the project is
consistent with subparagraph (A) or is inconsistent with the requirements of the Reclamation Project Act of 1939 (43 U.S.C. 485 et seq.), the Secretary shall attempt to resolve any such inconsistency with the Tribes, giving due weight to the recommendations and expertise of the Tribes.

(ii) Publication of Findings.—If, after an attempt to resolve an inconsistency under clause (i), the Secretary does not adopt in whole or in part a recommendation of the Tribes under subparagraph (B), the Secretary shall issue each of the following findings, including a statement of the basis for each of the findings:

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

(II) A finding that the conditions selected by the Secretary to be contained in the lease of power privilege under subparagraph (A) comply with
the requirements of clauses (i) and (ii) of that subparagraph.

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

(A) IN GENERAL.—Subject to subpara-
graph (B), any lease of power privilege issued by the Secretary for a project under subsection (b) shall contain conditions that require the lessee of the project to make direct payments to the Tribes through reasonable annual charges in an amount that recompenses the Tribes for any adverse economic effect of the project identified in a study performed pursuant to the study plan agreement for the project.

(B) AGREEMENT.—

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

(ii) CONDITION.—The agreement under clause (i), including any modification of the agreement, shall be deemed to be a condition to the lease of power privi-
lege issued by the Secretary for a project under subsection (b).

(C) DISPUTE RESOLUTION.—

(i) IN GENERAL.—If the proposed lessee and the Tribes cannot agree to the terms of an agreement under subparagraph (B)(i), the proposed lessee and the Tribes shall submit notice of the dispute to the Director.

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

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

(4) CONSULTATION.—In establishing conditions under this subsection, the Secretary shall consult with the Tribes.
(f) DEADLINES.—The Secretary or any officer of the Office of Hearing and Appeals before whom a proceeding is pending under this section may extend any deadline or enlarge any timeframe described in this section—

(1) at the discretion of the Secretary or the officer; or

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

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

(h) EFFECT ON OTHER PROJECTS.—Nothing in this section establishes any precedent or is binding on any Bureau of Reclamation lease of power privilege, other than for a project.