

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To authorize pumped storage hydropower development utilizing multiple Bureau of Reclamation reservoirs.

**IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.**

**S.** \_\_\_\_\_

To invest in the energy and outdoor infrastructure of the United States to deploy new and innovative technologies, update existing infrastructure to be reliable and resilient, and secure energy infrastructure against physical and cyber threats, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Ms. CANTWELL

Viz:

1 At the end of subtitle D of title III, add the following:

2 **SEC. 3305. AUTHORITY FOR PUMPED STORAGE HYDRO-**

3 **POWER DEVELOPMENT USING MULTIPLE BU-**

4 **REAU OF RECLAMATION RESERVOIRS.**

5 Section 9(c) of the Reclamation Project Act of 1939

6 (43 U.S.C. 485h(c)) is amended—

7 (1) in paragraph (1), in the fourth sentence, by

8 striking “, including small conduit hydropower devel-

9 opment” and inserting “and reserve to the Secretary

10 the exclusive authority to develop small conduit hy-

1 dropower using Bureau of Reclamation facilities and  
2 pumped storage hydropower exclusively using Bu-  
3 reau of Reclamation reservoirs”; and

4 (2) in paragraph (8), by striking “has been  
5 filed with the Federal Energy Regulatory Commis-  
6 sion as of the date of the enactment of the Bureau  
7 of Reclamation Small Conduit Hydropower Develop-  
8 ment and Rural Jobs Act” and inserting “was filed  
9 with the Federal Energy Regulatory Commission be-  
10 fore August 9, 2013, and is still pending”.

11 **SEC. 3306. LIMITATIONS ON ISSUANCE OF CERTAIN LEASES**  
12 **OF POWER PRIVILEGE.**

13 (a) DEFINITIONS.—In this section:

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

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

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

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

25 (A) The proposed lessee.

1 (B) The Tribes.

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

4 (A) would use multiple Bureau of Rec-  
5 lamation reservoirs; and

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

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

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

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

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

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

21 (A) the Confederated Tribes of the Colville  
22 Reservation; and

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

1 (b) REQUIREMENT FOR ISSUANCE OF LEASES OF  
2 POWER PRIVILEGE.—The Secretary shall not issue a lease  
3 of power privilege pursuant to section 9(c)(1) of the Rec-  
4 lamation Project Act of 1939 (43 U.S.C. 485h(c)(1)) (as  
5 amended by section 3305) for a project unless—

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

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

10 (A) a study plan agreement under sub-  
11 section (c)(2); or

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

13 (c) STUDY PLAN AGREEMENT REQUIREMENTS.—

14 (1) IN GENERAL.—A study plan agreement  
15 shall—

16 (A) establish the deadlines for the pro-  
17 posed lessee to formally respond in writing to  
18 comments and study requests about the project  
19 previously submitted to the Commission;

20 (B) allow for the parties to submit addi-  
21 tional comments and study requests if any as-  
22 pect of the project, as proposed, differs from an  
23 aspect of the project, as described in a  
24 preapplication document provided to the Com-  
25 mission;

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

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

7 (ii) any additional study request sub-  
8 mitted in accordance with the study plan  
9 agreement;

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

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

19 (ii) annual payments to the Spokane  
20 Tribe of Indians of the Spokane Reserva-  
21 tion authorized after the date of enactment  
22 of this Act, the amount of which derives  
23 from the annual payments described in  
24 clause (i);

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

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

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

9 (2) DISPUTES.—

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

19 (B) INCLUSION.—A dispute covered by  
20 subparagraph (A) may include the view of a  
21 proposed lessee that an additional study request  
22 submitted in accordance with paragraph (1)(B)  
23 is not reasonably calculated to assist the Sec-  
24 retary in evaluating the potential impacts of the  
25 project.

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

6           (d) STUDY PLAN.—

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

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

13           (B) determined by the Director in a final  
14          determination regarding a dispute under sub-  
15          section (c)(2).

16          (2) INITIAL DETERMINATION.—Not later than  
17          60 days after the date on which the Secretary re-  
18          ceives the study plan under paragraph (1), the Sec-  
19          retary shall make an initial determination that—

20           (A) approves the study plan;

21           (B) rejects the study plan on the grounds  
22          that the study plan—

23           (i) lacks sufficient detail on a pro-  
24          posed methodology for a study identified in  
25          the study plan agreement; or

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

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

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

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

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

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

20 (v) the environment.

21 (3) OBJECTIONS.—

22 (A) IN GENERAL.—Not later than 30 days  
23 after the date on which the Secretary makes an  
24 initial determination under paragraph (2), the  
25 Tribes or the proposed lessee may submit to the

1 Director an objection to the initial determina-  
2 tion.

3 (B) FINAL DETERMINATION.—Not later  
4 than 120 days after the date on which the Di-  
5 rector receives an objection under subparagraph  
6 (A), the Director shall—

7 (i) hold a hearing on the record re-  
8 garding the objection; and

9 (ii) make a final determination that  
10 establishes the study plan, including a de-  
11 scription of studies the proposed lessee is  
12 required to perform.

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

17 (e) CONDITIONS OF LEASE.—

18 (1) CONSISTENCY WITH RIGHTS OF TRIBES;  
19 PROTECTION, MITIGATION, AND ENHANCEMENT OF  
20 FISH AND WILDLIFE.—

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

24 (i) to ensure that the project is con-  
25 sistent with, and will not interfere with,

1 the exercise of the paramount hunting,  
2 fishing, and boating rights of the Tribes  
3 reserved pursuant to the Act of June 29,  
4 1940 (54 Stat. 703, chapter 460; 16  
5 U.S.C. 835d et seq.); and

6 (ii) to adequately and equitably pro-  
7 tect, mitigate damages to, and enhance  
8 fish and wildlife, including related spawn-  
9 ing grounds and habitat, affected by the  
10 development, operation, and management  
11 of the project.

12 (B) RECOMMENDATIONS OF THE  
13 TRIBES.—The conditions required under sub-  
14 paragraph (A) shall be based on joint rec-  
15 ommendations of the Tribes.

16 (C) RESOLVING INCONSISTENCIES.—

17 (i) IN GENERAL.—If the Secretary de-  
18 termines that any recommendation of the  
19 Tribes under subparagraph (B) is not rea-  
20 sonably calculated to ensure the project is  
21 consistent with subparagraph (A) or is in-  
22 consistent with the requirements of the  
23 Reclamation Project Act of 1939 (43  
24 U.S.C. 485 et seq.), the Secretary shall at-  
25 tempt to resolve any such inconsistency

1 with the Tribes, giving due weight to the  
2 recommendations and expertise of the  
3 Tribes.

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

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

17 (II) A finding that the conditions  
18 selected by the Secretary to be con-  
19 tained in the lease of power privilege  
20 under subparagraph (A) comply with  
21 the requirements of clauses (i) and  
22 (ii) of that subparagraph.

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

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

11           (B) AGREEMENT.—

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

17           (ii) CONDITION.—The agreement  
18 under clause (i), including any modifica-  
19 tion of the agreement, shall be deemed to  
20 be a condition to the lease of power privi-  
21 lege issued by the Secretary for a project  
22 under subsection (b).

23           (C) DISPUTE RESOLUTION.—

24           (i) IN GENERAL.—If the proposed les-  
25 see and the Tribes cannot agree to the

1 terms of an agreement under subpara-  
2 graph (B)(i), the proposed lessee and the  
3 Tribes shall submit notice of the dispute to  
4 the Director.

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

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

17 (4) CONSULTATION.—In establishing conditions  
18 under this subsection, the Secretary shall consult  
19 with the Tribes.

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

24 (1) at the discretion of the Secretary or the of-  
25 ficer; or

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

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

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