

Committee on Natural Resources

Rob Bishop Chairman
Markup Memorandum

November 14, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Markup: **S. 669 (Sen. Jeff Merkley)**, To authorize the Secretary of the Interior to assess sanitation and safety conditions at Bureau of Indian Affairs facilities that were constructed to provide affected Columbia River Treaty tribes access to traditional fishing grounds and expend funds on construction of facilities and structures to improve those conditions, and for other purposes.
November 15, 2018 at 9:30 a.m.; 1324 Longworth House Office Building

S. 669 (Sen. Jeff Merkley), “*Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act*”

Summary of the Bill

S. 669 was introduced by Sen. Jeff Merkley on March 21, 2017, and passed the Senate on November 29, 2017. The bill directs the Secretary of the Interior, through the Bureau of Indian Affairs (BIA), to assess current sanitation and safety conditions on lands that were set aside to provide affected Columbia River Treaty tribes access to traditional fishing grounds. BIA would also be authorized to execute improvements at the 27 In-Lieu and Treaty Fishing Access Sites that the BIA manages on both sides of the Columbia River. This effort would be done in coordination with the four tribes whom the sites serve.¹ The bill also directs the Government Accountability Office to report on whether the improvements authorized by the bill have been effective.

Cosponsors

Sen. Ron Wyden (D-OR), Sen. Patty Murray (D-WA), Sen. Maria Cantwell (D-WA).

Background

Certain Columbia River tribes, through a series of treaties signed with the United States in 1855, established access and secured rights to “usual and accustomed fishing areas” and

¹ The Columbia River Treaty tribes include: the Confederated Tribes and Bands of the Yakima Nation (WA), the Nez Perce Tribe (ID), the Confederated Tribes of the Warm Springs Indian Reservation of Oregon (OR) and the Confederated Tribes of the Umatilla Indian Reservation (OR).

ancillary fishing facilities.² However, during the 1930s and 1950s the United States began the process of building dams along the Columbia River to provide much needed electricity to various communities throughout Washington and Oregon. As a consequence, tribal and non-tribal communities were flooded and needed to be relocated.

Congress passed the River and Harbor Act of 1945 to authorize the U.S. Army Corps of Engineers to acquire and replace tribal fishing areas along the Columbia River.³ Over the next 20 years the Corps acquired five sites. In 1988 Congress authorized construction of improvements for ancillary fishing facilities along the Columbia River.⁴ That Act also directed the Corps to acquire lands from willing sellers to provide unfettered river access for members of the Columbia River Treaty Tribes. According to the Columbia River Intertribal Fish Commission, the flooded tribal lands were later replaced with 31 designated encampments. Since the Corps began acquiring these sites, all but four encampments have been transferred to the BIA for management.⁵

In response to a 2013 report on the sites' conditions, the Corps' Portland District acknowledged the terrible living conditions near those sites.^{6 7}

Major Provisions of S. 669

Section 2. Sanitation and safety conditions at certain Bureau of Indian Affairs facilities.

Section 2 provides for the assessment of fishing access facilities and structures maintained by the BIA, establishes the BIA as the sole Federal agency tasked with executing the requirements of the bill, applies the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) to the contracting process for facility assessments, defines the affected Columbia River Treaty tribes, and authorizes appropriations for assessments of the fishing access sites and facilities.

Section 2(a) authorizes the BIA, in consultation with the Columbia River Treaty tribes, to assess any permanent federal structures and improvements on BIA lands that were set aside to provide the Treaty tribes access to traditional grounds.

Section 2(b) provides that the BIA shall be the only federal agency authorized to carry out the activities in the bill.

² See Yakima Treaty, 1855; Tribes of Middle Oregon Treaty, 1855; Cayuse, Umatilla, and Walla Walla Treaty, 1855; and Nez Perce Treaty, 1855.

³ Pub. L. No. 79-14 (59 Stat. 22).

⁴ Title IV of Public Law 100-581, (102 Stat. 2944).

⁵ Legislative Hearing on S. 3222 before S. Comm on Indian Affairs. 114th Cong. Testimony of Paul Lumley, Executive Director Columbia River Inter-Tribal Fish Commission.

⁶ Columbia River Treaty Fishing Access Sites Oregon & Washington Fact-Finding Review on Tribal Housing final report. Prepared by Cooper Zietz Engineers, Inc. For Portland District U.S. Army Corps of Engineers. November 19, 2013.

⁷ Legislative hearing on S. 2636, S. 3216, S. 3222, S. 3300 before the Senate Committee on Indian Affairs, 114th Cong. (2016) (testimony of Paul Lumley, Executive Director, Columbia River Inter-Tribal Fish Commission).

Section 2(b) also allows the BIA to contract for the assessment with tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

Section 2(c) defines the affected Columbia River Treaty tribes as the Nez Perce Tribe, the Confederated Tribes of Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Nation.

Section 2(d) authorizes appropriations for the bill, “such sums as are necessary”.

Cost

The CBO has estimated that S. 669 would cost \$11 million over the 2018-2022 period.⁸

Administration Position

Unknown.

Anticipated Amendment

None.

⁸ <https://www.cbo.gov/system/files?file=115th-congress-2017-2018/costestimate/s669.pdf>.