

AMENDMENT TO
RULES COMMITTEE PRINT 116-54
OFFERED BY MRS. McMORRIS RODGERS OF
WASHINGTON

Page 1540, after line 17, insert the following:

1 **SEC. 33178. BUREAU OF RECLAMATION PUMPED STORAGE**
2 **HYDROPOWER DEVELOPMENT ACT.**

3 (a) **SHORT TITLE.**—This section may be cited as the
4 “Bureau of Reclamation Pumped Storage Hydropower
5 Development Act”.

6 (b) **AUTHORITY FOR PUMPED STORAGE HYDRO-**
7 **POWER DEVELOPMENT USING MULTIPLE BUREAU OF**
8 **RECLAMATION RESERVOIRS.**—Section 9(c) of the Rec-
9 lamation Project Act of 1939 (43 U.S.C. 485h(c)) is
10 amended—

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

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

8 (c) LIMITATIONS ON ISSUANCE OF CERTAIN LEASES
9 OF POWER PRIVILEGE.—

10 (1) DEFINITIONS.—In this subsection:

11 (A) COMMISSION.—The term “Commis-
12 sion” means the Federal Energy Regulatory
13 Commission.

14 (B) DIRECTOR.—The term “Director”
15 means the Director of the Office of Hearings
16 and Appeals.

17 (C) OFFICE OF HEARINGS AND AP-
18 PEALS.—The term “Office of Hearings and Ap-
19 peals” means the Office of Hearings and Ap-
20 peals of the Department of the Interior.

21 (D) PARTY.—The term “party”, with re-
22 spect to a study plan agreement, means each of
23 the following parties to the study plan agree-
24 ment:

25 (i) The proposed lessee.

1 (ii) The Tribes.

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

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

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

10 (F) PROPOSED LESSEE.—The term “pro-
11 posed lessee” means the proposed lessee of a
12 project.

13 (G) SECRETARY.—The term “Secretary”
14 means the Secretary of the Interior.

15 (H) STUDY PLAN.—The term “study plan”
16 means the plan described in paragraph (4)(A).

17 (I) STUDY PLAN AGREEMENT.—The term
18 “study plan agreement” means an agreement
19 entered into under paragraph (2)(A) and de-
20 scribed in paragraph (3).

21 (J) TRIBES.—The term “Tribes” means—

22 (i) the Confederated Tribes of the
23 Colville Reservation; and

24 (ii) the Spokane Tribe of Indians of
25 the Spokane Reservation.

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

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

9 (B) the Secretary or the Director, as appli-
10 cable, makes a final determination for—

11 (i) a study plan agreement under
12 paragraph (3)(B); or

13 (ii) a study plan under paragraph (4).

14 (3) STUDY PLAN AGREEMENT REQUIRE-
15 MENTS.—

16 (A) IN GENERAL.—A study plan agree-
17 ment shall—

18 (i) establish the deadlines for the pro-
19 posed lessee to formally respond in writing
20 to comments and study requests about the
21 project previously submitted to the Com-
22 mission;

23 (ii) allow for the parties to submit ad-
24 ditional comments and study requests if
25 any aspect of the project, as proposed, dif-

1 fers from an aspect of the project, as de-
2 scribed in a preapplication document pro-
3 vided to the Commission;

4 (iii) except as expressly agreed to by
5 the parties or as provided in subparagraph
6 (B) or paragraph (4), require that the pro-
7 posed lessee conduct each study described
8 in—

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

12 (II) any additional study request
13 submitted in accordance with the
14 study plan agreement;

15 (iv) require that the proposed lessee
16 study any potential adverse economic ef-
17 fects of the project on the Tribes, including
18 effects on—

19 (I) annual payments to the Con-
20 federated Tribes of the Colville Res-
21 ervation under section 5(b) of the
22 Confederated Tribes of the Colville
23 Reservation Grand Coulee Dam Set-
24 tlement Act (Public Law 103–436;
25 108 Stat. 4579); and

1 (II) annual payments to the Spo-
2 kane Tribe of Indians of the Spokane
3 Reservation authorized after the date
4 of enactment of this Act, the amount
5 of which derives from the annual pay-
6 ments described in clause (i);

7 (v) establish a protocol for commu-
8 nication and consultation between the par-
9 ties;

10 (vi) provide mechanisms for resolving
11 disputes between the parties regarding im-
12 plementation and enforcement of the study
13 plan agreement; and

14 (vii) contain other provisions deter-
15 mined to be appropriate by the parties.

16 (B) DISPUTES.—

17 (i) IN GENERAL.—If the parties can-
18 not agree to the terms of a study plan
19 agreement or implementation of those
20 terms, the parties shall submit to the Di-
21 rector, for final determination on the terms
22 or implementation of the study plan agree-
23 ment, notice of the dispute, consistent with
24 paragraph (1)(F), to the extent the parties
25 have agreed to a study plan agreement.

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

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

14 (4) STUDY PLAN.—

15 (A) IN GENERAL.—The proposed lessee
16 shall submit to the Secretary for approval a
17 study plan that details the proposed method-
18 ology for performing each of the studies—

19 (i) identified in the study plan agree-
20 ment of the proposed lessee; or

21 (ii) determined by the Director in a
22 final determination regarding a dispute
23 under paragraph (3)(B).

24 (B) INITIAL DETERMINATION.—Not later
25 than 60 days after the date on which the Sec-

1 retary receives the study plan under paragraph
2 (1), the Secretary shall make an initial deter-
3 mination that—

4 (i) approves the study plan;

5 (ii) rejects the study plan on the
6 grounds that the study plan—

7 (I) lacks sufficient detail on a
8 proposed methodology for a study
9 identified in the study plan agree-
10 ment; or

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

13 (iii) imposes additional study plan re-
14 quirements that the Secretary determines
15 are necessary to adequately define the po-
16 tential effects of the project on—

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

22 (II) the annual payments de-
23 scribed in subclauses (I) and (II) of
24 paragraph (3)(A)(iv);

1 (III) the Columbia Basin project
2 (as defined in section 1 of the Act of
3 May 27, 1937 (50 Stat. 208, chapter
4 269; 57 Stat. 14, chapter 14; 16
5 U.S.C. 835));

6 (IV) historic properties and cul-
7 tural or spiritually significant re-
8 sources; and

9 (V) the environment.

10 (C) OBJECTIONS.—

11 (i) IN GENERAL.—Not later than 30
12 days after the date on which the Secretary
13 makes an initial determination under para-
14 graph (2), the Tribes or the proposed les-
15 see may submit to the Director an objec-
16 tion to the initial determination.

17 (ii) FINAL DETERMINATION.—Not
18 later than 120 days after the date on
19 which the Director receives an objection
20 under subparagraph (A), the Director
21 shall—

22 (I) hold a hearing on the record
23 regarding the objection; and

24 (II) make a final determination
25 that establishes the study plan, in-

1 including a description of studies the
2 proposed lessee is required to perform.

3 (D) NO OBJECTIONS.—If no objections are
4 submitted by the deadline described in para-
5 graph (3)(A), the initial determination of the
6 Secretary under paragraph (2) shall be final.

7 (5) CONDITIONS OF LEASE.—

8 (A) CONSISTENCY WITH RIGHTS OF
9 TRIBES; PROTECTION, MITIGATION, AND EN-
10 HANCEMENT OF FISH AND WILDLIFE.—

11 (i) IN GENERAL.—Any lease of power
12 privilege issued by the Secretary for a
13 project under paragraph (2) shall contain
14 conditions—

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

23 (II) to adequately and equitably
24 protect, mitigate damages to, and en-
25 hance fish and wildlife, including re-

1 lated spawning grounds and habitat,
2 affected by the development, oper-
3 ation, and management of the project.

4 (ii) RECOMMENDATIONS OF THE
5 TRIBES.—The conditions required under
6 clause (i) shall be based on joint rec-
7 ommendations of the Tribes.

8 (iii) RESOLVING INCONSISTENCIES.—

9 (I) IN GENERAL.—If the Sec-
10 retary determines that any rec-
11 ommendation of the Tribes under
12 clause (ii) is not reasonably calculated
13 to ensure the project is consistent
14 with clause (i) or is inconsistent with
15 the requirements of the Reclamation
16 Project Act of 1939 (43 U.S.C. 485 et
17 seq.), the Secretary shall attempt to
18 resolve any such inconsistency with
19 the Tribes, giving due weight to the
20 recommendations and expertise of the
21 Tribes.

22 (II) PUBLICATION OF FIND-
23 INGS.—If, after an attempt to resolve
24 an inconsistency under subclause (I),
25 the Secretary does not adopt in whole

1 or in part a recommendation of the
2 Tribes under clause (ii), the Secretary
3 shall issue each of the following find-
4 ings, including a statement of the
5 basis for each of the findings:

6 (aa) A finding that adoption
7 of the recommendation is incon-
8 sistent with the requirements of
9 the Reclamation Project Act of
10 1939 (43 U.S.C. 485 et seq.).

11 (bb) A finding that the con-
12 ditions selected by the Secretary
13 to be contained in the lease of
14 power privilege under clause (i)
15 comply with the requirements of
16 subclauses (I) and (II) of that
17 subparagraph.

18 (B) ANNUAL CHARGES PAYABLE BY LI-
19 CENSEE.—

20 (i) IN GENERAL.—Subject to clause
21 (ii), any lease of power privilege issued by
22 the Secretary for a project under para-
23 graph (2) shall contain conditions that re-
24 quire the lessee of the project to make di-
25 rect payments to the Tribes through rea-

1 sonable annual charges in an amount that
2 recompenses the Tribes for any adverse
3 economic effect of the project identified in
4 a study performed pursuant to the study
5 plan agreement for the project.

6 (ii) AGREEMENT.—

7 (I) IN GENERAL.—The amount
8 of the annual charges described in
9 clause (i) shall be established through
10 agreement between the proposed les-
11 see and the Tribes.

12 (II) CONDITION.—The agreement
13 under subclause (I), including any
14 modification of the agreement, shall
15 be deemed to be a condition to the
16 lease of power privilege issued by the
17 Secretary for a project under para-
18 graph (2).

19 (iii) DISPUTE RESOLUTION.—

20 (I) IN GENERAL.—If the pro-
21 posed lessee and the Tribes cannot
22 agree to the terms of an agreement
23 under clause (ii)(I), the proposed les-
24 see and the Tribes shall submit notice
25 of the dispute to the Director.

1 (II) RESOLUTION.—The Director
2 shall resolve the dispute described in
3 subclause (I) not later than 180 days
4 after the date on which the Director
5 receives notice of the dispute under
6 that clause.

7 (C) ADDITIONAL CONDITIONS.—The Sec-
8 retary may include in any lease of power privi-
9 lege issued by the Secretary for a project under
10 paragraph (2) other conditions determined ap-
11 propriate by the Secretary, on the condition
12 that the conditions shall be consistent with the
13 Reclamation Project Act of 1939 (43 U.S.C.
14 485 et seq.).

15 (D) CONSULTATION.—In establishing con-
16 ditions under this subsection, the Secretary
17 shall consult with the Tribes.

18 (6) DEADLINES.—The Secretary or any officer
19 of the Office of Hearing and Appeals before whom
20 a proceeding is pending under this paragraph may
21 extend any deadline or enlarge any timeframe de-
22 scribed in this subsection—

23 (A) at the discretion of the Secretary or
24 the officer; or

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

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

7 (8) EFFECT ON OTHER PROJECTS.—Nothing in
8 this section establishes any precedent or is binding
9 on any Bureau of Reclamation lease of power privi-
10 lege, other than for a project.

