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

Page 1540, after line 17, insert the following:

SEC. 33178. BUREAU OF RECLAMATION PUMPED STORAGE
HYDROPOWER DEVELOPMENT ACT.

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

(b) AUTHORITY FOR PUMPED STORAGE HYDRO-
POWER DEVELOPMENT USING MULTIPLE BUREAU OF
RECLAMATION RESERVOIRS.—Section 9(c) of the Recl-
amation 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 devel-
opment” and inserting “and reserve to the Secretary
the exclusive authority to develop small conduit hy-
dropower using Bureau of Reclamation facilities and
pumped storage hydropower exclusively using Bu-
reau of Reclamation reservoirs”; and
(2) in paragraph (8), by striking “has been filed with the Federal Energy Regulatory Commission as of the date of the enactment of the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act” and inserting “was filed with the Federal Energy Regulatory Commission before August 9, 2013, and is still pending”.

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

(1) DEFINITIONS.—In this subsection:

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

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

(C) 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.

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

(i) The proposed lessee.
(ii) The Tribes.

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

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

(ii) 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)).

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

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

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

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

(J) TRIBES.—The term “Tribes” means—

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

(ii) the Spokane Tribe of Indians of
the Spokane Reservation.
(2) Requirement for issuance of leases

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

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

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

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

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

(3) Study plan agreement requirements.—

(A) In general.—A study plan agree-
ment shall—

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

(ii) allow for the parties to submit ad-
ditional comments and study requests if
any aspect of the project, as proposed, dif-
fers from an aspect of the project, as described in a preapplication document provided to the Commission;

(iii) except as expressly agreed to by the parties or as provided in subparagraph (B) or paragraph (4), 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;

(iv) 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);

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

(vi) provide mechanisms for resolving disputes between the parties regarding implementation and enforcement of the study plan agreement; and

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

(B) DISPUTES.—

(i) 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 determination 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 agreement.
(ii) 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.

(iii) 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.

(4) STUDY PLAN.—

(A) 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—

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

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

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

(i) approves the study plan;

(ii) 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

(iii) 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 subclauses (I) and (II) of paragraph (3)(A)(iv);
(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 cul-
tural or spiritually significant re-
sources; and

(V) the environment.

(C) OBJECTIONS.—

(i) In general.—Not later than 30
days after the date on which the Secretary
makes an initial determination under para-
graph (2), the Tribes or the proposed les-
see may submit to the Director an objec-
tion to the initial determination.

(ii) 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, in-
including a description of studies the
proposed lessee is required to perform.

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

(5) CONDITIONS OF LEASE.—

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

(i) IN GENERAL.—Any lease of power
privilege issued by the Secretary for a
project under paragraph (2) 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 en-
hance fish and wildlife, including re-
lated spawning grounds and habitat, affected by the development, operation, and management of the project.

(ii) **RECOMMENDATIONS OF THE TRIBES.**—The conditions required under clause (i) shall be based on joint recommendations of the Tribes.

(iii) **RESOLVING INCONSISTENCIES.**—

(I) **IN GENERAL.**—If the Secretary determines that any recommendation of the Tribes under clause (ii) is not reasonably calculated to ensure the project is consistent with clause (i) 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 subclause (I), the Secretary does not adopt in whole
or in part a recommendation of the Tribes under clause (ii), the Secretary shall issue each of the following findings, including a statement of the basis for each of the findings:

(aa) 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.).

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

(B) ANNUAL CHARGES PAYABLE BY LICENSEE.—

(i) IN GENERAL.—Subject to clause (ii), any lease of power privilege issued by the Secretary for a project under paragraph (2) shall contain conditions that require the lessee of the project to make direct payments to the Tribes through rea-
sonable 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.

(ii) AGREEMENT.—

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

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

(iii) DISPUTE RESOLUTION.—

(I) IN GENERAL.—If the pro-
posed lessee and the Tribes cannot
agree to the terms of an agreement
under clause (ii)(I), the proposed les-
see and the Tribes shall submit notice
of the dispute to the Director.
(II) Resolution.—The Director shall resolve the dispute described in subclause (I) not later than 180 days after the date on which the Director receives notice of the dispute under that clause.

(C) Additional Conditions.—The Secretary may include in any lease of power privilege issued by the Secretary for a project under paragraph (2) 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.).

(D) Consultation.—In establishing conditions under this subsection, the Secretary shall consult with the Tribes.

(6) Deadlines.—The Secretary or any officer of the Office of Hearing and Appeals before whom a proceeding is pending under this paragraph may extend any deadline or enlarge any timeframe described in this subsection—

(A) at the discretion of the Secretary or the officer; or
(B) on a showing of good cause by any party.

(7) 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.

(8) 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.