Elwha River Ecosystem and Fisheries Restoration Act
One Hundred Second Congress of the United States of America
January 3, 1992

To restore Olympic National Park and the Elwha River ecosystem and fisheries (Enrolled Bill (Sent to President))

--H.R.4844--

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One Hundred Second Congress of the United States of America
AT THE SECOND SESSION
Begun and held at the City of Washington on Friday, the third day of January, one thousand nine hundred and ninety-two
An Act
To restore Olympic National Park and the Elwha River ecosystem and fisheries in the State of Washington.

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 referred to as the `Elwha River Ecosystem and Fisheries Restoration Act'.

SEC. 2. DEFINITIONS.

For the purposes of this Act:

(a) The term `Administrator' means the Administrator of the Bonneville Power Administration.

(b) The term `Commission' means the Federal Energy Regulatory Commission.

(c) The term `electric power' means electric peaking capacity or electric energy or both.

(d) The term `Elwha Project' means the Elwha River Hydroelectric Project, Federal Energy Regulatory Commission Project Number 2683, including appurtenant works and project lands, located on the Elwha River in Clallam County, Washington.

(e) The term `Glines Project' means the Glines Canyon Hydroelectric Project, Federal Energy Regulatory Commission Project Number 588, including appurtenant works and project lands, located on private and public lands both within and without the exterior boundaries of Olympic National Park on the Elwha River in Clallam County, Washington.

(f) The term `local industrial consumer' means the owner of the pulp and paper mill located on Ediz Hook in Port Angeles, Washington, that, on the date of enactment of this Act, receives and consumes the electric power produced by the Projects, or its successors or assignees.

(g) The term `local preference customer' means Port Angeles City Light.

(h) The term `owner' means the current owner of the Projects or its successors or assignees, but shall not mean the Secretary, the United States, or any other entity acquiring title to the Projects or features thereof pursuant to the terms of this Act.

(i) The term `Park' means Olympic National Park.

(j) The term `Project' or `Projects' means either or both the Elwha Project and the Glines Project, including project works and appurtenant lands.

(k) The term `project replacement power' means electric power delivered to the local industrial consumer to replace losses of electric power generation from the Projects following their acquisition by the Secretary pursuant to this Act, in an amount not to exceed 172.088 gigawatthours of energy in any year.

(l) The term `Secretary' means the Secretary of the Interior.

(m) The term `State' means the State of Washington, including its agencies and departments.

SEC. 3. ACQUISITION OF PROJECTS.

(a) Effective sixty days after submission to the Congress of the report referred to in section 3(c), the Secretary is authorized to acquire the Elwha and Glines Canyon Projects, and all rights of the owner and local industrial consumer therein, subject to the appropriation of funds therefor: Provided, That the Secretary shall not acquire the projects unless he has determined pursuant to subsection (c) that removal of the Project dams is necessary for the full restoration of the Elwha River ecosystem and native anadromous fisheries and that funds for that purpose will be available for such removal within two years after acquisition.

(b) The consideration for acquisition of the Projects shall be $29.5 million and no more, to be paid by the Secretary to the owner and local industrial consumer at the time of acquisition, and shall be conditioned on a release of liability providing that all obligations

and liabilities of the owner and the local industrial consumer to the United States arising from the Projects, based upon ownership, license, permit, contract, or other authority, including, but not limited to, project removal and any ecosystem, fish and wildlife mitigation or restoration obligations, shall, from the moment of title transfer, be deemed to have been satisfied: Provided, That the United States may not assume or satisfy any liability, if any, of the owner or local industrial consumer to any federally recognized Indian Tribe nor shall such liability to the Tribe, if any, be deemed satisfied without the consent of such Tribe.

(c) The Secretary shall prepare a report on the acquisition of the Projects and his plans for the full restoration of the Elwha River ecosystem and the native anadromous fisheries and submit such report on or before January 31, 1994, to the Appropriations Committees of the United States Senate and the United States House of Representatives, as well as to the Committee on Energy and Natural Resources of the Senate and the Committees on Energy and Commerce, Interior and Insular Affairs, and Merchant Marine and Fisheries of the United States House of Representatives. The report shall contain, without limitation:

(1) The precise terms of acquisition of the Projects, with an analysis of the costs, in addition to the consideration set out in section 3(b), and potential liabilities and benefits, if any, to the Federal Government resulting from the acquisition and all other actions authorized under this Act;

(2) Alternatives, in lieu of dam removal, for the restoration of the Elwha River ecosystem and the native anadromous fisheries and wildlife of the Elwha River Basin, consistent with the management plan of the Park, the rights of any Indian tribe secured by treaty or other Federal law, and applicable State law. The report shall include feasibility studies for each alternative considered and a definite plan for removal. Such definite plan shall include the timetable after conveyance for removal of the dams and the plans for removal and disposal of sediment, debris, and other materials consistent with all applicable environmental laws and a detailed explanation of all costs of removal. In conducting the feasibility studies and in the preparation of the definite plan, the Secretary is authorized to use the services of any Federal agency on a reimbursable basis and the heads of all Federal agencies are authorized to provide such technical and other assistance as the Secretary may request. For each alternative considered, the Secretary shall estimate total costs, environmental risks and benefits, the potential for full restoration of the Elwha River ecosystem and native anadromous fisheries, and the effect on natural and historic resources (together with any comments made by the Advisory Council on Historic Preservation for any properties which are listed, or eligible for listing, on the National Register of Historic Places).

(3) Specific proposals for management of all lands or interests therein acquired pursuant to this Act which are located outside the exterior boundaries of the Olympic National Park. The Secretary shall specifically address the suitability of such lands, or portions thereof, for addition to the National Wildlife Refuge System; National Park System; transfer to the Lower Elwha Klallam Tribe in trust for tribal housing, cultural, or

economic development purposes in accordance with a plan developed by the Lower Elwha Klallam Tribe in consultation with the Secretary; and development and use by the State. Upon acquisition, all lands and interests therein within the exterior boundaries of the Park shall be managed pursuant to authorities otherwise applicable to the Park. For the purposes of protecting the Federal investment in restoration, that portion of the river outside the Park on which the Federal Government will acquire both banks shall, upon such acquisition, be managed in accordance with the declared policy of section 1(b) of Public Law 90-542, except that modifications necessary to restore, protect, and enhance fish resources and to protect the existing quality of water supplied from the river are hereby authorized.

(4) Specific proposals and any Federal funding and the availability of that funding that may be necessary to protect the existing quality and availability of water from the Elwha River for municipal and industrial use from possible adverse impacts of dam removal.

(5) Identification of any non-Federal parties or entities, excluding Federally recognized Indian tribes, which would directly benefit from the commercial, recreational, and ecological values that would be enhanced by the restoration of the Elwha River ecosystem and fisheries, if the Secretary believes that such parties or entities should assume some portion of the cost involved in the restoration, together with the specific cost-share provisions which the Secretary deems necessary and reasonable.

(d) In preparing his report, the Secretary shall consult with appropriate State and local officials, affected Indian tribes, the Commission, the Environmental Protection Agency, the Secretary of Energy, the Administrator, the Pacific Northwest Power Planning Council, the Secretary of Commerce, and of the Advisory Council on Historic Preservation, as well as interested members of the public. In addition, the Secretary shall afford an opportunity for public comment on the report prior to its submission to the Congress.

(e) Upon the appropriation of the sum provided for in section 3(b) for the acquisition of the Projects and the determination that dam removal is necessary, the owner and local industrial consumer shall convey to the United States, through the Secretary, title to the Projects, including all property and all other rights and interests. Upon such conveyance and payment of the consideration as provided in section 3(b), and without further action by the United States, title shall transfer and vest in the United States, the owner and local industrial consumer shall be released from any further liability to the United States, as provided in section 3(b), and the acquisition from the owner and local industrial consumer shall be deemed to be completed.

SEC. 4. ECOSYSTEM AND FISHERIES RESTORATION.

(a) Effective sixty days after submission of the report referred to in section 3(c) and following the conveyance in section 3(e), the Secretary is authorized and directed, subject to the appropriation of funds therefor, to take such actions as are necessary to implement-
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(1) the definite plan referred to in section 3(c)(2) for the removal of the dams and full restoration of the Elwha River ecosystem and native anadromous fisheries;

(2) management of lands acquired pursuant to this Act which are located outside the exterior boundaries of the Park; and

(3) protection of the existing quality and availability of water from the Elwha River for municipal and industrial uses from possible adverse impacts of dam removal.

(b) The definite plan referred to section 3(c)(2) must include all actions reasonably necessary to maintain and protect existing water quality for the City of Port Angeles, Dry Creek Water Association, and the industrial users of Elwha River water against adverse impacts of dam removal. The cost of such actions, which may include as determined by the Secretary, if reasonably necessary, design, construction, operation and maintenance of water treatment or related facilities, shall be borne by the Secretary. Funds may not be appropriated for removal of the dams, unless, at the same time, funds are appropriated for actions necessary to protect existing water quality.

(c) Nothing in this section shall be construed as an entitlement for which a claim against the United States may be made under the Tucker Act.

SEC. 5. PROJECT OPERATION AND REPLACEMENT POWER.

(a) Notwithstanding any other provision of law, neither the Federal Energy Regulatory Commission nor any other agency of the Federal Government shall have the authority or jurisdiction to issue a permanent license or similar order with respect to either Project prior to conveyance as provided in section 3(e), except that the Commission shall have jurisdiction under the Federal Power Act and is hereby authorized and directed to issue or maintain in effect annual licenses or authorizations for both Projects, authorizing continued operation of both Projects by the owner and local industrial consumer, such operation to be under such terms and conditions and in accordance with such practices as existed on September 1, 1992, until (1) the date the Secretary has acquired title to the Projects or (2) if the Secretary's report required in section 3(c) does not provide for dam removal, five years after the expiration of the current annual license or authorization then in effect, after which time the Commission shall have authority under the Federal Power Act to issue appropriate licenses with respect to such Projects to the extent the Commission has jurisdiction over such Projects under such Act on the date of enactment of this Act.

(b) To ensure the availability of adequate electric power supplies to the operating facilities of the local industrial consumer, the Administrator shall, following acquisition of the Projects pursuant to this Act, deliver all project replacement power required by the operating facilities of the local industrial consumer through the local preference customer at a rate equal to the priority firm rate, or the rate which is then the equivalent of the priority firm rate if that designation is no longer used by the Administrator, as such rate is fixed by the Administrator from time to time, without regard to any new large single load

determinations or similar factors. The local industrial consumer shall pay the local preference customer for such project replacement power at the same rate as all other industrial consumers of the local preference customer.

(c) Upon conveyance of the Projects to the United States, the Secretary shall maintain the dams in a safe condition for the period prior to their removal.

SEC. 6. LEASE OF FEDERAL LANDS.

(a) LEASE OF LANDS TO THE CITY OF PORT ANGELES- After the Secretary makes the determination to remove the dams and actually acquires the projects and funds are appropriated for such conveyance and removal, the Secretary is authorized to issue a lease to the City of Port Angeles, Washington, for those lands situated on Ediz Hook, Clallam County, Washington, currently leased to the City under Lease No. DOT-CG13-4811-72, dated April 4, 1972, as amended, except for that parcel of land described in subsection (b)(2). Such lease shall be issued pursuant to the Act of June 14, 1926, as amended (43 U.S.C. 869), for a period of 99 years, beginning on a date to be determined by the Secretary, without right of patent.

(b) LEASE OF LANDS TO THE LOWER ELWHA KLALLAM TRIBE- (1) After the Secretary makes the determination to remove the dams and actually acquires the Projects and funds are appropriated for such conveyance and removal, the Secretary is authorized to lease to the Lower Elwha Klallam Tribe that parcel of land situated on Ediz Hook, Clallam County, Washington, described in paragraph (2) for the purposes of the construction and operation of a tribal cultural facility, such as a longhouse or a museum, and associated interpretive and parking facilities. Such lease shall be issued pursuant to the Act of June 14, 1926, as amended (43 U.S.C. 869), for a period of ninety-nine years beginning on a date determined by the Secretary, without right of patent.

(2) The parcel of land to be leased to the Lower Elwha Klallam Tribe is that parcel of land lying south of the existing roadway and extending southward to the southern boundary of the land currently leased to the City of Port Angeles (Lease No. DOT-CG13-4811-72, dated April 4, 1972, as amended) and beginning at the north-south line 200 feet east of the western boundary of Out Lot 6 and running easterly 600 feet to the north-south line 300 feet west of the eastern boundary of Out Lot 6.

(3) In addition to the general terms and conditions applicable under the Act of June 14, 1926, as amended (43 U.S.C. 869), the lease to the Tribe shall be subject to the following terms and conditions:

(A) There shall be public access to the beach along the south side of the parcel at all times.

(B) The City of Port Angeles shall have the right to construct and maintain a waterfront trail adjacent to the existing roadway along the north side of the parcel, the location of which shall be determined in conjunction with the Secretary.

(C) Parking facilities on the parcel shall be open to the public at all times.

(c) In addition to the terms and conditions described in this section for the leases to the City and the Tribe, the Secretary shall incorporate by reference into each lease the Agreement entered into on August 11, 1992, between the City and the Tribe regarding the use of the adjacent leaseholds.

SEC. 7. TRIBAL LAND ACQUISITION AND DEVELOPMENT.

(a) After the Secretary makes the determination to remove the dams and actually acquires the Projects and funds are appropriated for such conveyance and removal, the Secretary is authorized to acquire by purchase, and hold in trust in reservation status for the benefit of the Lower Elwha Klallam Tribe, lands in Clallam County, Washington, for housing, economic development, and moorage for the Tribal commercial fishing fleet.

(b) There is authorized to be appropriated an amount not to exceed $4,000,000 to carry out the land acquisition purposes of this section.

SEC. 8. SAVINGS.

(a) Nothing in this Act shall abridge or modify existing rights to Elwha River water.

(b) Nothing in this Act shall affect the rights of any Indian Tribe secured by Treaty or other law of the United States.

(c) This Act does not modify any of the Administrator's obligations or require the Administrator to take any actions regarding the protection, mitigation, or enhancement of fish and wildlife or expand those provided for under the Pacific Northwest Power Planning and Conservation Act, Public Law 96-501. Notwithstanding any other provision of law, the Administrator shall not be required to make any expenditures from the Bonneville Power Administration fund for the operation, maintenance, rehabilitation, improvement, or removal, breach, or bypass of the Projects.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of the Interior for expenditure through the Assistant Secretary for Fish, Wildlife, and Parks and to the Secretary of Commerce for

expenditure through the National Marine Fisheries Service such sums as may be necessary to carry out the purposes of this Act: Provided, That such authorization shall not become effective until sixty days following submission of the report provided for in section (3)(c) of this Act.
Speaker of the House of Representatives.

Vice President of the United States,

President of the Senate.