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Read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To amend the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1027), and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Old Faithful Protec-
5 tion Act of 1993”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds that—

8 (1) Yellowstone National Park is a unique and
9 irreplaceable national and international treasure and
10 part of one of the few remaining undisturbed hydro-
11 thermal systems in the world;

1 (2) there is a risk that unrestricted ground-
2 water use or hydrothermal or geothermal resource
3 development adjacent to Yellowstone National Park
4 in the States of Montana, Wyoming, and Idaho will
5 interfere or adversely affect the hydrothermal and
6 geothermal features of such Park or the manage-
7 ment of relevant mineral resources;

8 (3) further research is needed to understand
9 the characteristics of the protected systems and fea-
10 tures and the effects of development on such sys-
11 tems and features on lands outside of Yellowstone
12 National Park but within the Yellowstone Protection
13 Area, as such area is defined in this Act;

14 (4) preservation and protection, free from in-
15 jury or impairment, of the hydrothermal system as-
16 sociated with and the features within Yellowstone
17 National Park is a benefit to the people of the
18 United States and the world;

19 (5) cooperation between the United States and
20 the States of Montana, Idaho, and Wyoming to pro-
21 tect and preserve Yellowstone National Park is de-
22 sirable; and

23 (6) as a settlement of litigation concerning
24 water rights, including the reserved water rights of
25 the United States associated with units of the Na-

1 tional Park System in Montana, the Department of
2 the Interior and the Department of Justice, on be-
3 half of the United States, and a Compact Commis-
4 sion, on behalf of the State of Montana, have devel-
5 oped a Compact that, when ratified by the State and
6 signed by the Secretary of the Interior and the At-
7 torney General of the United States, will constitute
8 such a settlement of litigation concerning matters
9 within its scope and which, in Article IV, also estab-
10 lishes a program for regulation of development and
11 use of groundwater in areas adjacent to Yellowstone
12 National Park.

13 (b) PURPOSES.—The purposes of this Act are—

14 (1) to require the Secretary to take the nec-
15 essary actions to preserve and protect the hydro-
16 thermal system associated with, and the hydro-
17 thermal and geothermal features within, Yellowstone
18 National Park from injury or impairment by protect-
19 ing the Federal reserved water rights of Yellowstone
20 National Park;

21 (2) to provide a framework for management by
22 the States of Montana, Wyoming, and Idaho of reg-
23 ulated resources outside of but significantly related
24 to Yellowstone National Park to the extent such
25 States implement appropriate approved programs for

1 such management that are adequate to preserve and
2 protect, free from injury or impairment, the pro-
3 tected systems and features;

4 (3) to authorize, as provided in section 8, ap-
5 proval of Article IV of the Compact as such an ap-
6 propriate State program; and

7 (4) to require relevant research.

8 **SEC. 3. DEFINITIONS.**

9 For purposes of this Act:

10 (1) The term “Secretary” means the Secretary
11 of the Interior.

12 (2) The term “Yellowstone Protection Area”
13 means the area in Montana, Idaho, and Wyoming
14 identified on the map entitled “Yellowstone Protec-
15 tion Area”, numbered 20036, and dated May 1993,
16 and any modifications thereof as may be made under
17 section 7.

18 (3) The term “protected systems and features”
19 means the hydrothermal and geothermal systems
20 and hydrothermal and geothermal features associ-
21 ated with Yellowstone National Park.

22 (4) The term “regulated resources” means—

23 (A) geothermal steam and associated geo-
24 thermal resources, as defined in section 2(c) of

1 the Geothermal Steam Act of 1970 (30 U.S.C.
2 1001(c)); and

3 (B) hydrothermal resources.

4 (5) The term “geothermal well” means a well
5 or facility producing or intended to produce regu-
6 lated resources.

7 (6) The term “hydrothermal system” means a
8 groundwater system, including cold water recharge
9 and transmission and warm and hot water dis-
10 charge.

11 (7) The term “hydrothermal resources” means
12 groundwater with a temperature in excess of 59 de-
13 grees Fahrenheit and any other groundwater that,
14 on the basis of research pursuant to section 6, and,
15 in a State with an approved State program, pursu-
16 ant to the procedures in such approved State pro-
17 gram, is determined to have characteristics that in-
18 dicate it may be directly related to the protected sys-
19 tems and features.

20 (8) The term “approved State program” means
21 a program of Montana, Idaho, or Wyoming that has
22 been submitted to the Secretary and has been ap-
23 proved pursuant to this Act.

1 (9) The term “Compact” means the water
2 rights compact ratified in 1993 by the State of Mon-
3 tana through enactment of H.B. 692.

4 (10) Except as otherwise provided in this Act,
5 terms used in this Act shall have the same meaning
6 as in the Geothermal Steam Act of 1970.

7 **SEC. 4. RESTRICTION ON FEDERAL LANDS.**

8 The Geothermal Steam Act of 1970 (30 U.S.C. 1001
9 and following) is amended by adding at the end thereof
10 the following new section:

11 “SEC. 30. (a) The Congress hereby declares that—

12 “(1) Yellowstone National Park possesses nu-
13 merous hydrothermal and geothermal features, in-
14 cluding Old Faithful geyser and approximately
15 10,000 other geysers and hot springs, and warrants
16 designation as a significant thermal feature unto
17 itself;

18 “(2) the establishment of the Park in 1872 re-
19 served to the United States a water right which in-
20 cludes a right with respect to groundwater (includ-
21 ing the water in the hydrothermal system supporting
22 such features) necessary to preserve and protect
23 such features for the benefit of future generations;
24 and

1 “(3) Federal legislation is desirable to protect
2 these Federal water rights from possible injury or
3 damage.

4 “(b) The Congress hereby declares that any use of,
5 or production from, any existing geothermal well, as such
6 term is defined in section 3(5) of the Old Faithful Protec-
7 tion Act of 1993, or any exploration for, or development
8 of, any new geothermal well or any facility related to the
9 use of geothermal steam and associated geothermal re-
10 sources within the boundary of the Yellowstone Protection
11 Area, as defined in section 3(2) of the Old Faithful Pro-
12 tection Act of 1993, risks adverse effects on the hydro-
13 thermal and geothermal features of Yellowstone National
14 Park.

15 “(c) The Secretary shall not issue a lease under this
16 Act for lands within the boundary of the Yellowstone Pro-
17 tection Area, as defined in section 3(2) of the Old Faithful
18 Protection Act of 1993. Nothing in this section shall be
19 construed to either affect the ban on leasing referenced
20 under section 28(f) or to apply to any lands not owned
21 by the United States.”.

22 **SEC. 5. MORATORIUM ON OTHER LANDS.**

23 (a) PROHIBITION.—(1) Except as provided by sec-
24 tions 7 and 8 of this Act, there shall be no use (except
25 for monitoring by the Secretary or monitoring under an

1 approved State program) of, or production from, any ex-
2 isting geothermal well and no exploration for, or develop-
3 ment of, any new geothermal well or any other new facility
4 related to the use of regulated resources within the Yellow-
5 stone Protection Area.

6 (2) Nothing in this subsection shall be construed to
7 affect existing facilities other than geothermal wells.

8 (b) MANAGEMENT.—The Secretary shall review Na-
9 tional Park Service management of Yellowstone National
10 Park and shall take such steps as may be necessary to
11 protect the protected systems and features and the hydro-
12 thermal, geothermal, and groundwater resources of such
13 National Park free from injury or impairment.

14 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion shall be construed to affect the ban or prohibitions
16 referenced under sections 28(f) and 30(c) of the Geo-
17 thermal Steam Act of 1970.

18 **SEC. 6. RESEARCH.**

19 (a) IN GENERAL.—The National Park Service, in
20 consultation with the Forest Service, the United States
21 Geological Survey, and each State agency implementing
22 an approved State program, shall research the characteris-
23 tics of the protected systems and features, inventory and
24 research the existing and potential effects (including cu-
25 mulative effects) of hydrothermal, geothermal, mineral, or

1 other resources development (including development of
2 groundwater other than regulated resources) on such sys-
3 tems and features, and periodically inform Congress con-
4 cerning the results of such inventory and research.

5 (b) UNDER STATE PROGRAM.—If an approved State
6 program provides for research described in subsection (a),
7 the Secretary, in cooperation with the relevant State, may
8 conduct such research in areas within and adjoining Yel-
9 lowstone National Park.

10 (c) NONINTRUSIVE METHODOLOGIES.—Except for
11 research within a National Park System unit approved by
12 the Secretary or elsewhere under a permit issued by a
13 State agency implementing an approved State program,
14 research pursuant to this section shall exclusively use
15 nonintrusive methodologies.

16 (d) LIMITATION.—Nothing in this Act shall be con-
17 strued as authorizing any activities within any unit of the
18 National Park System inconsistent with laws or policies
19 applicable to the relevant unit.

20 **SEC. 7. STATE MANAGEMENT PROGRAMS.**

21 (a) DEVELOPMENT.—The States of Montana, Wyo-
22 ming, and Idaho are encouraged to develop State pro-
23 grams for the management of regulated resources outside
24 of Yellowstone National Park to preserve and protect, free

1 from injury or impairment, the protected systems and
2 features.

3 (b) PERMIT.—As of the date of enactment of this
4 Act, no person shall engage in any use (including re-
5 search), production, exploration, or development of any
6 regulated resources on any land located within the Yellow-
7 stone Protection Area except to the extent authorized by
8 a permit issued by a State agency implementing an ap-
9 proved State program.

10 (c) STATE AUTHORITY.—(1) In the implementation
11 of an approved State program, a State may exercise the
12 authority to grant permits under subsection (b) for the
13 use (including research), production, exploration, or devel-
14 opment of any regulated resources within the Yellowstone
15 Protection Area.

16 (2) Notwithstanding any other provision of law, no
17 permit issued prior to the date of enactment of this Act
18 shall be deemed to have been issued in the implementation
19 of an approved State program, but in the event that after
20 the date of enactment of this Act the Secretary, on the
21 basis of research pursuant to section 6, determines that
22 groundwater with a temperature of 59 degrees Fahrenheit
23 or less has characteristics that indicate it may be directly
24 related to the protected systems and features, a permit
25 issued prior to such determination with respect to such

1 groundwater shall not be invalidated unless, pursuant to
2 the procedures in an approved State program it is deter-
3 mined that continued utilization of the groundwater cov-
4 ered by such permit would be inconsistent with the pur-
5 poses of this Act.

6 (3)(A) The Secretary shall monitor the implementa-
7 tion of an approved State program (including the State's
8 enforcement thereof) to assure consistency with the re-
9 quirements of this Act.

10 (B) The Secretary may suspend implementation of an
11 approved State program if such implementation (including
12 the State's enforcement thereof) is not being exercised in
13 a manner consistent with this Act. During any such sus-
14 pension, no permit granted under such program shall be
15 effective except to the extent the Secretary determines
16 that the permitted activities would be consistent with the
17 purposes of this Act.

18 (C) If an approved State program includes proce-
19 dures for the exercise of the Secretary's authority to sus-
20 pend such a program's implementation, the Secretary
21 shall follow such procedures.

22 (d) APPROVAL BY THE SECRETARY.—(1) The Sec-
23 retary may approve a program submitted by a State if
24 the Secretary determines that such program, when imple-

1 mented, will fulfill the purposes of this Act regarding the
2 protection of the protected systems and features.

3 (2) The Secretary shall not approve any State pro-
4 gram submitted under this section until the Secretary
5 has—

6 (A) solicited, publicly disclosed, and considered
7 the views of the heads of other State and Federal
8 agencies the Secretary determines are concerned
9 with the proposed State program;

10 (B) solicited, publicly disclosed, and considered
11 the views of the public; and

12 (C) found that the State has the necessary legal
13 authority and qualified personnel for the regulation
14 and management of regulated resources outside Yel-
15 lowstone National Park consistent with the require-
16 ments of this Act.

17 (3)(A) The Secretary may approve or disapprove a
18 program in whole or in part.

19 (B) If the Secretary disapproves any proposed State
20 program, in whole or in part, the Secretary shall notify
21 the State in writing of the decision and set forth in detail
22 the reasons therefor. The State may submit a revised
23 State program or portion thereof.

24 (4) The Secretary shall not approve any State pro-
25 gram that does not, at a minimum—

1 (A) include ongoing scientific review of restric-
2 tions, boundaries, and permits applicable to the de-
3 velopment of a regulated resource;

4 (B) require that, in conducting the scientific re-
5 view referred to in subparagraph (A) and in imple-
6 menting the State program, any doubt shall be re-
7 solved in favor of protection of the protected systems
8 and features;

9 (C) allow the State agency authorized to admin-
10 ister the program to reject recommendations based
11 on the scientific review referred to in subparagraph
12 (A), to the extent such rejection is necessary to
13 guarantee no adverse effect on the hydrothermal sys-
14 tem within Yellowstone National Park; and

15 (D) enable citizens of such State to obtain judi-
16 cial review of actions taken by the State agency im-
17 plementing the program to the extent necessary to
18 assure that such actions are consistent with all ap-
19 plicable law, including this Act.

20 (e) SCOPE.—Except to the extent an approved State
21 program is being implemented by a State, section 5(a) of
22 this Act shall apply to the Yellowstone Protection Area.

23 (f) MODIFICATION OF YELLOWSTONE PROTECTION
24 AREA.—(1) The boundaries of the Yellowstone Protection
25 Area in a State may be modified pursuant to an approved

1 State program to the extent such modification is approved
2 by the Secretary.

3 (2) The Secretary shall not approve any such modi-
4 fication that the Secretary finds would not be consistent
5 with the purposes of this Act.

6 (3) The Secretary shall revise the map of the Yellow-
7 stone Protection Area to reflect any approved boundary
8 modifications.

9 (4) If an approved State program includes procedures
10 for the exercise of the Secretary's authority to approve
11 modifications of the boundaries of the Yellowstone Protec-
12 tion Area, the Secretary shall follow such procedures.

13 (g) COOPERATIVE AGREEMENTS.—The Secretary is
14 authorized to enter into cooperative agreements with the
15 States of Montana, Idaho, and Wyoming and with the Sec-
16 retary of Agriculture to fulfill the purposes of this Act.

17 (h) FEDERAL FINANCIAL ASSISTANCE.—(1) Subject
18 to appropriation, the Secretary may provide financial as-
19 sistance for the implementation of an approved State pro-
20 gram. In providing such assistance, the Secretary may
21 enter into appropriate funding agreements, including
22 grants and cooperative agreements, with a State agency
23 or agencies, upon such terms and conditions as the Sec-
24 retary deems appropriate.

1 (2) A recipient State may invest funds provided
2 under this subsection so long as such funds, together with
3 interest and any other earnings thereon, shall be available
4 for use by the State only under the terms and conditions
5 of the approved State program and an agreement entered
6 into with the Secretary under this subsection and shall
7 not be used by the State for any other purpose.

8 **SEC. 8. MONTANA PROGRAM.**

9 (a) APPROVAL.—(1) The Congress finds that Article
10 IV of the compact, when implemented, will fulfill the pur-
11 poses of this Act regarding the protection of the protected
12 systems and features.

13 (2) All provisions of section 7 are applicable to this
14 section, except for purposes of section 7(d)(1) the Com-
15 pact shall be deemed to have been submitted to the Sec-
16 retary, and, notwithstanding sections 7(d)(2), 7(d)(3), and
17 7(d)(4), once signed by the Secretary and the Attorney
18 General of the United States, Article IV thereof shall be
19 considered an approved State program for regulation of
20 groundwater resources, including the hydrothermal re-
21 sources within the Montana portion of the Yellowstone
22 Protection Area. Article IV of the Compact shall not be
23 considered an approved State program for the manage-
24 ment of regulated resources within the Montana portion

1 of the Yellowstone protection area other than groundwater
2 resources.

3 (b) SCOPE.—Nothing in this Act shall be construed
4 as amending the Compact or as altering its status in rela-
5 tionship to any litigation with regard to water rights.

6 (c) REVIEW PROCEDURES.—For purposes of sections
7 7(c)(3)(B), 7(c)(3)(C), 7(f)(1), and 7(f)(2), the provisions
8 of the Compact with respect to—

9 (1) review of administrative decisions under Ar-
10 ticle IV of the Compact;

11 (2) enforcement of the Compact;

12 (3) the discretion of any party to the Compact
13 to withdraw therefrom; and

14 (4) modification of boundaries and restrictions
15 within the Controlled Groundwater Area,

16 shall be deemed to be procedures for the exercise of the
17 Secretary's authority to approve modifications of the
18 boundaries of the Yellowstone Protection Area or to sus-
19 pend the implementation of an approved State program.

20 **SEC. 9. IDAHO PROGRAM.**

21 For purposes of section 7(d)(1), the provisions of
22 Section 42 of the Idaho Code related to geothermal re-
23 sources shall be deemed to have been submitted to the Sec-
24 retary for approval as an approved State program.

1 **SEC. 10. WYOMING PROGRAM.**

2 For purposes of section 7(d)(1), the provisions of the
3 laws of the State of Wyoming referenced in the letter from
4 the Wyoming State Engineer included in the Committee
5 report to accompany H.R. 1137 of the 103rd Congress
6 shall be deemed to have been submitted to the Secretary
7 for approval as an approved State program.

8 **SEC. 11. CITIZEN SUITS.**

9 (a) IN GENERAL.—(1) Any person may commence a
10 civil suit on the person's own behalf to enjoin any party,
11 including the United States, except for a State or agency
12 or political subdivision thereof, that the plaintiff alleges—

13 (A) is in violation of any provision of this Act;

14 or

15 (B) is using a regulated resource in the absence
16 of, or beyond the scope of the terms or conditions
17 of, a permit issued pursuant to an approved State
18 program, or in violation of regulations issued under
19 the authority of an approved State program.

20 (2) The Federal district courts shall have jurisdiction,
21 without regard to the amount in controversy or the citizen-
22 ship of the parties—

23 (A) to require the Secretary or another party to
24 take any steps required or permitted by this Act, if
25 those steps are necessary to fulfill the purposes of
26 this Act; or

1 (B) to enforce the provisions, prohibitions, per-
2 mits, or regulations of an approved State program.

3 (b) VENUE AND INTERVENTION.—(1) Any suit under
4 this section may be brought in any appropriate judicial
5 district.

6 (2) In any such suit under this section in which the
7 United States is not a party, the Attorney General of the
8 United States, at the request of the Secretary, may inter-
9 vene on behalf of the United States as a matter of right.

10 (c) COSTS.—The court, in issuing any final order in
11 any suit brought under this section, may award costs of
12 litigation (including reasonable attorney and expert wit-
13 ness fees) to any party, whenever the court determines
14 such award is appropriate.

15 (d) NONEXCLUSIVE RELIEF.—The injunctive relief
16 provided by this subsection shall not restrict any right
17 which any person (or class of persons) may have under
18 any statute or common law to seek judicial review of ac-
19 tions taken by the State agency implementing an approved
20 State program or to seek enforcement of any standard or
21 limitation or to seek any other relief including relief
22 against the Secretary.

23 (e) NOTICE.—Before seeking the injunctive relief au-
24 thorized under this section, notice of intent to sue shall
25 be given to the Secretary, the State agency implementing

1 any relevant approved State program described in section
2 7, and each intended defendant. Such notice shall allow
3 the minimum period of time necessary for an intended de-
4 fendant to take those measures that (1) will cure any al-
5 leged violations of this Act, or (2) will end any alleged
6 improper use of regulated resources, as described in sub-
7 section (a)(1)(B).

8 **SEC. 12. JUDICIAL REVIEW.**

9 (a) ADMINISTRATIVE PROCEDURES.—Except as pro-
10 vided in this section, any Federal agency action or failure
11 to act to implement or enforce this Act shall be subject
12 to judicial review in accordance with and to the extent pro-
13 vided by chapter 7 of title 5, United States Code.

14 (b) REMEDY.—The sole remedy available to any per-
15 son claiming deprivation of a vested property right by en-
16 actment of this Act or Federal action pursuant to this Act
17 shall be an action for monetary damages, filed pursuant
18 to sections 1491 or 1505 of title 28, United States Code,
19 in the Court of Federal Claims. Any just compensation
20 awards determined by the Court of Federal Claims to be
21 due to a claimant shall be paid consistent with section
22 2517 of such title.

1 **SEC. 13. REGULATIONS.**

2 No later than two years after the date of enactment
3 of this Act, the Secretary shall promulgate such rules and
4 regulations as are necessary to implement this Act.

5 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

6 There are authorized to be appropriated such sums
7 as may be necessary to carry out this Act.

8 **SEC. 15. SCOPE OF ACT.**

9 Nothing in this Act shall be construed as increasing
10 or diminishing any rights of the United States with re-
11 spect to water, or as affecting any previous adjudication
12 of or any agreement concerning any such rights.

Passed the House of Representatives November 15,
1993.

Attest: DONNALD K. ANDERSON,
Clerk.

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