

**Union Calendar No. 198**

103D CONGRESS  
1ST SESSION

**H. R. 1137**

**[Report No. 103-364]**

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**A BILL**

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

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NOVEMBER 15, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1993

Mr. WILLIAMS introduced the following bill; which was referred to the Committee on Natural Resources

NOVEMBER 15, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 24, 1993]

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## A BILL

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 Protection*  
5        *Act of 1993".*

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) *FINDINGS.*—*The Congress finds that—*

3 (1) *Yellowstone National Park is a unique and*  
4 *irreplaceable national and international treasure and*  
5 *part of one of the few remaining undisturbed hydro-*  
6 *thermal systems in the world;*

7 (2) *there is a risk that unrestricted groundwater*  
8 *use or hydrothermal or geothermal resource develop-*  
9 *ment adjacent to Yellowstone National Park in the*  
10 *States of Montana, Wyoming, and Idaho will inter-*  
11 *fere or adversely affect the hydrothermal and geo-*  
12 *thermal features of such Park or the management of*  
13 *relevant mineral resources;*

14 (3) *further research is needed to understand the*  
15 *characteristics of the protected systems and features*  
16 *and the effects of development on such systems and*  
17 *features on lands outside of Yellowstone National*  
18 *Park but within the Yellowstone Protection Area, as*  
19 *such area is defined in this Act;*

20 (4) *preservation and protection, free from injury*  
21 *or impairment, of the hydrothermal system associated*  
22 *with and the features within Yellowstone National*  
23 *Park is a benefit to the people of the United States*  
24 *and the world;*

25 (5) *cooperation between the United States and*  
26 *the States of Montana, Idaho, and Wyoming to pro-*

1 *tect and preserve Yellowstone National Park is desir-*  
2 *able; and*

3 *(6) as a settlement of litigation concerning water*  
4 *rights, including the reserved water rights of the*  
5 *United States associated with units of the National*  
6 *Park System in Montana, the Department of the Inte-*  
7 *rior and the Department of Justice, on behalf of the*  
8 *United States, and a Compact Commission, on behalf*  
9 *of the State of Montana, have developed a Compact*  
10 *that, when ratified by the State and signed by the*  
11 *Secretary of the Interior and the Attorney General of*  
12 *the United States, will constitute such a settlement of*  
13 *litigation concerning matters within its scope and*  
14 *which, in Article IV, also establishes a program for*  
15 *regulation of development and use of groundwater in*  
16 *areas adjacent to Yellowstone National Park.*

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

18 *(1) to require the Secretary to take the necessary*  
19 *actions to preserve and protect the hydrothermal sys-*  
20 *tem associated with, and the hydrothermal and geo-*  
21 *thermal features within, Yellowstone National Park*  
22 *from injury or impairment by protecting the Federal*  
23 *reserved water rights of Yellowstone National Park;*

24 *(2) to provide a framework for management by*  
25 *the States of Montana, Wyoming, and Idaho of regu-*

1 *lated resources outside of but significantly related to*  
2 *Yellowstone National Park to the extent such States*  
3 *implement appropriate approved programs for such*  
4 *management that are adequate to preserve and pro-*  
5 *tect, free from injury or impairment, the protected*  
6 *systems and features;*

7 *(3) to authorize, as provided in section 8, ap-*  
8 *proval of Article IV of the Compact as such an appro-*  
9 *priate State program; and*

10 *(4) to require relevant research.*

11 **SEC. 3. DEFINITIONS.**

12 *For purposes of this Act:*

13 *(1) The term “Secretary” means the Secretary of*  
14 *the Interior.*

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

21 *(3) The term “protected systems and features”*  
22 *means the hydrothermal and geothermal systems and*  
23 *hydrothermal and geothermal features associated with*  
24 *Yellowstone National Park.*

25 *(4) The term “regulated resources” means—*

1           (A) *geothermal steam and associated geo-*  
2           *thermal resources, as defined in section 2(c) of*  
3           *the Geothermal Steam Act of 1970 (30 U.S.C.*  
4           *1001(c)); and*

5           (B) *hydrothermal resources.*

6           (5) *The term “geothermal well” means a well or*  
7           *facility producing or intended to produce regulated*  
8           *resources.*

9           (6) *The term “hydrothermal system” means a*  
10          *groundwater system, including cold water recharge*  
11          *and transmission and warm and hot water discharge.*

12          (7) *The term “hydrothermal resources” means*  
13          *groundwater with a temperature in excess of 59 de-*  
14          *grees Fahrenheit and any other groundwater that, on*  
15          *the basis of research pursuant to section 6, and, in a*  
16          *State with an approved State program, pursuant to*  
17          *the procedures in such approved State program, is de-*  
18          *termined to have characteristics that indicate it may*  
19          *be directly related to the protected systems and fea-*  
20          *tures.*

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

1           (9) *The term “Compact” means the water rights*  
2 *compact ratified in 1993 by the State of Montana*  
3 *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 the*  
10 *following new section:*

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

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

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

23                   *“(3) Federal legislation is desirable to protect*  
24 *these Federal water rights from possible injury or*  
25 *damage.*

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

11       “(c) The Secretary shall not issue a lease under this  
12 Act for lands within the boundary of the Yellowstone Protec-  
13 tion Area, as defined in section 3(2) of the Old Faithful  
14 Protection Act of 1993. Nothing in this section shall be con-  
15 strued to either affect the ban on leasing referenced under  
16 section 28(f) or to apply to any lands not owned by the  
17 United States.”.

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

19       (a) PROHIBITION.—(1) Except as provided by sections  
20 7 and 8 of this Act, there shall be no use (except for monitor-  
21 ing by the Secretary or monitoring under an approved  
22 State program) of, or production from, any existing geo-  
23 thermal well and no exploration for, or development of, any  
24 new geothermal well or any other new facility related to

1 *the use of regulated resources within the Yellowstone Protec-*  
2 *tion Area.*

3 *(2) Nothing in this subsection shall be construed to af-*  
4 *fect existing facilities other than geothermal wells.*

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

11 *(c) RULE OF CONSTRUCTION.—Nothing in this section*  
12 *shall be construed to affect the ban or prohibitions ref-*  
13 *erenced under sections 28(f) and 30(c) of the Geothermal*  
14 *Steam Act of 1970.*

15 **SEC. 6. RESEARCH.**

16 *(a) IN GENERAL.—The National Park Service, in con-*  
17 *sultation with the Forest Service, the United States Geologi-*  
18 *cal Survey, and each State agency implementing an ap-*  
19 *proved State program, shall research the characteristics of*  
20 *the protected systems and features, inventory and research*  
21 *the existing and potential effects (including cumulative ef-*  
22 *fects) of hydrothermal, geothermal, mineral, or other re-*  
23 *sources development (including development of groundwater*  
24 *other than regulated resources) on such systems and fea-*

1 tures, and periodically inform Congress concerning the re-  
2 sults of such inventory and research.

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

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

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

18 **SEC. 7. STATE MANAGEMENT PROGRAMS.**

19 (a) *DEVELOPMENT.*—The States of Montana, Wyo-  
20 ming, and Idaho are encouraged to develop State programs  
21 for the management of regulated resources outside of Yellow-  
22 stone National Park to preserve and protect, free from in-  
23 jury or impairment, the protected systems and features.

24 (b) *PERMIT.*—As of the date of enactment of this Act,  
25 no person shall engage in any use (including research), pro-

1 *duction, exploration, or development of any regulated re-*  
2 *sources on any land located within the Yellowstone Protec-*  
3 *tion Area except to the extent authorized by a permit issued*  
4 *by a State agency implementing an approved State pro-*  
5 *gram.*

6 *(c) STATE AUTHORITY.—(1) In the implementation of*  
7 *an approved State program, a State may exercise the au-*  
8 *thority to grant permits under subsection (b) for the use*  
9 *(including research), production, exploration, or develop-*  
10 *ment of any regulated resources within the Yellowstone Pro-*  
11 *tection Area.*

12 *(2) Notwithstanding any other provision of law, no*  
13 *permit issued prior to the date of enactment of this Act*  
14 *shall be deemed to have been issued in the implementation*  
15 *of an approved State program, but in the event that after*  
16 *the date of enactment of this Act the Secretary, on the basis*  
17 *of research pursuant to section 6, determines that ground-*  
18 *water with a temperature of 59 degrees Fahrenheit or less*  
19 *has characteristics that indicate it may be directly related*  
20 *to the protected systems and features, a permit issued prior*  
21 *to such determination with respect to such groundwater*  
22 *shall not be invalidated unless, pursuant to the procedures*  
23 *in an approved State program it is determined that contin-*  
24 *ued utilization of the groundwater covered by such permit*  
25 *would be inconsistent with the purposes of this Act.*

1           (3)(A) *The Secretary shall monitor the implementation*  
2 *of an approved State program (including the State's en-*  
3 *forcement thereof) to assure consistency with the require-*  
4 *ments of this Act.*

5           (B) *The Secretary may suspend implementation of an*  
6 *approved State program if such implementation (including*  
7 *the State's enforcement thereof) is not being exercised in a*  
8 *manner consistent with this Act. During any such suspen-*  
9 *sion, no permit granted under such program shall be effec-*  
10 *tive except to the extent the Secretary determines that the*  
11 *permitted activities would be consistent with the purposes*  
12 *of this Act.*

13           (C) *If an approved State program includes procedures*  
14 *for the exercise of the Secretary's authority to suspend such*  
15 *a program's implementation, the Secretary shall follow such*  
16 *procedures.*

17           (d) *APPROVAL BY THE SECRETARY.—(1) The Sec-*  
18 *retary may approve a program submitted by a State if the*  
19 *Secretary determines that such program, when imple-*  
20 *mented, will fulfill the purposes of this Act regarding the*  
21 *protection of the protected systems and features.*

22           (2) *The Secretary shall not approve any State pro-*  
23 *gram submitted under this section until the Secretary has—*

24                   (A) *solicited, publicly disclosed, and considered*  
25           *the views of the heads of other State and Federal*

1        *agencies the Secretary determines are concerned with*  
2        *the proposed State program;*

3            *(B) solicited, publicly disclosed, and considered*  
4        *the views of the public; and*

5            *(C) found that the State has the necessary legal*  
6        *authority and qualified personnel for the regulation*  
7        *and management of regulated resources outside Yel-*  
8        *lowstone National Park consistent with the require-*  
9        *ments of this Act.*

10        *(3)(A) The Secretary may approve or disapprove a*  
11        *program in whole or in part.*

12            *(B) If the Secretary disapproves any proposed State*  
13        *program, in whole or in part, the Secretary shall notify*  
14        *the State in writing of the decision and set forth in detail*  
15        *the reasons therefor. The State may submit a revised State*  
16        *program or portion thereof.*

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

19            *(A) include ongoing scientific review of restric-*  
20        *tions, boundaries, and permits applicable to the devel-*  
21        *opment of a regulated resource;*

22            *(B) require that, in conducting the scientific re-*  
23        *view referred to in subparagraph (A) and in imple-*  
24        *menting the State program, any doubt shall be re-*

1       *solved in favor of protection of the protected systems*  
2       *and features;*

3           *(C) allow the State agency authorized to admin-*  
4       *ister the program to reject recommendations based on*  
5       *the scientific review referred to in subparagraph (A),*  
6       *to the extent such rejection is necessary to guarantee*  
7       *no adverse effect on the hydrothermal system within*  
8       *Yellowstone National Park; and*

9           *(D) enable citizens of such State to obtain judi-*  
10       *cial review of actions taken by the State agency im-*  
11       *plementing the program to the extent necessary to as-*  
12       *sure that such actions are consistent with all applica-*  
13       *ble law, including this Act.*

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

17       *(f) MODIFICATION OF YELLOWSTONE PROTECTION*  
18       *AREA.—(1) The boundaries of the Yellowstone Protection*  
19       *Area in a State may be modified pursuant to an approved*  
20       *State program to the extent such modification is approved*  
21       *by the Secretary.*

22       *(2) The Secretary shall not approve any such modi-*  
23       *fication that the Secretary finds would not be consistent*  
24       *with the purposes of this Act.*

1       (3) *The Secretary shall revise the map of the Yellow-*  
2 *stone Protection Area to reflect any approved boundary*  
3 *modifications.*

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

8       (g) *COOPERATIVE AGREEMENTS.—The Secretary is*  
9 *authorized to enter into cooperative agreements with the*  
10 *States of Montana, Idaho, and Wyoming and with the Sec-*  
11 *retary of Agriculture to fulfill the purposes of this Act.*

12       (h) *FEDERAL FINANCIAL ASSISTANCE.—(1) Subject to*  
13 *appropriation, the Secretary may provide financial assist-*  
14 *ance for the implementation of an approved State program.*  
15 *In providing such assistance, the Secretary may enter into*  
16 *appropriate funding agreements, including grants and co-*  
17 *operative agreements, with a State agency or agencies, upon*  
18 *such terms and conditions as the Secretary deems appro-*  
19 *priate.*

20       (2) *A recipient State may invest funds provided under*  
21 *this subsection so long as such funds, together with interest*  
22 *and any other earnings thereon, shall be available for use*  
23 *by the State only under the terms and conditions of the*  
24 *approved State program and an agreement entered into*

1 *with the Secretary under this subsection and shall not be*  
2 *used by the State for any other purpose.*

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

4 *(a) APPROVAL.—(1) The Congress finds that Article IV*  
5 *of the compact, when implemented, will fulfill the purposes*  
6 *of this Act regarding the protection of the protected systems*  
7 *and features.*

8 *(2) All provisions of section 7 are applicable to this*  
9 *section, except for purposes of section 7(d)(1) the Compact*  
10 *shall be deemed to have been submitted to the Secretary,*  
11 *and, notwithstanding sections 7(d)(2), 7(d)(3), and 7(d)(4),*  
12 *once signed by the Secretary and the Attorney General of*  
13 *the United States, Article IV thereof shall be considered an*  
14 *approved State program for regulation of groundwater re-*  
15 *sources, including the hydrothermal resources within the*  
16 *Montana portion of the Yellowstone Protection Area. Article*  
17 *IV of the Compact shall not be considered an approved State*  
18 *program for the management of regulated resources within*  
19 *the Montana portion of the Yellowstone protection area*  
20 *other than groundwater resources.*

21 *(b) SCOPE.—Nothing in this Act shall be construed as*  
22 *amending the Compact or as altering its status in relation-*  
23 *ship to any litigation with regard to water rights.*

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

4           (1) review of administrative decisions under Ar-  
5 ticle IV of the Compact;

6           (2) enforcement of the Compact;

7           (3) the discretion of any party to the Compact  
8 to withdraw therefrom; and

9           (4) modification of boundaries and restrictions  
10 within the Controlled Groundwater Area,

11 shall be deemed to be procedures for the exercise of the Sec-  
12 retary's authority to approve modifications of the bound-  
13 aries of the Yellowstone Protection Area or to suspend the  
14 implementation of an approved State program.

15 **SEC. 9. IDAHO PROGRAM.**

16           For purposes of section 7(d)(1), the provisions of Sec-  
17 tion 42 of the Idaho Code related to geothermal resources  
18 shall be deemed to have been submitted to the Secretary for  
19 approval as an approved State program.

20 **SEC. 10. WYOMING PROGRAM.**

21           For purposes of section 7(d)(1), the provisions of the  
22 laws of the State of Wyoming referenced in the letter from  
23 the Wyoming State Engineer included in the Committee re-  
24 port to accompany H.R. 1137 of the 103rd Congress shall

1 *be deemed to have been submitted to the Secretary for ap-*  
2 *proval as an approved State program.*

3 **SEC. 11. CITIZEN SUITS.**

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

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

9 *or*

10 *(B) is using a regulated resource in the absence*  
11 *of, or beyond the scope of the terms or conditions of,*  
12 *a permit issued pursuant to an approved State pro-*  
13 *gram, or in violation of regulations issued under the*  
14 *authority of an approved State program.*

15 *(2) The Federal district courts shall have jurisdiction,*  
16 *without regard to the amount in controversy or the citizen-*  
17 *ship of the parties—*

18 *(A) to require the Secretary or another party to*  
19 *take any steps required or permitted by this Act, if*  
20 *those steps are necessary to fulfill the purposes of this*  
21 *Act; or*

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

1       (b) *VENUE AND INTERVENTION.*—(1) Any suit under  
2 this section may be brought in any appropriate judicial dis-  
3 trict.

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

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

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

21       (e) *NOTICE.*—Before seeking the injunctive relief au-  
22 thorized under this section, notice of intent to sue shall be  
23 given to the Secretary, the State agency implementing any  
24 relevant approved State program described in section 7,  
25 and each intended defendant. Such notice shall allow the

1 *minimum period of time necessary for an intended defend-*  
2 *ant to take those measures that (1) will cure any alleged*  
3 *violations of this Act, or (2) will end any alleged improper*  
4 *use of regulated resources, as described in subsection*  
5 *(a)(1)(B).*

6 **SEC. 12. JUDICIAL REVIEW.**

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

12       (b) *REMEDY.*—*The sole remedy available to any person*  
13 *claiming deprivation of a vested property right by enact-*  
14 *ment of this Act or Federal action pursuant to this Act shall*  
15 *be an action for monetary damages, filed pursuant to sec-*  
16 *tions 1491 or 1505 of title 28, United States Code, in the*  
17 *Court of Federal Claims. Any just compensation awards de-*  
18 *termined by the Court of Federal Claims to be due to a*  
19 *claimant shall be paid consistent with section 2517 of such*  
20 *title.*

21 **SEC. 13. REGULATIONS.**

22       *No later than two years after the date of enactment*  
23 *of this Act, the Secretary shall promulgate such rules and*  
24 *regulations as are necessary to implement this Act.*

1 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

2 *There are authorized to be appropriated such sums as*  
3 *may be necessary to carry out this Act.*

4 **SEC. 15. SCOPE OF ACT.**

5 *Nothing in this Act shall be construed as increasing*  
6 *or diminishing any rights of the United States with respect*  
7 *to water, or as affecting any previous adjudication of or*  
8 *any agreement concerning any such rights.*

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