

105TH CONGRESS
2D SESSION

H. R. 4294

To amend the Elwha River Ecosystem and Fisheries Restoration Act to provide further for the acquisition and removal of the Elwha dam and acquisition of Glines Canyon dam and the restoration of the Elwha River ecosystem and native anadromous fisheries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 21, 1998

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

A BILL

To amend the Elwha River Ecosystem and Fisheries Restoration Act to provide further for the acquisition and removal of the Elwha dam and acquisition of Glines Canyon dam and the restoration of the Elwha River ecosystem and native anadromous fisheries, 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,*

1 **SECTION 1. ACQUISITION OF PROJECTS AND REMOVAL OF**
2 **DAMS.**

3 The Elwha River Ecosystem and Fisheries Restora-
4 tion Act (106 Stat. 3173) is amended by striking section
5 3 and inserting the following:

6 **“SEC. 3. ACQUISITION OF PROJECTS.**

7 “(a) IN GENERAL.—As soon as practicable after
8 sums are appropriated for the purpose, the Secretary shall
9 acquire the Elwha Project and Glines Project for a pur-
10 chase price of \$29,500,000.

11 “(b) RELEASE FROM LIABILITY.—

12 “(1) IN GENERAL.—Subject to paragraph (2),
13 the acquisition of the Projects shall be conditioned
14 on a release from liability providing that all obliga-
15 tions and liabilities of the owner and the local indus-
16 trial consumer to the United States arising from the
17 Projects, based on ownership or on a license, permit,
18 contract, or other authority (including Project re-
19 moval and any ecosystem, fish and wildlife mitiga-
20 tion, and restoration obligations), shall, from the
21 moment of title transfer, be deemed to have been
22 satisfied.

23 “(2) LIABILITY TO INDIAN TRIBES.—The
24 United States may not assume or satisfy the liabil-
25 ity, if any, of the owner or local industrial consumer
26 to any federally recognized Indian tribe, nor shall

1 any such liability be deemed satisfied without the
2 consent of the Indian tribe.

3 “(c) ELWHA PROJECT.—

4 “(1) REMOVAL OF DAM.—

5 “(A) IN GENERAL.—After acquiring the
6 Elwha Project, the Secretary as soon as prac-
7 ticable after sums are appropriated for the pur-
8 pose, shall remove the Elwha dam.

9 “(B) PROTECTION OF WATER SUPPLY.—

10 “(i) IN GENERAL.—Before commence-
11 ing removal of the Elwha dam or taking
12 any steps to breach, bypass, or otherwise
13 alter the water flow from the Elwha dam,
14 the Secretary shall take all such actions as
15 are necessary to ensure the continued
16 availability, after removal of the dam, of
17 the quantity and quality of water that is
18 available, as of the date of enactment of
19 this paragraph, to the city of Port Angeles,
20 Washington, the Dry Creek Water Associa-
21 tion, current (as of the date of enactment
22 of this paragraph) and future industrial
23 water users, and other current users of
24 water from the Elwha River.

1 “(ii) ACTIONS INCLUDED.—The ac-
2 tions that the Secretary shall, subject to
3 the availability of appropriations, take
4 under clause (i) include—

5 “(I) the design, construction, op-
6 eration, and maintenance of new or
7 improved water treatment or storage
8 facilities; and

9 “(II) the mitigation of any injury
10 to fisheries and remediation of any
11 degradation in water quality that may
12 result from the removal of or any
13 other change in the water flow from
14 the Elwha dam.

15 “(iii) PAYMENT OF COSTS.—The cost
16 of each action taken under clause (i), sub-
17 ject to the availability of appropriations,
18 shall be borne by the Secretary.

19 “(2) EVALUATION OF EFFECT OF REMOVAL.—
20 During the removal phase of the Elwha dam, the
21 Secretary shall make a thorough evaluation of the
22 impact of removal of the dam on fish runs, and sub-
23 mit his findings to Congress.

24 “(3) COMPENSATION FOR LOST REVENUE.—
25 After the acquisition of the Projects, the Secretary

1 shall pay the Clallam County Board of Commis-
2 sioners \$150,000 per year for a period of 12 years,
3 subject to the availability of annual appropriations,
4 for the purposes of recovering lost revenue under the
5 condition that the county dedicate at least 50 per-
6 cent of each payment to studying the river system
7 before, during, and after dam removal.

8 “(4) PRIOR EFFORTS.—Efforts by the Sec-
9 retary prior to enactment of this paragraph to evalu-
10 ate the environmental impacts of dam removal are
11 declared to meet and fully comply with any other-
12 wise applicable provisions of section 7 of the Endan-
13 gered Species Act of 1973 (16 U.S.C. 1536) and the
14 National Environmental Policy Act of 1969 (42
15 U.S.C. 4332) for purposes of removing the Elwha
16 Dam as provided under this Act.

17 “(d) GLINES PROJECT.—

18 “(1) GLINES CANYON DAM OPERATIONS.—

19 “(A) IN GENERAL.—Except as provided in
20 paragraph (2), the Secretary shall continue op-
21 eration of the Glines Canyon dam after the
22 Elwha dam has been removed subject to the
23 availability of funds for that purpose.

24 “(B) ENGINEERING, DESIGN, AND EVAL-
25 UATION.—As soon as practicable after the date

of enactment of this paragraph, the Secretary shall—

“(i) complete an engineering and design study to determine the most cost-effective manner in which transmission lines and operational controls can be reconfigured to permit continued operation of the Glines Canyon dam as provided in subparagraph (A); and

“(ii) evaluate the impact that managing the Glines Canyon Project for fisheries restoration will have on future hydropower operations.

“(2) FISHERIES RESTORATION ENHANCEMENT EFFORTS.—

“(A) ANNUAL RESTORATION WORK PLAN.—As soon as practicable after the date of enactment of this paragraph and each year thereafter, the Secretary shall, in consultation with the appropriate Federal, State, tribal, and local entities, develop an annual work plan that clearly defines all requirements necessary to achieve the ecosystem restoration objectives of this Act. The Secretary’s annual work plan shall include, but is not limited to, specific de-

1 tails on engineering and environmental studies
2 (including plans and specifications) for dam re-
3 moval, water supply, reconfiguration of power,
4 and river restoration measures. The work plan
5 shall include a schedule of yearly activities,
6 major milestones, and performance measure-
7 ment criteria.

8 “(B) INDEPENDENT SCIENTIFIC REVIEW
9 PANEL.—

10 “(i) The Secretary shall appoint an
11 Independent Scientific Review Panel
12 (Panel), which shall be comprised of eleven
13 members, to review progress toward res-
14 toration of the Elwha River ecosystem and
15 the contribution of removal of the Elwha
16 River Dam toward restoration. Members
17 shall be appointed from a list of no fewer
18 than 20 scientists submitted by the Na-
19 tional Academy of Sciences (Academy):
20 *Provided*, That Pacific Northwest scientists
21 with expertise in anadromous and non-
22 anadromous fish and wildlife and ocean ex-
23 perts shall be among those represented on
24 the Panel. If appointments are required in
25 subsequent years, the Secretary shall re-

1 quest nominations from the Academy and
2 the Academy shall provide nominations not
3 later than 90 days after the date of this
4 request. If the Academy does not provide
5 nominations within 90 days of enactment
6 of this Act, the Secretary may appoint
7 such members as the Secretary deems ap-
8 propriate.

9 “(ii) CONFLICT OF INTEREST AND
10 COMPENSATION.—Panel members may be
11 compensated and shall be considered sub-
12 ject to the conflict of interest standards
13 that apply to scientists performing com-
14 parable work for the National Academy of
15 Sciences. All expenses of the Panel shall be
16 paid by the Secretary as provided for
17 under clause (vii). The Panel shall not be
18 deemed an advisory committee within the
19 meaning of the Federal Advisory Commit-
20 tee Act.

21 “(iii) PROJECT CRITERIA AND RE-
22 VIEW.—The Panel shall, in consultation
23 with the Washington Department of Fish
24 and Wildlife, the National Marine Fish-
25 eries Service, the Lower Elwha Klallam In-

1 dian Tribe and the Elwha Citizens' Advi-
2 sory Committee, review the Secretary's an-
3 nual work plan for Elwha Ecosystem Res-
4 toration and make recommendations on
5 matters related to such work plan to the
6 Secretary no later than June 15 of each
7 year. If the Secretary does not receive the
8 recommendations by this date, the Sec-
9 retary may proceed to implement the work
10 plan, relying on the best information avail-
11 able. The Panel shall base its recommenda-
12 tions on a determination that the work
13 plan is based on sound science principles;
14 benefit fish and wildlife; and have a clearly
15 defined objective and outcome with provi-
16 sions for monitoring and evaluation of re-
17 sults. In making its recommendations to
18 the Secretary, the Panel shall determine
19 whether the work plan employs cost-effec-
20 tive measures to achieve the objectives of
21 this Act. The Panel, with assistance from
22 the Washington Department of Fish and
23 Wildlife, the National Marine Fisheries
24 Service, the Lower Elwha Klallam Indian
25 Tribe and the Elwha Citizens' Advisory

1 Committee, shall review, on an annual
2 basis, the results of prior year expenditures
3 based upon these criteria and submit its
4 findings to the Secretary for its review.

5 “(iv) EVALUATION OF ELWHA DAM
6 REMOVAL.—Each year following removal of
7 the Elwha Dam, the Panel shall, in con-
8 sultation with the Washington Department
9 of Fish and Wildlife, the National Marine
10 Fisheries Service, the Lower Elwha
11 Klallam Indian Tribe and the Elwha Citi-
12 zens’ Advisory Committee, evaluate the
13 contribution of removal of the Elwha River
14 Dam toward restoration of the Elwha
15 River ecosystem. Based in its evaluation
16 under this subparagraph, the Panel shall
17 provide recommendations to the Secretary
18 with regard to removal of the Glines Can-
19 yon Dam.

20 “(v) PUBLIC REVIEW.—Upon comple-
21 tion of the review of the Secretary’s annual
22 work plan and its evaluation of the re-
23 moval of the Elwha Dam, the Panel shall
24 submit recommendations on the work plan
25 and removal of the Glines Canyon Dam to

1 the Secretary. The Secretary shall make
2 the Panel’s findings available to the public
3 and subject to public comment.

4 “(vi) RESPONSIBILITIES OF THE SEC-
5 RETARY.—

6 “(I) The Secretary shall fully
7 consider the recommendations of the
8 Panel when implementing the Sec-
9 retary’s annual work plan, and if the
10 Secretary does not incorporate a rec-
11 ommendation of the Panel, the Sec-
12 retary shall explain in writing its rea-
13 sons for not accepting Panel rec-
14 ommendations. If the Secretary finds
15 the recommendations inconsistent
16 with this Act, he must notify the
17 Panel, in writing, within 30 days of
18 receiving their recommendations. The
19 Secretary, after consideration of the
20 recommendations of the Panel and
21 other appropriate entities, shall be re-
22 sponsible for making the final rec-
23 ommendations to Congress for appro-
24 priations to implement the work plan.

1 “(II) The Secretary shall take
2 steps to remove the Glines Canyon
3 Dam after receiving a recommenda-
4 tion from the Panel to do so.

5 “(vii) COST LIMITATION.—The cost of
6 this provision shall not exceed \$1,000,000
7 in 1998 dollars.

8 “(viii) EXPIRATION.—This paragraph
9 shall expire 20 years after the date of the
10 enactment of his paragraph.”.

11 **SEC. 2. CONTRACTING OUT PROVISIONS.**

12 The Secretary shall, to the fullest extent practicable,
13 obtain by procurement from private sources all services
14 necessary to execute the planning, engineering, design,
15 and construction requirements necessary to comply with
16 the provisions of this Act.

17 **SEC. 3. CONFORMING AMENDMENTS.**

18 The Elwha River Ecosystem and Fisheries Restora-
19 tion Act (106 Stat. 3173) is amended—

20 (1) in section 4—

21 (A) in subsection (a)—

22 (i) in the matter preceding paragraph
23 (1), by striking “Effective” and all that
24 follows through “implement” and inserting
25 “Effective 60 days after date of convey-

1 ance of the Projects, the Secretary shall,
 2 subject to the availability of appropriated
 3 funds, take such actions as are necessary
 4 to implement”; and

5 (ii) in paragraph (1), by striking “re-
 6 ferred to in section 3(c)(2) for the removal
 7 of the dams and full;” and inserting “for
 8 the removal of the Elwha dam and”; and

9 (B) in the first sentence of subsection (b),
 10 by striking “referred to in section 3(c)(2)”;

11 (2) in section 5(a), by striking “as provided in
 12 section 3(e)”;

13 (3) in section 6—

14 (A) in the first sentence of subsection (a),
 15 by striking “makes the determination to remove
 16 the dams and”; and

17 (B) in the first sentence of subsection
 18 (b)(1)—

19 (i) by striking “makes the determina-
 20 tion to remove the dams and”; and

21 (ii) by inserting “of the Elwha
 22 Project” after “removal”; and

23 (4) in section 7(a)—

24 (A) by striking “makes the determination
 25 to remove the dams and”; and

1 (B) by inserting “of the Elwha Project”
2 after “removal”.

3 **SEC. 4. COLUMBIA-SNAKE RIVER HYDROELECTRIC SYSTEM**
4 **PROTECTION.**

5 (a) IN GENERAL.—Under no circumstances shall re-
6 moval of dams on the Elwha River be considered a prece-
7 dent of any kind for removal of dams on other rivers.

8 (b) CONGRESSIONAL AUTHORIZATION REQUIRED.—
9 Except as otherwise provided in this Act, no dam, im-
10 poundment, or other facility on the Columbia River or
11 Snake River or their tributaries that is owned or operated
12 by an agency of the United States for flood control, hydro-
13 electric power generation, irrigation, navigation, or other
14 congressionally authorized purpose may be removed or sig-
15 nificantly modified structurally, except for reasons of safe-
16 ty or necessary repairs, unless specifically approved by an
17 authorization or appropriation by Congress.

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