

PROMOTING HYDROPOWER DEVELOPMENT AT EXISTING
NONPOWERED DAMS ACT

DECEMBER 12, 2017.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. WALDEN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 2872]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred
the bill (H.R. 2872) to amend the Federal Power Act to promote hy-
dropower development at existing nonpowered dams, and for other
purposes, having considered the same, report favorably thereon
with an amendment and recommend that the bill as amended do
pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Promoting Hydropower Development at Existing Nonpowered Dams Act”.

SEC. 2. PROMOTING HYDROPOWER DEVELOPMENT AT EXISTING NONPOWERED DAMS.

Part I of the Federal Power Act (16 U.S.C. 792 et seq.) is amended by adding at the end the following:

“SEC. 34. PROMOTING HYDROPOWER DEVELOPMENT AT EXISTING NONPOWERED DAMS.

“(a) EXPEDITED LICENSING PROCESS FOR NON-FEDERAL HYDROPOWER PROJECTS AT EXISTING NONPOWERED DAMS.—

“(1) IN GENERAL.—As provided in this section, the Commission may issue and amend licenses and preliminary permits, as appropriate, for any facility the Commission determines is a qualifying facility.

“(2) RULE.—Not later than 180 days after the date of enactment of this section, the Commission shall issue a rule establishing an expedited process for issuing and amending licenses and preliminary permits for qualifying facilities under this section.

“(3) INTERAGENCY TASK FORCE.—In establishing the expedited process under this section, the Commission shall convene an interagency task force, with appropriate Federal and State agencies and Indian tribes represented, to coordinate the regulatory processes associated with the authorizations required to construct and operate a qualifying facility.

“(4) LENGTH OF PROCESS.—The Commission shall ensure that the expedited process under this section will result in a final decision on an application for a license by not later than 2 years after receipt of a completed application for the license.

“(b) DAM SAFETY.—

“(1) ASSESSMENT.—Before issuing any license for a qualifying facility, the Commission shall assess the safety of existing non-Federal dams and other non-Federal structures related to the qualifying facility (including possible consequences associated with failure of such structures).

“(2) REQUIREMENTS.—In issuing any license for a qualifying facility, the Commission shall ensure that the Commission’s dam safety requirements apply to such qualifying facility, and the associated qualifying nonpowered dam, over the term of such license.

“(c) INTERAGENCY COMMUNICATIONS.—Interagency cooperation in the preparation of environmental documents under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an application for a license for a qualifying facility under this section, and interagency communications relating to licensing process coordination pursuant to this section, shall not—

“(1) be considered to be ex parte communications under Commission rules; or

“(2) preclude an agency from participating in a licensing proceeding under this part.

“(d) IDENTIFICATION OF NONPOWERED DAMS FOR HYDROPOWER DEVELOPMENT.—

“(1) IN GENERAL.—Not later than 12 months after the date of enactment of this section, the Commission, with the Secretary of the Army, the Secretary of the Interior, and the Secretary of Agriculture, shall jointly develop a list of existing nonpowered Federal dams that the Commission and the Secretaries agree have the greatest potential for non-Federal hydropower development.

“(2) CONSIDERATIONS.—In developing the list under paragraph (1), the Commission and the Secretaries may consider the following:

“(A) The compatibility of hydropower generation with existing purposes of the dam.

“(B) The proximity of the dam to existing transmission resources.

“(C) The existence of studies to characterize environmental, cultural, and historic resources relating to the dam.

“(D) The effects of hydropower development on release or flow operations of the dam.

“(3) AVAILABILITY.—The Commission shall—

“(A) provide the list developed under paragraph (1) to—

“(i) the Committee on Energy and Commerce, the Committee on Transportation and Infrastructure, and the Committee on Natural Resources, of the House of Representatives; and

“(ii) the Committee on Environment and Public Works, and the Committee on Energy and Natural Resources, of the Senate; and

“(B) make such list available to the public.

“(e) DEFINITIONS.—For purposes of this section:

“(1) QUALIFYING CRITERIA.—The term ‘qualifying criteria’ means, with respect to a facility—

“(A) as of the date of enactment of this section, the facility is not licensed under, or exempted from the license requirements contained in, this part;

“(B) the facility will be associated with a qualifying nonpowered dam;

“(C) the facility will be constructed, operated, and maintained for the generation of electric power;

“(D) the facility will use for such generation any withdrawals, diversions, releases, or flows from the associated qualifying nonpowered dam, including its associated impoundment or other infrastructure; and

“(E) the operation of the facility will not result in any material change to the storage, release, or flow operations of the associated qualifying nonpowered dam.

“(2) QUALIFYING FACILITY.—The term ‘qualifying facility’ means a facility that is determined under this section to meet the qualifying criteria.

“(3) QUALIFYING NONPOWERED DAM.—The term ‘qualifying nonpowered dam’ means any dam, dike, embankment, or other barrier—

“(A) the construction of which was completed on or before the date of enactment of this section;

“(B) that is or was operated for the control, release, or distribution of water for agricultural, municipal, navigational, industrial, commercial, environmental, recreational, aesthetic, drinking water, or flood control purposes; and

“(C) that, as of the date of enactment of this section, is not generating electricity with hydropower generating works that are licensed under, or exempted from the license requirements contained in, this part.”.

SEC. 3. OBLIGATION FOR PAYMENT OF ANNUAL CHARGES.

Section 10(e) of the Federal Power Act (16 U.S.C. 803(e)) is amended by adding at the end the following:

“(5) Any obligation of a licensee for payment of annual charges under this subsection shall commence when the construction of the applicable facility commences.”.

PURPOSE AND SUMMARY

H.R. 2872 promotes hydropower development at existing nonpowered dams by establishing an expedited licensing process that will result in a final decision on an application in two years or less. The legislation also requires the Federal Energy Regulatory Commission (FERC), the U.S. Army Corps of Engineers (USACE), and the Department of Interior (DOI), to develop a list of existing nonpowered Federal dams that have the greatest potential for non-Federal hydropower development.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2872, Promoting Hydropower Development at Existing Nonpowered Dams Act of 2017, was introduced by Representative Larry Bucshon (R-IN) on June 12, 2017.

COMMITTEE ACTION

The Committee on Energy and Commerce has not held hearings on the legislation.

On October 26, 2017, the Subcommittee on Energy met in open markup session and forwarded H.R. 2872, without amendment, to the full Committee by a voice vote. On December 6, 2017, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 2872, as amended, favorably reported to the House by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

There were no record votes taken in connection with ordering H.R. 2872 reported.

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee has not held hearings on this legislation.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 2872 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 8, 2017.

Hon. GREG WALDEN,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2872, the Promoting Hydropower Development at Existing Nonpowered Dams Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 2872—Promoting Hydropower Development at Existing Nonpowered Dams Act

H.R. 2872 would direct the Federal Energy Regulatory Commission (FERC), within 180 days of enactment, to establish an expedited process for issuing permits and licenses for hydropower projects at existing nonfederal dams that do not have hydroelectric facilities. In developing those procedures, the bill would require FERC to consult with other federal and local agencies involved in regulating projects that would qualify for expedited permitting and licensing on the basis of criteria specified by the bill. H.R. 2872 also would require FERC and other federal agencies to develop a list of federal dams with significant potential for developing hydropower and which currently have no hydroelectric facilities.

Establishing and implementing the proposed expedited regulatory process could increase FERC's annual workload. Using information from FERC about the historical costs of similar efforts, however, CBO estimates that any increase in the agency's administrative costs would be relatively small. Further, because FERC recovers 100 percent of its costs through user fees, any change in its

administrative costs (which are subject to appropriation) would be offset by an equal change in the fees that the commission charges. Hence, CBO expects that implementing H.R. 2872 would not have a significant net effect on the federal budget.

Enacting H.R. 2872 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 2872 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2872 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA). If FERC increases fees to offset the costs of implementing the bill, the cost of an existing mandate to pay those fees would increase for public and private licensees. Using information from FERC about the potential costs of implementing the bill, CBO estimates that any incremental change in fees collected would be small and would total far less than the thresholds established in UMRA for intergovernmental and private-sector mandates (\$78 million and \$156 million, respectively, in 2017).

The CBO staff contacts for this estimate are Megan Carroll (for federal costs) and Jon Sperl (for mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to promote hydropower development at existing nonpowered dams.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 2872 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 2872 contains no earmarks, limited tax benefits, or limited tariff benefits.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, the following directed rule makings are contained in H.R. 2872:

- Section 2: Not later than 180 days after the date of enactment of this section, the Commission shall issue a rule establishing an expedited process for issuing and amending licenses and preliminary permits for qualifying facilities.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides the short title of “Promoting Hydropower Development at Existing Nonpowered Dams Act.”

Section 2. Promoting hydropower development at existing nonpowered dams

Section 2 amends Part I of the Federal Power Act (FPA) by adding a new section titled “Sec 34. Promoting Hydropower Development at Existing Nonpowered Dams.”

FPA section 34(a) allows the Commission to issue and amend licenses and preliminary permits for any facility the Commission determines is a qualifying facility and directs the Commission to issue a rule not later than 180 days after the date of enactment of this section to establish this expedited process. When establishing the expedited process, the Commission shall convene an interagency task force with appropriate Federal and State agencies and Indian tribes to coordinate the regulatory process associated with the authorizations required to construct and operate a qualifying facility. The expedited process established by the Commission shall result in a final decision on applications for a license within two years of receipt of a completed license application.

FPA section 34(b) requires the Commission to assess the safety of existing non-Federal dams and other non-Federal structures related to the qualifying facility before issuing any license for a qualifying facility. When issuing any license for a qualifying facility, the Commission shall ensure that the Commission’s dam safety requirements apply to such qualifying facility, and the associated qualifying nonpowered dam, over the term of such license.

FPA section 34(c) directs that any interagency cooperation in the preparation of environmental documents under the National Environmental Policy Act of 1969 with respect to an application for a license for a qualifying facility, and any interagency communications related to licensing process coordination shall not be considered to be *ex parte* communications under Commission rules and

shall not preclude an agency from participating in a licensing proceeding under this part.

FPA section 34(d) directs the Commission, with the Secretary of the Army, the Secretary of the Interior, and the Secretary of Agriculture to jointly develop a list of existing nonpowered Federal dams that the Commission and the Secretaries agree have the greatest potential for non-Federal hydropower development, and shall do so not later than 12 months after the date of enactment this section. In developing this list, the Commission and Secretaries may consider the compatibility of hydropower generation with existing purposes of the dam, the proximity of the dam to existing transmission resources, the existence of studies to characterize environmental, cultural, and historic resources relating to the dam, and the effects of hydropower development on release or flow operations of the dam. The Commission shall provide this developed list to specified Congressional Committees and shall make such list available to the public.

FPA section 34(e) states that the term “qualifying criteria” with respect to a facility means the facility is not licensed or exempted from license requirements contained in Part I of the FPA, the facility will be associated with a qualifying nonpowered dam, the facility will be used for the generation of electric power, the facility will use the withdrawals, diversions, releases, or flows from the associated qualifying nonpowered dam for such generation, and the operation of the facility will not result in any material change to the storage, release, or flow operations of the associated qualifying nonpowered dam. The term “qualifying facility” means a facility that is determined under this section to meet the qualifying criteria. The term “qualifying nonpowered dam” means any dam, dike, embankment, or barrier, the construction of which was completed prior to the date of enactment of this section; that is or was operated for the control, release, or distribution of water for agricultural, municipal, navigational, industrial, commercial, environmental, recreational, aesthetic, drinking water, or flood control purposes; and that as the date of enactment of this section, is not generating electricity with hydropower generating works that are licensed under or exempted from the license requirements contained in Part I of the FPA.

Section 3. Obligation for payment of annual charges

This section amends section 10(e) of the FPA by adding a requirement that any obligation or a licensee for payment of annual charges under this subsection shall commence when the construction of the applicable facility commences.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

FEDERAL POWER ACT

PART I

* * * * *

SEC. 10. All licenses issued under this Part shall be on the following conditions:

(a)(1) That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e); and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

(2) In order to ensure that the project adopted will be best adapted to the comprehensive plan described in paragraph (1), the Commission shall consider each of the following:

(A) The extent to which the project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by—

- (i) an agency established pursuant to Federal law that has the authority to prepare such a plan; or
- (ii) the State in which the facility is or will be located.

(B) The recommendations of Federal and State agencies exercising administration over flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located, and the recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project.

(C) In the case of a State or municipal applicant, or an applicant which is primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities), the electricity consumption efficiency improvement program of the applicant, including its plans, performance and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of relevant State regulatory authorities applicable to such applicant.

(3) Upon receipt of an application for a license, the Commission shall solicit recommendations from the agencies and Indian tribes identified in subparagraphs (A) and (B) of paragraph (2) for proposed terms and conditions for the Commission's consideration for inclusion in the license.

(b) That except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works constructed hereunder of an installed capacity in excess of two thousand horsepower without the

prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct.

(c) That the licensee shall maintain the project works in a condition or repair adequate for the purposes of navigation and for the efficient operation of said works in the development and transmission of power, shall make all necessary renewals and replacements, shall establish and maintain adequate depreciation reserves for such purposes, shall so maintain and operate said works as not to impair navigation, and shall conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property. Each licensee hereunder shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under the license, and in no event shall the United States be liable therefor.

(d) That after the first twenty years of operation, out of surplus earned thereafter, if any, accumulated in excess of a specified reasonable rate of return upon the net investment of a licensee in any project or projects, under license, the licensee shall establish and maintain amortization reserves, which reserves shall, in the discretion of the Commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return and the proportion of such surplus earnings to be paid into and held in such reserves shall be set forth in the license. For any new license issued under section 15, the amortization reserves under this subsection shall be maintained on and after the effective date of such new license.

(e)(1) That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part, including any reasonable and necessary costs incurred by Federal and State fish and wildlife agencies and other natural and cultural resource agencies in connection with studies or other reviews carried out by such agencies for purposes of administering their responsibilities under this part; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; and for the expropriation to the Government of excessive profits until the respective States shall make provision for preventing excessive profits or for the expropriation thereof to themselves, or until the period of amortization as herein provided is reached, and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require: *Provided*, That, subject to annual appropriations Acts, the portion of such annual charges imposed by the Commission under this subsection to cover the reasonable and necessary costs of such agencies shall be available to such agencies (in addition to other funds appropriated for such purposes) solely for carrying out such studies and reviews and shall remain available until expended: *Provided*, That when licenses are issued involving the use of Government dams or other structures owned by the United States or tribal lands embraced within Indian reservations the Commission shall, subject to the ap-

approval of the Secretary of the Interior in the case of such dams or structures in reclamation projects and, in the case of such tribal lands, subject to the approval of the Indian tribe having jurisdiction of such lands as provided in section 16 of the Act of June 18, 1934 (48 Stat. 984), fix a reasonable annual charge for the use thereof, and such charges may with like approval be readjusted by the Commission at the end of twenty years after the project is available for service and at periods of not less than ten years thereafter upon notice and opportunity for hearing: *Provided further*, That licenses for the development, transmission, or distribution of power by States or municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes, except that as to projects constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation, licenses therefor shall be issued without charge; and that licenses for the development, transmission, or distribution of power for domestic, mining, or other beneficial use in projects of not more than two thousand horsepower installed capacity may be issued without charges, except on tribal lands within Indian reservations; but in no case shall a license be issued free of charge for the development and utilization of power created by any Government dam and that the amount charged therefor in any license shall be such as determined by the Commission : *Provided however*, That no charge shall be assessed for the use of any Government dam or structure by any licensee if, before January 1, 1985, the Secretary of the Interior has entered into a contract with such licensee that meets each of the following requirements:

(A) The contract covers one or more projects for which a license was issued by the Commission before January 1, 1985.

(B) The contract contains provisions specifically providing each of the following:

(i) A powerplant may be built by the licensee utilizing irrigation facilities constructed by the United States.

(ii) The powerplant shall remain in the exclusive control, possession, and ownership of the licensee concerned.

(iii) All revenue from the powerplant and from the use, sale, or disposal of electric energy from the powerplant shall be, and remain, the property of such licensee.

(C) The contract is an amendatory, supplemental and replacement contract between the United States and: (i) the Quincy-Columbia Basin Irrigation District (Contract No. 14-06-100-6418); (ii) the East Columbia Basin Irrigation District (Contract No. 14-06-100-6419); or, (iii) the South Columbia Basin Irrigation District (Contract No. 14-06-100-6420).

This paragraph shall apply to any project covered by a contract referred to in this paragraph only during the term of such contract unless otherwise provided by subsequent Act of Congress. In the event an overpayment of any charge due under this section shall be made by a licensee, the Commission is authorized to allow a credit for such overpayment when charges are due for any subsequent period.

(2) In the case of licenses involving the use of Government dams or other structures owned by the United States, the charges fixed (or readjusted) by the Commission under paragraph (1) for the use

of such dams or structures shall not exceed 1 mill per kilowatt-hour for the first 40 gigawatt-hours of energy a project produces in any year, 1½ mills per kilowatt-hour for over 40 up to and including 80 gigawatt-hours in any year, and 2 mills per kilowatt-hour for any energy the project produces over 80 gigawatt-hours in any year. Except as provided in subsection (f), such charge shall be the only charge assessed by any agency of the United States for the use of such dams or structures.

(3) The provisions of paragraph (2) shall apply with respect to—

(A) all licenses issued after the date of the enactment of this paragraph; and

(B) all licenses issued before such date which—

(i) did not fix a specific charge for the use of the Government dam or structure involved; and

(ii) did not specify that no charge would be fixed for the use of such dam or structure.

(4) Every 5 years, the Commission shall review the appropriateness of the annual charge limitations provided for in this subsection and report to Congress concerning its recommendations thereon.

(5) *Any obligation of a licensee for payment of annual charges under this subsection shall commence when the construction of the applicable facility commences.*

(f) That whenever any licensee hereunder is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Commission shall require as a condition of the license that the licensee so benefited shall reimburse the owner of such reservoir or other improvements for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. The proportion of such charges to be paid by any licensee shall be determined by the Commission. The licensees or permittees affected shall pay to the United States the cost of making such determination as fixed by the Commission.

Whenever such reservoir or other improvement is constructed by the United States the Commission shall assess similar charges against any licensee directly benefited thereby, and any amount so assessed shall be paid into the Treasury of the United States, to be reserved and appropriated as a part of the special fund for headwater improvements as provided in section 17 hereof.

Whenever any power project not under license is benefited by the construction work of a licensee or permittee, the United States or any agency thereof, the Commission, after notice to the owner or owners of such unlicensed project, shall determine and fix a reasonable and equitable annual charge to be paid to the licensee or permittee on account of such benefits, or to the United States if it be the owner of such headwater improvement.

(g) Such other conditions not inconsistent with the provisions of this Act as the Commission may require.

(h)(1) That combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service are hereby prohibited.

(2) That conduct under the license that: (A) results in the contravention of the policies expressed in the antitrust laws; and (B)

is not otherwise justified by the public interest considering regulatory policies expressed in other applicable law (including but not limited to those contained in Part II of this Act) shall be prevented or adequately minimized by means of conditions included in the license prior to its issuance. In the event it is impossible to prevent or adequately minimize the contravention, the Commission shall refuse to issue any license to the applicant for the project and, in the case of an existing project, shall take appropriate action to provide thereafter for the operation and maintenance of the affected project and for the issuing of a new license in accordance with section 15 of this Part.

(i) In issuing licenses for a minor part only of a complete project, or for a complete project of not more than two thousand horsepower installed capacity, the Commission may in its discretion waive such conditions, provisions, and requirements of this Part, except the license period of fifty years, as it may deem to be to the public interest to waive under the circumstances: *Provided*, That the provision hereof shall not apply annual charges for use of lands within Indian reservations.

(j)(1) That in order to adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project, each license issued under this Part shall include conditions for such protection, mitigation, and enhancement. Subject to paragraph (2), such conditions shall be based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.

(2) Whenever the Commission believes that any recommendation referred to in paragraph (1) may be inconsistent with the purposes and requirements of this Part or other applicable law, the Commission and the agencies referred to in paragraph (1) shall attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If, after such attempt, the Commission does not adopt in whole or in part a recommendation of any such agency, the Commission shall publish each of the following findings (together with a statement of the basis for each of the findings):

(A) A finding that adoption of such recommendation is inconsistent with the purposes and requirements of this Part or with other applicable provisions of law.

(B) A finding that the conditions selected by the Commission comply with the requirements of paragraph (1).

Subsection (i) shall not apply to the conditions required under this subsection.

* * * * *

SEC. 34. PROMOTING HYDROPOWER DEVELOPMENT AT EXISTING NON-POWERED DAMS.

(a) *EXPEDITED LICENSING PROCESS FOR NON-FEDERAL HYDROPOWER PROJECTS AT EXISTING NONPOWERED DAMS.—*

(1) *IN GENERAL.—As provided in this section, the Commission may issue and amend licenses and preliminary permits, as ap-*

appropriate, for any facility the Commission determines is a qualifying facility.

(2) *RULE.*—Not later than 180 days after the date of enactment of this section, the Commission shall issue a rule establishing an expedited process for issuing and amending licenses and preliminary permits for qualifying facilities under this section.

(3) *INTERAGENCY TASK FORCE.*—In establishing the expedited process under this section, the Commission shall convene an interagency task force, with appropriate Federal and State agencies and Indian tribes represented, to coordinate the regulatory processes associated with the authorizations required to construct and operate a qualifying facility.

(4) *LENGTH OF PROCESS.*—The Commission shall ensure that the expedited process under this section will result in a final decision on an application for a license by not later than 2 years after receipt of a completed application for the license.

(b) *DAM SAFETY.*—

(1) *ASSESSMENT.*—Before issuing any license for a qualifying facility, the Commission shall assess the safety of existing non-Federal dams and other non-Federal structures related to the qualifying facility (including possible consequences associated with failure of such structures).

(2) *REQUIREMENTS.*—In issuing any license for a qualifying facility, the Commission shall ensure that the Commission's dam safety requirements apply to such qualifying facility, and the associated qualifying nonpowered dam, over the term of such license.

(c) *INTERAGENCY COMMUNICATIONS.*—Interagency cooperation in the preparation of environmental documents under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an application for a license for a qualifying facility under this section, and interagency communications relating to licensing process coordination pursuant to this section, shall not—

(1) be considered to be *ex parte* communications under Commission rules; or

(2) preclude an agency from participating in a licensing proceeding under this part.

(d) *IDENTIFICATION OF NONPOWERED DAMS FOR HYDROPOWER DEVELOPMENT.*—

(1) *IN GENERAL.*—Not later than 12 months after the date of enactment of this section, the Commission, with the Secretary of the Army, the Secretary of the Interior, and the Secretary of Agriculture, shall jointly develop a list of existing nonpowered Federal dams that the Commission and the Secretaries agree have the greatest potential for non-Federal hydropower development.

(2) *CONSIDERATIONS.*—In developing the list under paragraph (1), the Commission and the Secretaries may consider the following:

(A) The compatibility of hydropower generation with existing purposes of the dam.

(B) The proximity of the dam to existing transmission resources.

- (C) *The existence of studies to characterize environmental, cultural, and historic resources relating to the dam.*
- (D) *The effects of hydropower development on release or flow operations of the dam.*
- (3) *AVAILABILITY.—The Commission shall—*
 - (A) *provide the list developed under paragraph (1) to—*
 - (i) *the Committee on Energy and Commerce, the Committee on Transportation and Infrastructure, and the Committee on Natural Resources, of the House of Representatives; and*
 - (ii) *the Committee on Environment and Public Works, and the Committee on Energy and Natural Resources, of the Senate; and*
 - (B) *make such list available to the public.*
- (e) *DEFINITIONS.—For purposes of this section:*
 - (1) *QUALIFYING CRITERIA.—The term “qualifying criteria” means, with respect to a facility—*
 - (A) *as of the date of enactment of this section, the facility is not licensed under, or exempted from the license requirements contained in, this part;*
 - (B) *the facility will be associated with a qualifying non-powered dam;*
 - (C) *the facility will be constructed, operated, and maintained for the generation of electric power;*
 - (D) *the facility will use for such generation any withdrawals, diversions, releases, or flows from the associated qualifying nonpowered dam, including its associated impoundment or other infrastructure; and*
 - (E) *the operation of the facility will not result in any material change to the storage, release, or flow operations of the associated qualifying nonpowered dam.*
 - (2) *QUALIFYING FACILITY.—The term “qualifying facility” means a facility that is determined under this section to meet the qualifying criteria.*
 - (3) *QUALIFYING NONPOWERED DAM.—The term “qualifying nonpowered dam” means any dam, dike, embankment, or other barrier—*
 - (A) *the construction of which was completed on or before the date of enactment of this section;*
 - (B) *that is or was operated for the control, release, or distribution of water for agricultural, municipal, navigational, industrial, commercial, environmental, recreational, aesthetic, drinking water, or flood control purposes; and*
 - (C) *that, as of the date of enactment of this section, is not generating electricity with hydropower generating works that are licensed under, or exempted from the license requirements contained in, this part.*

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