

Public Law 105-317
105th Congress

An Act

Oct. 30, 1998

[H.R. 3903]

To provide for an exchange of lands located near Gustavus, Alaska, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Glacier Bay National Park Boundary Adjustment Act of 1998".

SEC. 2. LAND EXCHANGE AND WILDERNESS DESIGNATION.

(a) IN GENERAL.—(1) Subject to conditions set forth in subsection (c), if the State of Alaska, in a manner consistent with this Act, offers to transfer to the United States the lands identified in paragraph (2) in exchange for the lands identified in paragraph (4), selected from the area described in section 3(b)(1), the Secretary of the Interior (in this Act referred to as the "Secretary") shall complete such exchange no later than 6 months after the issuance of a license to Gustavus Electric Company by the Federal Energy Regulatory Commission (in this Act referred to as "FERC"), in accordance with this Act. This land exchange shall be subject to the laws applicable to exchanges involving lands managed by the Secretary as part of the National Park System in Alaska and the appropriate process for the exchange of State lands required by State law.

(2) The lands to be conveyed to the United States by the State of Alaska shall be determined by mutual agreement of the Secretary and the State of Alaska. Lands that will be considered for conveyance to the United States pursuant to the process required by State law are lands owned by the State of Alaska in the Long Lake area within Wrangell-St. Elias National Park and Preserve, or other lands owned by the State of Alaska.

(3) If the Secretary and the State of Alaska have not agreed on which lands the State of Alaska will convey by a date not later than 6 months after a license is issued pursuant to this Act, the United States shall accept, within 1 year after a license is issued, title to land having a sufficiently equal value to satisfy State and Federal law, subject to clear title and valid existing rights, and absence of environmental contamination, and as provided by the laws applicable to exchanges involving lands managed by the Secretary as part of the National Park System in Alaska and the appropriate process for the exchange of State lands required by State law. Such land shall be accepted by the United States, subject to the other provisions of this Act, from among the following State lands in the priority listed:

Glacier Bay
National Park
Boundary
Adjustment Act
of 1998.
16 USC 410hh-1
note.

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(A) T.6 S., R. 12 E., partially surveyed, Sec. 5, lots 1, 2, and 3, NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$. Containing 617.68 acres, as shown on the plat of survey accepted June 9, 1922.

(B) T.6 S., R. 11 E., partially surveyed, Sec. 11, lots 1 and 2, NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$; Sec. 12; Sec. 14, lots 1 and 2, NW $\frac{1}{4}$ NW $\frac{1}{4}$. Containing 1,191.75 acres, as shown on the plat of survey accepted June 9, 1922.

(C) T.6 S., R. 11 E., partially surveyed, Sec. 2, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$. Containing 200.00 acres, as shown on the plat of survey accepted June 9, 1922.

(D) T.6 S., R. 12 E., partially surveyed, Sec. 6, lots 1 through 10, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$. Containing approximately 529.94 acres, as shown on the plat of survey accepted June 9, 1922.

(4) The lands to be conveyed to the State of Alaska by the United States under paragraph (1) are lands to be designated by the Secretary and the State of Alaska, consistent with sound land management principles, based on those lands determined by FERC with the concurrence of the Secretary and the State of Alaska, in accordance with section 3(b), to be the minimum amount of land necessary for the construction and operation of a hydro-electric project.

(5) The time periods set forth for the completion of the land exchanges described in this Act may be extended as necessary by the Secretary should the processes of State law or Federal law delay completion of an exchange.

(6) For purposes of this Act, the term "land" means lands, waters, and interests therein.

(b) WILDERNESS.—(1) To ensure that this transaction maintains, within the National Wilderness Preservation System, approximately the same amount of area of designated wilderness as currently exists, the following lands in Alaska shall be designated as wilderness in the priority listed, upon consummation of the land exchange authorized by this Act and shall be administered according to the laws governing national wilderness areas in Alaska:

(A) An unnamed island in Glacier Bay National Park lying southeasterly of Blue Mouse Cove in sections 5, 6, 7, and 8, T. 36 S., R. 54 E., CRM, and shown on United States Geological Survey quadrangle Mt. Fairweather (D-2), Alaska, containing approximately 789 acres.

(B) Cenotaph Island of Glacier Bay National Park lying within Lituya Bay in sections 23, 24, 25, and 26, T. 37 S., R. 47 E., CRM, and shown on United States Geological Survey quadrangle Mt. Fairweather (C-5), Alaska, containing approximately 280 acres.

(C) An area of Glacier Bay National Park lying in T. 31 S., R. 43 E. and T. 32 S., R. 43 E., CRM, that is not currently designated wilderness, containing approximately 2,270 acres.

(2) The specific boundaries and acreage of these wilderness designations may be reasonably adjusted by the Secretary, consistent with sound land management principles, to approximately equal, in sum, the total wilderness acreage deleted from Glacier Bay National Park and Preserve pursuant to the land exchange authorized by this Act.

(c) CONDITIONS.—Any exchange of lands under this Act may occur only if—

(1) following the submission of a complete license application, FERC has conducted economic and environmental analyses under the Federal Power Act (16 U.S.C. 791–828) (notwithstanding provisions of that Act and the Federal regulations that otherwise exempt this project from economic analyses), the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370), and the Fish and Wildlife Coordination Act (16 U.S.C. 661–666), that conclude, with the concurrence of the Secretary of the Interior with respect to subparagraphs (A) and (B), that the construction and operation of a hydroelectric power project on the lands described in section 3(b)—

(A) will not adversely impact the purposes and values of Glacier Bay National Park and Preserve (as constituted after the consummation of the land exchange authorized by this section);

(B) will comply with the requirements of the National Historic Preservation Act (16 U.S.C. 470–470w); and

(C) can be accomplished in an economically feasible manner;

(2) FERC held at least one public meeting in Gustavus, Alaska, allowing the citizens of Gustavus to express their views on the proposed project;

(3) FERC has determined, with the concurrence of the Secretary and the State of Alaska, the minimum amount of land necessary to construct and operate this hydroelectric power project; and

(4) Gustavus Electric Company has been granted a license by FERC that requires Gustavus Electric Company to submit an acceptable financing plan to FERC before project construction may commence, and the FERC has approved such plan.

Gustavus
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SEC. 3. ROLE OF FERC.

(a) LICENSE APPLICATION.—(1) The FERC licensing process shall apply to any application submitted by Gustavus Electric Company to the FERC for the right to construct and operate a hydropower project on the lands described in subsection (b).

(2) FERC is authorized to accept and consider an application filed by Gustavus Electric Company for the construction and operation of a hydropower plant to be located on lands within the area described in subsection (b), notwithstanding section 3(2) of the Federal Power Act (16 U.S.C. 796(2)). Such application must be submitted within 3 years after the date of the enactment of this Act.

(3) FERC will retain jurisdiction over any hydropower project constructed on this site.

(b) ANALYSES.—(1) The lands referred to in subsection (a) of this section are lands in the State of Alaska described as follows:

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Township 39 South, Range 59 East, partially surveyed, Section 36 (unsurveyed), $SE\frac{1}{4}SW\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$, $W\frac{1}{2}W\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$, and $S\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$. Containing approximately 130 acres.

Township 40 South, Range 59 East, partially surveyed, Section 1 (unsurveyed), $NW\frac{1}{4}$, $SW\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$, and $SW\frac{1}{4}SW\frac{1}{4}NE\frac{1}{4}$,

excluding U.S. Survey 944 and Native allotment A-442; Section 2 (unsurveyed), fractional, that portion lying above the mean high tide line of Icy Passage, excluding U.S. Survey 944 and U.S. Survey 945; Section 11 (unsurveyed), fractional, that portion lying above the mean high tide line of Icy Passage, excluding U.S. Survey 944; Section 12 (unsurveyed), fractional, NW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, and those portions of NW $\frac{1}{4}$ and SW $\frac{1}{4}$ lying above the mean high tide line of Icy Passage, excluding U.S. Survey 944 and Native allotment A-442. Containing approximately 1,015 acres.

(2) Additional lands and acreage will be included as needed in the study area described in paragraph (1) to account for accretion to these lands from natural forces.

(3) With the concurrence of the Secretary and the State of Alaska, the FERC shall determine the minimum amount of lands necessary for construction and operation of such project.

(4) The National Park Service shall participate as a joint lead agency in the development of any environmental document under the National Environmental Policy Act of 1969 in the licensing of such project. Such environmental document shall consider both the impacts resulting from licensing and any land exchange necessary to authorize such project.

(c) **ISSUANCE OF LICENSE.**—(1) A condition of the license to construct and operate any portion of the hydroelectric power project shall be FERC's approval, prior to any commencement of construction, of a finance plan submitted by Gustavus Electric Company.

(2) The National Park Service, as the existing supervisor of potential project lands ultimately to be deleted from the Federal reservation in accordance with this Act, waives its right to impose mandatory conditions on such project lands pursuant to section 4(e) of the Federal Power Act (16 U.S.C. 797(e)).

(3) FERC shall not license or relicense the project, or amend the project license unless it determines, with the Secretary's concurrence, that the project will not adversely impact the purposes and values of Glacier Bay National Park and Preserve (as constituted after the consummation of the land exchange authorized by this Act). Additionally, a condition of the license, or any succeeding license, to construct and operate any portion of the hydroelectric power project shall require the licensee to mitigate any adverse effects of the project on the purposes and values of Glacier Bay National Park and Preserve identified by the Secretary after the initial licensing.

(4) A condition of the license to construct and operate any portion of the hydroelectric power project shall be the completion, prior to any commencement of construction, of the land exchange described in this Act.

SEC. 4. ROLE OF SECRETARY OF THE INTERIOR.

(a) **SPECIAL USE PERMIT.**—Notwithstanding the provisions of the Wilderness Act (16 U.S.C. 1133–1136), the Secretary shall issue a special use permit to Gustavus Electric Company to allow the completion of the analyses referred to in section 3. The Secretary shall impose conditions in the permit as needed to protect the purposes and values of Glacier Bay National Park and Preserve.

(b) **PARK SYSTEM.**—The lands acquired from the State of Alaska under this Act shall be added to and administered as part of the National Park System, subject to valid existing rights. Upon

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completion of the exchange of lands under this Act, the Secretary shall adjust, as necessary, the boundaries of the affected National Park System units to include the lands acquired from the State of Alaska; and adjust the boundary of Glacier Bay National Park and Preserve to exclude the lands transferred to the State of Alaska under this Act. Any such adjustment to the boundaries of National Park System units resulting from this Act shall not be charged against any acreage limitations under section 103(b) of Public Law 96-487.

(c) **WILDERNESS AREA BOUNDARIES.**—The Secretary shall make any necessary modifications or adjustments of boundaries of wilderness areas as a result of the additions and deletions caused by the land exchange referenced in section 2. Any such adjustment to the boundaries of National Park System units shall not be considered in applying any acreage limitations under section 103(b) of Public Law 96-487.

(d) **CONCURRENCE OF THE SECRETARY.**—Whenever in this Act the concurrence of the Secretary is required, it shall not be unlawfully withheld or unreasonably delayed.

SEC. 5. APPLICABLE LAW.

The authorities and jurisdiction provided in this Act shall continue in effect until such time as this Act is expressly modified or repealed by Congress.

Approved October 30, 1998.

LEGISLATIVE HISTORY—H.R. 3903 (S. 2109):

HOUSE REPORTS: No. 105-706, Pt. 1 (Comm. on Resources).

SENATE REPORTS: No. 105-306 accompanying S. 2109 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 144 (1998):

Sept. 15, considered and passed House.

Oct. 2, considered and passed Senate.

Oct. 8, Senate vitiated passage; reconsidered and passed, amended.

Oct. 10, House concurred in Senate amendments.