

105TH CONGRESS
2D SESSION

H. R. 4834

To ensure salmon recovery in the Pacific Northwest, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 4, 1998

Ms. FURSE introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To ensure salmon recovery in the Pacific Northwest, 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 “Northwest Salmon Re-
5 covery Act of 1998”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that:

8 (1) In order to deal with significant changes in
9 the Nation’s electric utility industry, and to continue

1 to enjoy the considerable benefits the Pacific North-
2 west receives from the Federal Columbia River
3 Power System through the Bonneville Power Admin-
4 istration, new tools are needed to ensure that the
5 electric power customers of the Administration repay
6 all the costs associated with the system, including
7 the public obligations to restore fish and wildlife,
8 meet treaty and trust obligations, and pay the
9 United States Treasury and the Washington Public
10 Power Supply System bondholders.

11 (2) In addition, new tools are needed to ensure
12 salmon recovery and promote conservation and re-
13 newable resources in the Pacific Northwest region.

14 **SEC. 3. DEFINITIONS.**

15 For purposes of this Act:

16 (1) The term “Administration” means the Bon-
17 neville Power Administration.

18 (2) The term “Administrator” means the Ad-
19 ministrator of the Bonneville Power Administration.

20 (3) The term “Council” means the Pacific
21 Northwest Electric Power and Conservation Plan-
22 ning Council established by the Pacific Northwest
23 Electric Power Planning and Conservation Act.

24 (4) The term “Commission” means the Federal
25 Energy Regulatory Commission.

1 (5) The terms “region” and “Pacific North-
2 west” have the meaning provided for such terms by
3 section 3(11) of the Pacific Northwest Electric
4 Power Planning and Conservation Act.

5 (6) The term “Secretary” means the Secretary
6 of the Interior.

7 (7) The term “States” means the States of Or-
8 egon, Washington, Idaho, Montana, and Alaska.

9 (8) The term “tribes” means the following fed-
10 erally recognized Indian tribes: Confederated Salish
11 and Kootenai Tribes, Shoshone-Bannock Tribe, Nez
12 Perce Tribe, Kootenai Tribe of Idaho, Coeur d’Alene
13 Tribe, Shoshone-Paiute Tribes, Burns-Paiute Tribe,
14 Confederated Tribes of Warm Springs, Confederated
15 Tribes of Umatilla, and Confederated Tribes of
16 Yakama, Spokane Tribe, Colville Tribe, and Kalispel
17 Tribe.

18 (9) The term “unified plan” means the unified
19 plan developed under section 4 of this Act.

20 (10) The term “WPPSS” means the Washing-
21 ton Public Power Supply System.

22 **SEC. 4. GOVERNANCE.**

23 The Secretary of the Interior shall, in consultation
24 with the Federal, State, and tribal governments in the Pa-
25 cific Northwest, develop a unified plan for salmon recovery

1 in the region by December 31, 1999. The goal of this plan
 2 shall be to restore sustainable, naturally reproducing salm-
 3 on populations to support tribal and nontribal harvest and
 4 cultural and economic practices. The plan shall address
 5 treaty, trust, and Endangered Species Act responsibilities,
 6 the fish mitigation and enhancement requirements of the
 7 Pacific Northwest Electric Power Planning and Conserva-
 8 tion Act, the water quality standards under the Clean
 9 Water Act, and the United States-Canada Pacific Salmon
 10 Treaty commitments. Implementation of the unified plan
 11 and the Northwest Power Planning Council's fish and
 12 wildlife program shall be overseen by the Secretary of the
 13 Interior. The Secretary shall promulgate a rule, in accord-
 14 ance with the applicable requirements of title 5 of the
 15 United States Code, applicable environmental require-
 16 ments, and other applicable requirements of law, contain-
 17 ing the plan developed under this section.

18 **SEC. 5. FISCAL ACCOUNTABILITY.**

19 (a) ACCOUNTING SYSTEM.—

20 (1) REQUIREMENTS.—Not later than 12
 21 months after the date of the enactment of this Act,
 22 the Secretary of Energy and the Secretary of the
 23 Treasury, in consultation with the Office of Manage-
 24 ment and Budget and the General Accounting Of-
 25 fice, shall establish an accounting system for the Ad-

1 ministration that meets each of the following re-
2 quirements:

3 (A) REPAYMENT OF COSTS TO THE
4 UNITED STATES TREASURY.—The accounting
5 system shall ensure that all costs repayable to
6 the United States Treasury are paid in a timely
7 manner. The accounting system shall provide
8 for independent, outside reviews of Administra-
9 tion repayment studies and include the views of
10 the Federal Energy Regulatory Commission.
11 Such reviews shall assess assumptions and
12 methodologies, application of appropriate inter-
13 est rates, and whether all power-related costs
14 are included for repayment.

15 (B) FISH AND WILDLIFE COSTS.—The ac-
16 counting system shall properly and accurately
17 identify costs allocable to compliance with the
18 restoration of fish and wildlife in the region, in-
19 cluding treaty, trust, and Endangered Species
20 Act responsibilities of the Administrator, the
21 fish mitigation and enhancement requirements
22 of the Pacific Northwest Electric Power Plan-
23 ning and Conservation Act, and the water qual-
24 ity standards under the Clean Water Act. The
25 Administration is prohibited from allocating to

1 fishery restoration accounts the costs of spills
2 or releases of water that result in power loss or
3 which are required for purposes of flood control,
4 irrigation, navigation, or other authorized ac-
5 tivities.

6 (2) ACCOUNTING PRINCIPLES AND REQUIRE-
7 MENTS.—The accounting system shall provide proce-
8 dures to ensure regular consultation with Federal,
9 State, and tribal governments in the region, tracking
10 of the costs associated with each of the Administra-
11 tor’s significant responsibilities, including those re-
12 ferred to in paragraph (1).

13 (3) PUBLIC AVAILABILITY.—The system shall
14 contain procedures to ensure that the books and
15 records of the Administration, including all account-
16 ing records regarding the costs allocated to fishery
17 restoration, public purposes, and the WPPSS debt,
18 are available to the public.

19 (4) COMPLIANCE.—The system shall contain
20 procedures for the filing of complaints with the Sec-
21 retary of Energy by interested persons seeking to
22 ensure compliance with this section.

23 (b) FISH AND WILDLIFE BUDGET MANAGEMENT
24 AND ACCOUNTABILITY.—The Secretaries of the Interior,
25 Energy, Commerce, and the Army shall implement (until

1 the unified plan takes effect) the Memorandum of Agree-
2 ment and Annex on Budget Management and Accountabil-
3 ity adopted in September 1996, including procedures for
4 effective regional involvement and accountability in the ex-
5 penditure of moneys from the Administration's fund pur-
6 suant to section 4(h)(10) of the Pacific Northwest Electric
7 Power Planning and Conservation Act. The following pro-
8 cedures shall apply to administration of the Memorandum
9 of Agreement and the unified plan:

10 (1) Open and accurate methods for tracking the
11 funding, implementation, and performance of activi-
12 ties.

13 (2) Independent scientific review of activities
14 funded pursuant to this Act. Such independent sci-
15 entific review shall be undertaken by an independent
16 scientific advisory board appointed by the Secretary
17 of the Interior, in consultation with the region's
18 State and tribal governments. Appointments to the
19 Board will take into account recommendations from
20 the chair of the National Research Council.

21 (3) Coordinated and integrated project
22 prioritization processes for selection of activities
23 (under both the unified plan and the Council's fish
24 and wildlife program) to be funded pursuant to this
25 Act to be implemented by State and tribal govern-

1 ments and the Secretaries of the Interior, Energy,
 2 Commerce, and the Army for all fish and wildlife ex-
 3 penditures pursuant to this Act, using consistent cri-
 4 teria that allow for choices among direct, reimburs-
 5 able and capital, and other expenditure categories.

6 (4) Effective procedures for resolution of dis-
 7 putes regarding budget management and account-
 8 ability.

9 (c) REPEAL.—Section 4(h)(10)(D) of the Pacific
 10 Northwest Electric Power Planning and Conservation Act
 11 (16 U.S.C. 839b(h)(10)(D)) is hereby repealed.

12 **SEC. 6. PAYMENTS TOWARD THE NATURAL RESOURCES RE-**
 13 **COVERY FUND AND THE WPPSS DEBT.**

14 (a) NATURAL RESOURCES RECOVERY FUND.—

15 (1) ESTABLISHMENT.—The Secretary of the In-
 16 terior shall establish a Natural Resources Recovery
 17 Fund. The Fund shall be managed by the Secretary.

18 (2) USES OF FUND.—The Secretary of the In-
 19 terior shall expend amounts in the Fund in a man-
 20 ner consistent with the Memorandum of Agreement
 21 referred to in section 5 until the unified plan takes
 22 effect. When the unified plan takes effect, the Fund
 23 shall be administered in a manner consistent with
 24 such unified plan. If no unified plan exists, the Sec-
 25 retary of the Interior shall allocate funds in con-

1 sultation with States, tribes, and Federal agencies.
2 Amounts in the Fund shall be used for the restora-
3 tion of fish and wildlife in the region, including
4 meeting treaty, trust, and Endangered Species Act
5 responsibilities, the fish mitigation and enhancement
6 requirements of the Pacific Northwest Electric
7 Power Planning and Conservation Act, and imple-
8 mentation of measures necessary to meet the water
9 quality standards under the Clean Water Act. Mon-
10 eys in the Fund may also be used to promote con-
11 servation and renewable energy projects.

12 (3) SOURCE OF MONIES.—All fees collected
13 under paragraph (4) shall be deposited in the Fund,
14 and such fees shall be available without further ap-
15 propriation for the purposes set forth in paragraph
16 (2).

17 (4) DISTRIBUTION FEE.—Each public and in-
18 vestor-owned utility that purchases electric power
19 from the Administrator and makes retail sales of
20 electric power in the region shall collect and deposit
21 in the Fund a fee in the amount of 3 mills per kilo-
22 watt hour on all retail electric power sales made by
23 such utility in the region during the 15 calendar
24 years following the date of the enactment of this
25 Act. During such 15-year period, the Administrator

1 shall collect from each direct service industrial cus-
2 tomer of the Administrator (as defined in section
3 3(8) of the Pacific Northwest Electric Power Plan-
4 ning and Conservation Act) a fee in the amount of
5 3 mills per kilowatt hour.

6 (b) PAYMENTS OF WPPSS DEBT.—In order to en-
7 sure that the costs of repayment of Washington Public
8 Power Supply System debt is repaid and fairly allocated
9 to all Administration customers, the Administrator shall
10 establish, collect, and use for repayment of the WPPSS
11 debt each of the following fees and charges:

12 (1) FEE OR SURCHARGE FOR CERTAIN NEW
13 CONTRACTS.—The Administrator shall require each
14 direct service industrial customer (as defined in sec-
15 tion 3(8) of the Pacific Northwest Electric Power
16 Planning and Conservation Act) that enters into a
17 new contract with the Administrator for the delivery
18 of electric energy by the Administrator during the
19 period beginning after the date of the enactment of
20 this Act and ending in the year 2006 to pay either
21 a fee established by the Administrator or an addi-
22 tional percentage surcharge over the otherwise appli-
23 cable rates.

24 (2) EXIT CHARGE.—The Administrator shall re-
25 quire each wholesale power purchaser receiving elec-

1 tric energy as of the year 2006 that does not enter
2 into a contract with the Administration for the deliv-
3 ery of power after the year 2006 to pay an exit
4 charge in such amount as may be established by the
5 Administrator.

6 (3) AMOUNT OF FEE, SURCHARGE, OR EXIT
7 CHARGE.—Fees, surcharges, and exit charges re-
8 ceived by the Administrator under this subsection
9 shall be established at such level as the Adminis-
10 trator deems necessary to insure that the direct
11 service industrial customers referred to in paragraph
12 (1) and the wholesale power purchasers referred to
13 in paragraph (2) pay an equitable portion of the
14 Washington Public Power Supply System debt based
15 upon each purchaser’s historic purchases.

16 (c) RELATIONSHIP TO RATES.—The fees, surcharges,
17 and exit charges imposed as provided in this section shall
18 be in addition to the rates established as provided in sec-
19 tions 7 and 8.

20 **SEC. 7. RATES FOR POWER SALES BY BONNEVILLE POWER**
21 **ADMINISTRATION.**

22 (a) RATES, TERMS, AND CONDITIONS.—

23 (1) IN GENERAL.—All rates and charges made,
24 demanded, or received by the Administrator for the
25 sale of electric energy by the Administration to its

1 electric energy customers (other than the fees, sur-
2 charges, and charges referred to in section 6) shall
3 recover from such customers, over a reasonable pe-
4 riod of years, in accordance with sound business
5 principles, all costs incurred by the United States
6 for the generation and marketing of electric energy
7 sold by the Administration, including meeting treaty,
8 trust, and Endangered Species Act responsibilities,
9 the fish mitigation and enhancement requirements of
10 the Northwest Power Act, and the water quality
11 standards under the Clean Water Act.

12 (2) COMMISSION APPROVAL.—Rates established
13 under this section shall become effective only upon
14 a determination by the Commission that such rates
15 meet the requirements of paragraph (1). The Com-
16 mission may modify proposed rates submitted by the
17 Administrator and establish terms and conditions to
18 meet the requirements of paragraph (1).

19 (b) EXISTING RATES.—All rates, terms, and condi-
20 tions for the sale of electric energy at wholesale by the
21 Administration placed into effect on a final basis pursuant
22 to any authority prior to the date of enactment of this
23 Act shall remain in full force and effect unless the Com-
24 mission determines, after a hearing held upon its own mo-
25 tion or upon complaint, that the rates, terms, and condi-

1 tions are inconsistent with subsection (a) of this section
2 and establishes new rates, terms, and conditions. Such
3 new rates, terms, and conditions shall not result in rates
4 for such sales that are in excess of the comparable market
5 rate for electricity in the Western System Coordinating
6 Council.

7 **SEC. 8. FEDERAL ENERGY REGULATORY COMMISSION REG-**
8 **ULATION OF BONNEVILLE POWER ADMINIS-**
9 **TRATION TRANSMISSION RATES.**

10 (a) IN GENERAL.—The transmission of electric en-
11 ergy by the Administration shall be subject to the provi-
12 sions of parts II and III of the Federal Power Act (except
13 sections 204, 207, 209, 214, and 305), and the Commis-
14 sion shall have jurisdiction under such parts II and III
15 over the rates, terms, and conditions of such transmission.
16 Such provisions of the Federal Power Act and the rules,
17 regulations, and policies of the Commission thereunder
18 shall apply to such transmission by the Administration to
19 the same extent and in the same manner as such provi-
20 sions apply to the transmission of electric energy by a pub-
21 lic utility otherwise subject to the jurisdiction of the Com-
22 mission under part II of such Act, except that rates
23 charged by the Administration for the transmission of
24 electric energy shall be sufficient to recover all costs for
25 compliance with treaty, trust, and Endangered Species

1 Act responsibilities, the fish mitigation and enhancement
2 requirements of the Pacific Northwest Electric Power
3 Planning and Conservation Act, and the water quality
4 standards under the Clean Water Act.

5 (b) SEPARATION.—(1) The financial and accounting
6 system established for the Administration under section
7 5 shall assure the separation of all costs, revenues, and
8 other fiscal matters associated with transmission from the
9 costs, revenues, and other fiscal matters associated with
10 power sales. The Commission shall review and approve or
11 disapprove such administrative separation and assure that
12 only costs properly allocable to transmission rates are re-
13 covered through transmission rates. Nothing in this para-
14 graph shall be construed to limit or affect the authority
15 of the Administrator to impose a transmission fee as part
16 of cost recovery measures under subsection (c)(1)(B)(ii).

17 (2) Except for purposes of assuring such trans-
18 mission access as is necessary for purposes of meeting
19 treaty, trust, and Endangered Species Act responsibilities,
20 the fish mitigation and enhancement requirements of the
21 Northwest Power Act, and the water quality standards
22 under the Clean Water Act, the Commission shall take
23 such steps as may be necessary to assure that no pref-
24 erence is accorded to the Administration for the trans-
25 mission of power sold by the Administration.

1 (c) COST RECOVERY ADJUSTMENT.—(1) Whenever,
2 during the period beginning October 1, 2001, and ending
3 September 30, 2016, the Administrator, in accordance
4 with account procedures established under section 5, de-
5 termines that either—

6 (A) the Administration’s reserves have fallen
7 below \$800,000,000, or

8 (B) a 10-year forecast indicates that in any 1
9 future year, the Administration has less than a 95
10 percent probability of meeting a payment to the
11 United States Treasury,

12 the Administrator shall submit to the Commission a trans-
13 mission rate increase under this subsection and implement
14 the following cost recovery measures designed to correct,
15 within 5 years, such reserve deficiency or reduced payment
16 ability forecast:

17 (i) the Administrator shall adjust wholesale
18 power rates (up to the market rate for electricity in
19 the Western System Coordinating Council) to meet
20 the revenue requirement set forth in subparagraph
21 (A) or (B), as the case may be; and

22 (ii) if increasing wholesale rates up to the mar-
23 ket rate of electricity in the Western System Coordi-
24 nating Council is not sufficient to meet such require-
25 ment, the Administrator shall implement a trans-

1 mission fee to generate revenues sufficient to meet
2 such requirement but not in excess of \$100,000,000
3 a year.

4 (2) The Commission shall approve, disapprove, or
5 modify any transmission rate increase submitted under
6 this subsection within 30 days after the date of submis-
7 sion. The Commission shall approve such increase if the
8 Commission determines that such rate increase meets the
9 requirements of this subsection and that the Adminis-
10 trator has taken reasonable steps to avoid such increase
11 by using its authority under section 4(h)(10)(C) of the Pa-
12 cific Northwest Electric Power, Planning and Conserva-
13 tion Act (16 U.S.C. 838b(h)(10)(D)).

○