

105TH CONGRESS  
2D SESSION

# S. 1904

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.

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## IN THE SENATE OF THE UNITED STATES

APRIL 1, 1998

Mr. GORTON introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## 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 (a) IN GENERAL.—The Elwha River Ecosystem and  
4 Fisheries Restoration Act (106 Stat. 3173) is amended  
5 by striking section 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 shall remove the  
7 Elwha dam.

8 “(B) PROTECTION OF WATER SUPPLY.—

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

1                   “(ii) ACTIONS INCLUDED.—The ac-  
 2                   tions that the Secretary shall take under  
 3                   clause (i) include—

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

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

14                  “(iii) PAYMENT OF COSTS.—The cost  
 15                  of each action taken under clause (i) shall  
 16                  be borne by the Secretary.

17                  “(2) EVALUATION OF EFFECT OF REMOVAL.—  
 18                  For a period of 12 years during the removal phase  
 19                  of the Elwha dam, the Secretary shall make a thor-  
 20                  ough evaluation of the impact of removal of the dam  
 21                  on fish runs.

22                  “(3) COMPENSATION FOR LOST REVENUE.—  
 23                  After the acquisition of the Projects, the Secretary  
 24                  shall pay the Clallam County Board of Commis-  
 25                  sioners \$150,000 per year for a period of 12 years

1 for the purposes of recovering lost revenue under the  
2 condition that the county dedicate at least 50 per-  
3 cent of each payment to studying the river system  
4 before, during, and after dam removal.

5 “(d) GLINES PROJECT.—

6 “(1) IN GENERAL.—As soon as practicable  
7 after sums are appropriated for the purpose, the  
8 Secretary shall acquire the Glines Project.

9 “(2) DELAY IN REMOVAL OF DAM.—

10 “(A) IN GENERAL.—The Secretary shall  
11 continue operation of, and shall not commence  
12 removal of, the Glines Canyon dam for a period  
13 of 12 years after the Elwha dam has been re-  
14 moved.

15 “(B) REMOVAL.—After the 12-year period  
16 described in subparagraph (A), the Secretary  
17 may, subject to the availability of appropria-  
18 tions, remove the Glines Canyon Project, if the  
19 Secretary determines that the benefit to fish-  
20 eries and restoration of the natural state of the  
21 river exceeds the value of power and the desir-  
22 ability of the lake by a margin that is sufficient  
23 to warrant the expenditure of the removal cost.

1 “(C) ENGINEERING AND DESIGN STUDY.—

2 As soon as practicable after the date of enact-  
3 ment of this paragraph, the Secretary shall—

4 “(i) complete an engineering and de-  
5 sign study to determine the most cost-ef-  
6 fective manner in which transmission lines  
7 and operational controls can be reconfig-  
8 ured to permit operation of the Glines  
9 Canyon dam during the 12-year period de-  
10 scribed in subsection (a)(2); and

11 “(ii) evaluate the impact that manag-  
12 ing the Glines Canyon Project for fisheries  
13 restoration will have on future hydropower  
14 operations.

15 “(3) FISHERIES RESTORATION ENHANCEMENT  
16 EFFORTS.—

17 “(A) IN GENERAL.—To the extent prac-  
18 ticable, the Secretary shall develop and imple-  
19 ment a comprehensive fish enhancement plan  
20 with the Elwha Citizens Commission, the Lower  
21 Elwha Klallam tribe, the National Marine Fish-  
22 eries Service, the Washington Department of  
23 Fish and Wildlife, and other persons and enti-  
24 ties directly affected by management decisions  
25 on the Elwha River.

1           “(B) LIMITATION.—The comprehensive  
2 fish enhancement plan shall not compromise or  
3 preempt—

4           “(i) commitments for power genera-  
5 tion on the river in effect on the date of  
6 enactment of this paragraph; or

7           “(ii) the authority of the Secretary to  
8 remove the Glines Canyon Project before  
9 the 12-year period described in subsection  
10 (a)(2) has expired.”.

11       (b) CONFORMING AMENDMENTS.—The Elwha River  
12 Ecosystem and Fisheries Restoration Act (106 Stat.  
13 3173) is amended—

14           (1) in section 4—

15           (A) in subsection (a)—

16           (i) in the matter preceding paragraph  
17 (1), by striking “Effective” and all that  
18 follows through “implement” and inserting  
19 “Effective 60 days after date of convey-  
20 ance of the Projects, the Secretary shall,  
21 subject to the availability of appropriated  
22 funds, take such actions as are necessary  
23 to implement”; and

24           (ii) in paragraph (1), by striking “re-  
25 ferred to in section 3(c)(2) for the removal

1 of the dams and full;” and inserting “for  
 2 the removal of the Elwha dam and;” and  
 3 (B) in the first sentence of subsection (b),  
 4 by striking “referred to in section 3(c)(2)”;  
 5 (2) in section 5(a), by striking “as provided in  
 6 section 3(e)”;  
 7 (3) in section 6—  
 8 (A) in the first sentence of subsection (a),  
 9 by striking “makes the determination to remove  
 10 the dams and”; and  
 11 (B) in the first sentence of subsection  
 12 (b)(1)—  
 13 (i) by striking “makes the determina-  
 14 tion to remove the dams and”; and  
 15 (ii) by inserting “of the Elwha  
 16 Project” after “removal”; and  
 17 (4) in section 7(a)—  
 18 (A) by striking “makes the determination  
 19 to remove the dams and”; and  
 20 (B) by inserting “of the Elwha Project”  
 21 after “removal”.

22 **SEC. 2. COLUMBIA-SNAKE RIVER HYDROELECTRIC SYSTEM**  
 23 **PROTECTION.**

24 (a) IN GENERAL.—Notwithstanding the Endangered  
 25 Species Act (42 U.S.C. 4321 et seq.) or any other Federal



1 or State law (including a regulation), or Federal Energy  
2 Regulatory Commission license condition, unless specifi-  
3 cally authorized by an Act of Congress, a Federal or State  
4 agency shall not require, approve, authorize, fund, or un-  
5 dertake any action that would—

6 (1) impair the ability of flood control facilities  
7 located in the Columbia-Snake River basin to ade-  
8 quately protect the safety of humans and property  
9 from damage due to flooding;

10 (2) reduce the capability of the Federal Colum-  
11 bia River Power System to generate electric energy  
12 or capacity below the operations analyzed in the Pre-  
13 ferred Alternative of the Columbia River System Op-  
14 eration Review Final Environmental Impact State-  
15 ment, and thereafter adopted, in conjunction with  
16 the National Marine Fisheries Service March 2,  
17 1995 biological opinion of Federal Columbia River  
18 Power System operations by the Bonneville Power  
19 Administration, the Army Corps of Engineers, and  
20 the Bureau of Reclamation except as may be nec-  
21 essary for flood control or routine maintenance or  
22 repair of generating units;

23 (3) reduce the power and energy generating ca-  
24 pability of any dam on the Columbia or Snake Riv-  
25 ers or their tributaries licensed by the Federal En-

1       ergy Regulatory Commission to a level below 85 per-  
2       cent of its capability in 1990;

3           (4)(A) reduce the level of the Columbia-Snake  
4       River reservoirs below minimum operating pools (as  
5       of the date of enactment of this Act), except as may  
6       be necessary for flood control or maintenance or re-  
7       pair of dam and navigation locks;

8           (B) reduce the reservoir levels below established  
9       minimum irrigation pools; or

10          (C) further restrict access to the Columbia  
11       River or Snake River for irrigation or recreational  
12       use;

13          (5) impair the Columbia-Snake River inland  
14       navigation system from Bonneville Dam to Lewiston,  
15       Idaho (as of the date of enactment of this Act),  
16       which shall remain at all times fully operational as  
17       authorized by Congress;

18          (6) restrict or abrogate in any way the manage-  
19       ment or control of State water rights; or

20          (7) require the release of stored water from any  
21       Federal, State, or private water storage project.

22       (b) NO ACTION ABOVE RIVER MILE 106.—Unless  
23       specifically authorized by Congress—

24           (1) a Federal or State agency shall not take  
25       any action above Columbia River mile 106 that

1 would reduce the Congressionally required minimum  
2 14 foot navigation channel and navigation lock sill  
3 clearance at minimum regulated flow, except as may  
4 be necessary for purposes of flood control, or main-  
5 tenance and repairs; and

6 (2) no Federal funds may be expended to study  
7 the reduction of the minimum channel depth or lock  
8 sill clearance unless specifically authorized by Con-  
9 gress.

10 (c) JUDICIAL REVIEW.—

11 (1) IN GENERAL.—Except to enforce this sec-  
12 tion, a Federal or State court, in reviewing agency  
13 action concerning any federally authorized or li-  
14 censed dam or navigational lock in the Columbia-  
15 Snake River basin, shall be without jurisdiction to  
16 issue any equitable relief concerning the operation,  
17 removal, breach, or structural modification of the  
18 dam or lock, and decisions concerning the operation,  
19 removal, breach, or structural modification of those  
20 dams and locks are declared to be within the exclu-  
21 sive competence of Congress.

22 (2) CIVIL ACTION.—A person whose interests  
23 may be adversely affected by a violation of this sec-  
24 tion may bring a civil action in the person's own be-  
25 half to enjoin any person, including the United

1 States and any governmental instrumentality or  
2 agency (to the extent permitted by the 11th amend-  
3 ment to the Constitution), from continuation of the  
4 violation.

5 (3) PERIOD OF LIMITATION.—A civil action to  
6 enjoin a violation of this section shall be brought not  
7 later than 90 days of the date on which the agency  
8 action becomes final.

9 (4) EXCLUSIVE VENUE.—A civil action to en-  
10 join a violation of this section may be brought only  
11 in the United States District Court for the District  
12 of Columbia.

13 (5) STAY.—On motion by any party to a civil  
14 action under this subsection, the Court, without re-  
15 quiring bond or security of any kind, shall imme-  
16 diately stay implementation of the agency action  
17 pending final judgment (including judgment after  
18 appeal) in the civil action.

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