

112TH CONGRESS
2^D SESSION

H. R. 6247

To protect the Federal Columbia River Power System, Power Marketing Administration customers, and Bureau of Reclamation dams and other facilities and to promote new Federal and other hydropower generation.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 2012

Mr. HASTINGS of Washington introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Energy and 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 protect the Federal Columbia River Power System, Power Marketing Administration customers, and Bureau of Reclamation dams and other facilities and to promote new Federal and other hydropower generation.

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 “Saving Our Dams and
5 New Hydropower Development and Jobs Act of 2012”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
 Sec. 2. Table of contents.
 Sec. 3. Findings.
 Sec. 4. Bureau of Reclamation conduit hydropower.
 Sec. 5. Transparency and reporting.
 Sec. 6. Non-Federal contributions to Bureau of Reclamation and Power Marketing Administration infrastructure.
 Sec. 7. Advancing hydropower through new water storage.
 Sec. 8. Prohibitin harmful spills at Bureau of Reclamation and other Federal dams.
 Sec. 9. Protecting electricity rights-of-way on Federal lands.
 Sec. 10. Federal funding prohibition on Power Marketing Administration memorandum.
 Sec. 11. Federal funding prohibitions on Federal dam removal.
 Sec. 12. Federal funding prohibitions on dam removal mitigation.
 Sec. 13. Federal funding prohibitions on nongovernmental organizations.
 Sec. 14. Departments of the Interior and Commerce conditions and recommendations.

1 **SEC. 3. FINDINGS.**

2 Congress finds the following:

3 (1) Hydropower is the most abundant source of
 4 clean, renewable energy in the United States.

5 (2) All Federal hydropower facilities, including
 6 Bureau of Reclamation dams, provide renewable and
 7 emissions-free energy to rural and urban commu-
 8 nities, accounting for half of the hydroelectricity pro-
 9 duced in the Nation.

10 (3) Non-Federal hydropower facilities, many of
 11 which are located on Federal lands, provide the
 12 other half of this clean energy.

13 (4) Federal and non-Federal hydropower ac-
 14 count for nearly 7 percent of the electricity gen-
 15 erated in the United States, avoiding approximately
 16 200,000,000 annual metric tons of carbon emissions.

1 (5) Existing Federal and non-Federal hydro-
2 power facilities are subject to litigation, judicial or-
3 ders, and regulations that seek to diminish this re-
4 source.

5 (6) Potential exists to develop new hydropower
6 facilities and jobs related to construction and oper-
7 ation of these facilities.

8 (7) It is in the Nation’s economic and environ-
9 mental interest to protect existing hydropower re-
10 sources and promote new development.

11 **SEC. 4. BUREAU OF RECLAMATION CONDUIT HYDRO-**
12 **POWER.**

13 Section 9(c) of the Reclamation Project Act of 1939
14 (43 U.S.C. 485h(c)) is amended—

15 (1) by striking “The Secretary is authorized to
16 enter into contracts to furnish water” and inserting:

17 “(1) The Secretary is authorized to enter into
18 contracts to furnish water”;

19 (2) by striking “(1) shall” and inserting “(A)
20 shall”;

21 (3) by striking “(2) shall” and inserting “(B)
22 shall”;

23 (4) by striking “respecting the terms of sales of
24 electric power and leases of power privileges shall be
25 in addition and alternative to any authority in exist-

1 ing laws relating to particular projects” and insert-
2 ing “respecting the sales of electric power and leases
3 of power privileges shall be an authorization in addi-
4 tion to and alternative to any authority in existing
5 laws related to particular projects, including small
6 conduit hydropower development”; and

7 (5) by adding at the end the following:

8 “(2) When carrying out this subsection, the
9 Secretary shall first offer the lease of power privilege
10 to an irrigation district or water users association
11 operating the applicable transferred work, or to the
12 irrigation district or water users association receiv-
13 ing water from the applicable reserved work. The
14 Secretary shall determine a reasonable timeframe for
15 the irrigation district or water users association to
16 accept or reject a lease of power privilege offer.

17 “(3) The National Environmental Policy Act of
18 1969 (42 U.S.C. 4321 et seq.) shall not apply to
19 small conduit hydropower development, excluding
20 siting of associated transmission on Federal lands,
21 under this subsection.

22 “(4) The Power Resources Office of the Bureau
23 of Reclamation shall be the lead office of small con-
24 duit hydropower policy and procedure-setting activi-
25 ties conducted under this subsection.

1 “(5) Nothing in this subsection shall obligate
2 the Western Area Power Administration, the Bonne-
3 ville Power Administration, or the Southwestern
4 Power Administration to purchase or market any of
5 the power produced by the facilities covered under
6 this subsection and none of the costs associated with
7 production or delivery of such power shall be as-
8 signed to project purposes for inclusion in project
9 rates.

10 “(6) Nothing in this subsection shall alter or
11 impede the delivery and management of water by
12 Bureau of Reclamation facilities, as water used for
13 conduit hydropower generation shall be deemed inci-
14 dental to use of water for the original project pur-
15 poses. Lease of power privilege shall be made only
16 when, in the judgment of the Secretary, the exercise
17 of the lease will not be incompatible with the pur-
18 poses of the project or division involved, nor shall it
19 create any unmitigated financial or physical impacts
20 to the project or division involved. The Secretary
21 shall notify and consult with the irrigation district or
22 legally organized water users association operating
23 the transferred work in advance of offering the lease
24 of power privilege and shall prescribe such terms
25 and conditions that will adequately protect the plan-

1 ning, design, construction, operation, maintenance,
2 and other interests of the United States and the
3 project or division involved.

4 “(7) Nothing in this subsection shall alter or
5 affect any existing agreements for the development
6 of conduit hydropower projects or disposition of rev-
7 enues.

8 “(8) Revenues derived from the lease of power
9 privilege under this subsection shall be applied as
10 follows:

11 “(A) First against reimbursable construc-
12 tion costs allocated to power.

13 “(B) Then for use to repair or rehabilitate
14 the facility from which such power is derived.

15 “(C) The remainder, after application
16 under subparagraphs (A) and (B) shall be used
17 to construct any new storage at the project
18 from which such power is derived. No funding
19 under this subparagraph shall be used for
20 studying new storage.

21 “(9) In this subsection:

22 “(A) CONDUIT.—The term ‘conduit’ means
23 any Bureau of Reclamation tunnel, canal, pipe-
24 line, aqueduct, flume, ditch, or similar man-
25 made water conveyance that is operated for the

1 distribution of water for agricultural, municipal,
2 or industrial consumption and not primarily for
3 the generation of electricity.

4 “(B) IRRIGATION DISTRICT.—The term ‘ir-
5 rigation district’ means any irrigation, water
6 conservation or conservancy district, multi-
7 county water conservation or conservancy dis-
8 trict, or any separate public entity composed of
9 two or more such districts and jointly exercising
10 powers of its member districts.

11 “(C) RESERVED WORK.—The term ‘re-
12 served work’ means any conduit that is included
13 in project works the care, operation, and main-
14 tenance of which has been reserved by the Sec-
15 retary, through the Commissioner of the Bu-
16 reau of Reclamation.

17 “(D) TRANSFERRED WORK.—The term
18 ‘transferred work’ means any conduit that is in-
19 cluded in project works the care, operation, and
20 maintenance of which has been transferred to a
21 legally organized water users association or irri-
22 gation district.

23 “(E) SECRETARY.—The term ‘Secretary’
24 means the Secretary of the Interior.

1 “(F) SMALL CONDUIT HYDROPOWER.—
2 The term ‘small conduit hydropower’ means a
3 facility capable of producing 5 megawatts or
4 less of electric capacity.”.

5 **SEC. 5. TRANSPARENCY AND REPORTING.**

6 (a) INFORMATION INCLUDED IN MONTHLY BILLING
7 TO POWER CUSTOMERS.—The Administrators of each of
8 the Bonneville Power Administration, the Western Area
9 Power Administration, the Southwestern Power Adminis-
10 tration, and the Southeastern Power Administration shall
11 include in monthly billings sent to each of their power cus-
12 tomers information estimating and reporting the costs of
13 the customer’s share of the direct and indirect costs in-
14 curred by the administration related to compliance with
15 any Federal environmental laws impacting the conserva-
16 tion of fish and wildlife considered by the Administrator
17 concerned, at that Administrator’s sole discretion after
18 consultation with consumers, to be relevant.

19 (b) DIRECT COSTS.—Direct costs reported under this
20 subsection shall include Federal agency obligations related
21 to costs of studies; capital, operation, maintenance, and
22 replacement costs; and staffing costs.

23 (c) INDIRECT COSTS.—Indirect costs reported under
24 this subsection shall include foregone generation and re-

1 placement power costs, including the net costs of any
2 transmission.

3 (d) COORDINATION.—The Commissioner of the Bu-
4 reau of Reclamation and the head of any other affected
5 Federal agency shall assist the Administrators with the
6 identification of the costs.

7 (e) REPORT.—No later than January 30 of each
8 year, each of the Administrators referred to in subsection
9 (a), in coordination with the Bureau of Reclamation and
10 other affected Federal agencies, shall provide an annual
11 report to the appropriate committees of the House of Rep-
12 resentatives and the Senate estimating the total of the di-
13 rect and indirect costs incurred by the administration re-
14 lated to compliance with any Federal environmental laws
15 impacting the conservation of fish and wildlife, the sources
16 of replacement power, and costs related to integrating
17 wind energy resources considered by the Administrator
18 concerned, at that Administrator's sole discretion after
19 consultation with consumers, to be relevant.

20 **SEC. 6. NON-FEDERAL CONTRIBUTIONS TO BUREAU OF**
21 **RECLAMATION AND POWER MARKETING AD-**
22 **MINISTRATION INFRASTRUCTURE.**

23 The Act of May 9, 1938 (43 U.S.C. 392a), is amend-
24 ed as follows:

1 (1) By striking “has been made by law or con-
2 tract” and all that follows through “such project:”
3 and inserting “is made by law or contract for the
4 use of such revenues to repay funds contributed by
5 users of water or power to benefit such project:”.

6 (2) By striking “General Treasury as ‘miscella-
7 neous receipts’” and inserting “reclamation fund,
8 except as otherwise specifically provided by law”.

9 **SEC. 7. ADVANCING HYDROPOWER THROUGH NEW WATER**
10 **STORAGE.**

11 The Secretary of the Interior, acting through the
12 Commissioner of the Bureau of Reclamation, may here-
13 after partner or enter into an agreement with local joint
14 power authorities formed pursuant to State law by irriga-
15 tion districts and other local water districts and local gov-
16 ernments, to complete planning and feasibility studies au-
17 thorized by Congress for water storage projects. A project
18 under this section is authorized for construction only if
19 no Federal funds are used for financing, constructing, or
20 operating the project and if the project, when constructed,
21 will produce hydropower.

22 **SEC. 8. PROHIBITING HARMFUL SPILLS AT BUREAU OF**
23 **RECLAMATION AND OTHER FEDERAL DAMS.**

24 The Bureau of Reclamation and other Federal agen-
25 cies shall not bypass hydroelectric turbines if a State in

1 which the affected facilities has declared a drought emer-
2 gency or if any Federal agency finds that such bypass
3 could result in harming endangered fish by any means un-
4 less such bypasses are necessary for flood control pur-
5 poses.

6 **SEC. 9. PROTECTING ELECTRICITY RIGHTS-OF-WAY ON**
7 **FEDERAL LANDS.**

8 If an electricity right-of-way holder, including a
9 Power Marketing Administration, on Forest Service or
10 Bureau of Land Management lands applies to remove in-
11 sect-infected trees or other hazardous fuels within 500 feet
12 of the right-of-way, the project or activity is categorically
13 excluded from the requirement to prepare an environ-
14 mental assessment or an environmental impact statement
15 under the National Environmental Policy Act of 1969 (42
16 U.S.C. 4321 et seq.), so long as the project or activity
17 is otherwise conducted consistently with agency and de-
18 partmental procedures and the applicable land and re-
19 source management plan or land-use plan.

20 **SEC. 10. FEDERAL FUNDING PROHIBITION ON POWER MAR-**
21 **KETING ADMINISTRATION MEMORANDUM.**

22 No Federal funds, including funds derived from
23 Power Marketing Administration customer revenues, shall
24 be used to implement a new program, new project, new
25 activity, or other new action required by or proposed in

1 the memorandum from Steven Chu, Secretary of Energy,
2 to the Power Marketing Administrators with the subject
3 line “Power Marketing Administrations’ Role” and dated
4 March 16, 2012, until—

5 (1) the Committee on Natural Resources of the
6 House of Representatives and the Committee on En-
7 ergy and Natural Resources of the Senate receive a
8 report containing a legal analysis performed by the
9 appropriate Federal agency that justifies the existing
10 and proposed statutory authorities necessary to im-
11 plement every program, project, activity, and other
12 action required or proposed by the memorandum;
13 and

14 (2) the authority for the program, project, ac-
15 tivity, or other action to be so funded has been au-
16 thorized—

17 (A) as documented in the report required
18 under paragraph (1); or

19 (B) by a Federal law enacted after the
20 issuance of that report.

21 **SEC. 11. FEDERAL FUNDING PROHIBITIONS ON FEDERAL**
22 **DAM REMOVAL.**

23 Federal funding shall not be used to remove, partially
24 remove, or breach, or study the removal, partial removal,

1 or breaching of any Federal or non-Federal hydroelectric-
2 producing dam unless explicitly authorized by Congress.

3 **SEC. 12. FEDERAL FUNDING PROHIBITIONS ON DAM RE-**
4 **MOVAL MITIGATION.**

5 Federal funding or funding from congressionally
6 chartered organizations that provide grants impacting
7 Federal land and fish and wildlife shall not be used for
8 mitigation activities carried out by Federal or non-Federal
9 entities related to hydroelectric-producing dam removal
10 unless explicitly authorized by Congress.

11 **SEC. 13. FEDERAL FUNDING PROHIBITIONS ON NON-**
12 **GOVERNMENTAL ORGANIZATIONS.**

13 (a) PROHIBITION ON FUNDING.—Federal agencies or
14 congressionally chartered organizations that provide
15 grants impacting Federal land and fish and wildlife shall
16 not fund any nongovernmental organization that is in-
17 volved in or that was involved in certain litigation at any
18 time during the 10 years immediately before the funding
19 would otherwise be provided.

20 (b) DEFINITIONS.—For the purposes of this sec-
21 tion—

22 (1) the term “certain litigation” means litiga-
23 tion against the Federal Government that requests,
24 urges, or otherwise attempts or if successful would
25 result in hydroelectric producing dam removal, par-

1 tial removal, breaching, or reoperation that would
2 negatively impact the generation of hydropower; and

3 (2) the term “involved in” includes a party to
4 litigation, a person on behalf of whom litigation is
5 initiated, settled, or otherwise instigated, and an at-
6 torney or law firm to whom or on behalf of whom
7 attorneys fees will be paid as a result of the litiga-
8 tion.

9 **SEC. 14. DEPARTMENTS OF THE INTERIOR AND COMMERCE**

10 **CONDITIONS AND RECOMMENDATIONS.**

11 (a) DEFINITIONS.—In this section:

12 (1) COMMISSION.—The term “Commission”
13 means the Federal Energy Regulatory Commission.

14 (2) CONDITION.—The term “condition”
15 means—

16 (A) a condition to a license for a project on
17 a reservation deemed necessary by a consulting
18 agency for the purpose of the first proviso of
19 section 4(e) of the Federal Power Act (16
20 U.S.C. 797(e)); or

21 (B) a requirement relating to the construc-
22 tion, maintenance, or operation of a fishway
23 prescribed by a consulting agency for the pur-
24 pose of the first sentence of section 18 of the
25 Federal Power Act (16 U.S.C. 811).

1 (3) CONSULTING AGENCY.—The term “con-
2 sulting agency” means—

3 (A) in relation to a condition described in
4 paragraph (2)(A), the Federal agency with re-
5 sponsibility for supervising the reservation; and

6 (B) in relation to a requirement described
7 in paragraph (2)(B), the Secretary of the Inte-
8 rior or the Secretary of Commerce, as appro-
9 priate.

10 (4) PROPOSED LICENSE APPLICANT.—The term
11 “proposed license applicant” means a person, State,
12 or municipality that is engaging in activities in prep-
13 aration for filing an application for a license under
14 section 4 of the Federal Power Act (16 U.S.C. 797).

15 (5) RESERVATION.—The term “reservation”
16 has the meaning given the term “reservations” in
17 section 3 of the Federal Power Act (16 U.S.C. 796).

18 (6) PERSON; STATE; MUNICIPALITY.—The
19 terms “person”, “State”, and “municipality” have
20 the meanings given those terms in section 3 of the
21 Federal Power Act (16 U.S.C. 796).

22 (b) SUBMISSION OF RECOMMENDATIONS PRIOR TO
23 FILING OF APPLICATION.—If a consulting agency makes
24 any recommendation to a proposed license applicant prior
25 to such license applicant filing a license application under

1 part I of the Federal Power Act (16 U.S.C. 792 et seq.)
2 with the Commission, the consulting agency shall submit
3 such recommendation to the Commission not later than
4 30 days after making such recommendation.

5 (c) FACTORS TO BE CONSIDERED.—

6 (1) IN GENERAL.—In deeming necessary or
7 prescribing a condition, a consulting agency shall
8 take into consideration—

9 (A) the impacts of the condition on—

10 (i) the cost of the project;

11 (ii) electric generation capacity and
12 system reliability;

13 (iii) air quality (including consider-
14 ation of the impacts on greenhouse gas
15 emissions); and

16 (iv) drinking water supply, flood con-
17 trol, irrigation, navigation, and recreational
18 water supply; and

19 (B) compatibility with other conditions to
20 be included in the license, including mandatory
21 conditions of other agencies, if available.

22 (2) DOCUMENTATION.—

23 (A) IN GENERAL.—In the course of the
24 consideration of factors under paragraph (1), a
25 consulting agency shall create written docu-

1 mentation detailing, among other pertinent
2 matters, all proposals made, comments received,
3 facts considered, and analyses made regarding
4 each of those factors sufficient to demonstrate
5 that each of the factors was given full consider-
6 ation in deeming necessary or prescribing the
7 condition to be submitted to the Commission.

8 (B) SUBMISSION TO THE COMMISSION.—A
9 consulting agency shall include the documenta-
10 tion created under subparagraph (A) in its sub-
11 mission of a condition to the Commission.

12 (d) RELATIONSHIP TO IMPACTS ON RESERVATION.—
13 In the case of a condition deemed necessary by a con-
14 sulting agency for the purpose of the first proviso of sec-
15 tion 4(e) of the Federal Power Act (16 U.S.C. 797(e)),
16 if the Commission determines such condition is not di-
17 rectly and reasonably related to the impacts of the project
18 within the reservation, such condition shall not be included
19 in any license issued by the Commission.

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