

Union Calendar No. 463

117TH CONGRESS
2^D SESSION

H. R. 2641

[Report No. 117-644]

To amend the Reclamation Project Act of 1939 to authorize pumped storage hydropower development utilizing multiple Bureau of Reclamation reservoirs.

IN THE HOUSE OF REPRESENTATIVES

APRIL 19, 2021

Mr. NEWHOUSE introduced the following bill; which was referred to the
Committee on Natural Resources

DECEMBER 15, 2022

Reported from the Committee on Natural Resources; committed to the Com-
mittee of the Whole House on the State of the Union and ordered to be
printed

A BILL

To amend the Reclamation Project Act of 1939 to authorize pumped storage hydropower development utilizing multiple Bureau of Reclamation reservoirs.

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 “Pacific Northwest
5 Pumped Storage Hydropower Development Act of 2021”.

6 **SEC. 2. AUTHORITY FOR PUMPED STORAGE HYDROPOWER**
7 **DEVELOPMENT USING MULTIPLE BUREAU OF**
8 **RECLAMATION RESERVOIRS.**

9 Section 9(c) of the Reclamation Project Act of 1939
10 (43 U.S.C. 485h(c)) is amended—

11 (1) in paragraph (1), in the fourth sentence, by
12 striking “, including small conduit hydropower devel-
13 opment” and inserting “and reserve to the Secretary
14 the exclusive authority to develop small conduit hy-
15 dropower using Bureau of Reclamation facilities and
16 pumped storage hydropower exclusively using Bu-
17 reau of Reclamation reservoirs”; and

18 (2) in paragraph (8), by striking “has been
19 filed with the Federal Energy Regulatory Commis-
20 sion as of the date of the enactment of the Bureau
21 of Reclamation Small Conduit Hydropower Develop-
22 ment and Rural Jobs Act” and inserting “was filed
23 with the Federal Energy Regulatory Commission be-
24 fore August 9, 2013, and is still pending”.

1 **SEC. 3. LIMITATIONS ON ISSUANCE OF CERTAIN LEASES OF**
2 **POWER PRIVILEGE.**

3 (a) DEFINITIONS.—In this section:

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

6 (2) DIRECTOR.—The term “Director” means
7 the Director of the Office of Hearings and Appeals.

8 (3) OFFICE OF HEARINGS AND APPEALS.—The
9 term “Office of Hearings and Appeals” means the
10 Office of Hearings and Appeals of the Department
11 of the Interior.

12 (4) PARTY.—The term “party”, with respect to
13 a study plan agreement, means each of the following
14 parties to the study plan agreement:

15 (A) The proposed lessee.

16 (B) The Tribes.

17 (5) PROJECT.—The term “project” means a
18 proposed pumped storage facility that—

19 (A) would use multiple Bureau of Rec-
20 lamation reservoirs; and

21 (B) as of June 1, 2017, was subject to a
22 preliminary permit issued by the Commission
23 pursuant to section 4(f) of the Federal Power
24 Act (16 U.S.C. 797(f)).

25 (6) PROPOSED LESSEE.—The term “proposed
26 lessee” means the proposed lessee of a project.

1 (7) SECRETARY.—The term “Secretary” means
2 the Secretary of the Interior.

3 (8) STUDY PLAN.—The term “study plan”
4 means the plan described in subsection (d)(1).

5 (9) STUDY PLAN AGREEMENT.—The term
6 “study plan agreement” means an agreement en-
7 tered into under subsection (b)(1) and described in
8 subsection (c).

9 (10) TRIBES.—The term “Tribes” means—

10 (A) the Confederated Tribes of the Colville
11 Reservation; and

12 (B) the Spokane Tribe of Indians of the
13 Spokane Reservation.

14 (b) REQUIREMENT FOR ISSUANCE OF LEASES OF
15 POWER PRIVILEGE.—The Secretary shall not issue a lease
16 of power privilege pursuant to section 9(c)(1) of the Rec-
17 lamation Project Act of 1939 (43 U.S.C. 485h(c)(1)) (as
18 amended by section 2) for a project unless—

19 (1) the proposed lessee and the Tribes have en-
20 tered into a study plan agreement; or

21 (2) the Secretary or the Director, as applicable,
22 makes a final determination for—

23 (A) a study plan agreement under sub-
24 section (c)(2); or

25 (B) a study plan under subsection (d).

1 (c) STUDY PLAN AGREEMENT REQUIREMENTS.—

2 (1) IN GENERAL.—A study plan agreement
3 shall—

4 (A) establish the deadlines for the pro-
5 posed lessee to formally respond in writing to
6 comments and study requests about the project
7 previously submitted to the Commission;

8 (B) allow for the parties to submit addi-
9 tional comments and study requests if any as-
10 pect of the project, as proposed, differs from an
11 aspect of the project, as described in a
12 preapplication document provided to the Com-
13 mission;

14 (C) except as expressly agreed to by the
15 parties or as provided in paragraph (2) or sub-
16 section (d), require that the proposed lessee
17 conduct each study described in—

18 (i) a study request about the project
19 previously submitted to the Commission; or

20 (ii) any additional study request sub-
21 mitted in accordance with the study plan
22 agreement;

23 (D) require that the proposed lessee study
24 any potential adverse economic effects of the
25 project on the Tribes, including effects on—

1 (i) annual payments to the Confed-
2 erated Tribes of the Colville Reservation
3 under section 5(b) of the Confederated
4 Tribes of the Colville Reservation Grand
5 Coulee Dam Settlement Act (Public Law
6 103–436; 108 Stat. 4579); and

7 (ii) annual payments to the Spokane
8 Tribe of Indians of the Spokane Reserva-
9 tion authorized after the date of enactment
10 of this Act, the amount of which derives
11 from the annual payments described in
12 clause (i);

13 (E) establish a protocol for communication
14 and consultation between the parties;

15 (F) provide mechanisms for resolving dis-
16 putes between the parties regarding implemen-
17 tation and enforcement of the study plan agree-
18 ment; and

19 (G) contain other provisions determined to
20 be appropriate by the parties.

21 (2) DISPUTES.—

22 (A) IN GENERAL.—If the parties cannot
23 agree to the terms of a study plan agreement
24 or implementation of those terms, the parties
25 shall submit to the Director, for final deter-

1 mination on the terms or implementation of the
2 study plan agreement, notice of the dispute,
3 consistent with paragraph (1)(F), to the extent
4 the parties have agreed to a study plan agree-
5 ment.

6 (B) INCLUSION.—A dispute covered by
7 subparagraph (A) may include the view of a
8 proposed lessee that an additional study request
9 submitted in accordance with paragraph (1)(B)
10 is not reasonably calculated to assist the Sec-
11 retary in evaluating the potential impacts of the
12 project.

13 (C) TIMING.—The Director shall issue a
14 determination regarding a dispute under sub-
15 paragraph (A) not later than 120 days after the
16 date on which the Director receives notice of
17 the dispute under that subparagraph.

18 (d) STUDY PLAN.—

19 (1) IN GENERAL.—The proposed lessee shall
20 submit to the Secretary for approval a study plan
21 that details the proposed methodology for per-
22 forming each of the studies—

23 (A) identified in the study plan agreement
24 of the proposed lessee; or

1 (B) determined by the Director in a final
2 determination regarding a dispute under sub-
3 section (c)(2).

4 (2) INITIAL DETERMINATION.—Not later than
5 60 days after the date on which the Secretary re-
6 ceives the study plan under paragraph (1), the Sec-
7 retary shall make an initial determination that—

8 (A) approves the study plan;

9 (B) rejects the study plan on the grounds
10 that the study plan—

11 (i) lacks sufficient detail on a pro-
12 posed methodology for a study identified in
13 the study plan agreement; or

14 (ii) is inconsistent with the study plan
15 agreement; or

16 (C) imposes additional study plan require-
17 ments that the Secretary determines are nec-
18 essary to adequately define the potential effects
19 of the project on—

20 (i) the exercise of the paramount
21 hunting, fishing, and boating rights of the
22 Tribes reserved pursuant to the Act of
23 June 29, 1940 (54 Stat. 703, chapter 460;
24 16 U.S.C. 835d et seq.);

- 1 (ii) the annual payments described in
2 clauses (i) and (ii) of subsection (c)(1)(D);
3 (iii) the Columbia Basin project (as
4 defined in section 1 of the Act of May 27,
5 1937 (50 Stat. 208, chapter 269; 57 Stat.
6 14, chapter 14; 16 U.S.C. 835));
7 (iv) historic properties and cultural or
8 spiritually significant resources; and
9 (v) the environment.

10 (3) OBJECTIONS.—

11 (A) IN GENERAL.—Not later than 30 days
12 after the date on which the Secretary makes an
13 initial determination under paragraph (2), the
14 Tribes or the proposed lessee may submit to the
15 Director an objection to the initial determina-
16 tion.

17 (B) FINAL DETERMINATION.—Not later
18 than 120 days after the date on which the Di-
19 rector receives an objection under subparagraph
20 (A), the Director shall—

- 21 (i) hold a hearing on the record re-
22 garding the objection; and
23 (ii) make a final determination that
24 establishes the study plan, including a de-

1 scription of studies the proposed lessee is
2 required to perform.

3 (4) NO OBJECTIONS.—If no objections are sub-
4 mitted by the deadline described in paragraph
5 (3)(A), the initial determination of the Secretary
6 under paragraph (2) shall be final.

7 (e) CONDITIONS OF LEASE.—

8 (1) CONSISTENCY WITH RIGHTS OF TRIBES;
9 PROTECTION, MITIGATION, AND ENHANCEMENT OF
10 FISH AND WILDLIFE.—

11 (A) IN GENERAL.—Any lease of power
12 privilege issued by the Secretary for a project
13 under subsection (b) shall contain conditions—

14 (i) to ensure that the project is con-
15 sistent with, and will not interfere with,
16 the exercise of the paramount hunting,
17 fishing, and boating rights of the Tribes
18 reserved pursuant to the Act of June 29,
19 1940 (54 Stat. 703, chapter 460; 16
20 U.S.C. 835d et seq.); and

21 (ii) to adequately and equitably pro-
22 tect, mitigate damages to, and enhance
23 fish and wildlife, including related spawn-
24 ing grounds and habitat, affected by the

1 development, operation, and management
2 of the project.

3 (B) RECOMMENDATIONS OF THE
4 TRIBES.—The conditions required under sub-
5 paragraph (A) shall be based on joint rec-
6 ommendations of the Tribes.

7 (C) RESOLVING INCONSISTENCIES.—

8 (i) IN GENERAL.—If the Secretary de-
9 termines that any recommendation of the
10 Tribes under subparagraph (B) is not rea-
11 sonably calculated to ensure the project is
12 consistent with subparagraph (A) or is in-
13 consistent with the requirements of the
14 Reclamation Project Act of 1939 (43
15 U.S.C. 485 et seq.), the Secretary shall at-
16 tempt to resolve any such inconsistency
17 with the Tribes, giving due weight to the
18 recommendations and expertise of the
19 Tribes.

20 (ii) PUBLICATION OF FINDINGS.—If,
21 after an attempt to resolve an inconsis-
22 tency under clause (i), the Secretary does
23 not adopt in whole or in part a rec-
24 ommendation of the Tribes under subpara-
25 graph (B), the Secretary shall issue each

1 of the following findings, including a state-
2 ment of the basis for each of the findings:

3 (I) A finding that adoption of the
4 recommendation is inconsistent with
5 the requirements of the Reclamation
6 Project Act of 1939 (43 U.S.C. 485 et
7 seq.).

8 (II) A finding that the conditions
9 selected by the Secretary to be con-
10 tained in the lease of power privilege
11 under subparagraph (A) comply with
12 the requirements of clauses (i) and
13 (ii) of that subparagraph.

14 (2) ANNUAL CHARGES PAYABLE BY LI-
15 CENSEE.—

16 (A) IN GENERAL.—Subject to subpara-
17 graph (B), any lease of power privilege issued
18 by the Secretary for a project under subsection
19 (b) shall contain conditions that require the les-
20 see of the project to make direct payments to
21 the Tribes through reasonable annual charges
22 in an amount that recompenses the Tribes for
23 any adverse economic effect of the project iden-
24 tified in a study performed pursuant to the
25 study plan agreement for the project.

1 (B) AGREEMENT.—

2 (i) IN GENERAL.—The amount of the
3 annual charges described in subparagraph
4 (A) shall be established through agreement
5 between the proposed lessee and the
6 Tribes.

7 (ii) CONDITION.—The agreement
8 under clause (i), including any modifica-
9 tion of the agreement, shall be deemed to
10 be a condition to the lease of power privi-
11 lege issued by the Secretary for a project
12 under subsection (b).

13 (C) DISPUTE RESOLUTION.—

14 (i) IN GENERAL.—If the proposed les-
15 see and the Tribes cannot agree to the
16 terms of an agreement under subpara-
17 graph (B)(i), the proposed lessee and the
18 Tribes shall submit notice of the dispute to
19 the Director.

20 (ii) RESOLUTION.—The Director shall
21 resolve the dispute described in clause (i)
22 not later than 180 days after the date on
23 which the Director receives notice of the
24 dispute under that clause.

1 (3) ADDITIONAL CONDITIONS.—The Secretary
2 may include in any lease of power privilege issued by
3 the Secretary for a project under subsection (b)
4 other conditions determined appropriate by the Sec-
5 retary, on the condition that the conditions shall be
6 consistent with the Reclamation Project Act of 1939
7 (43 U.S.C. 485 et seq.).

8 (4) CONSULTATION.—In establishing conditions
9 under this subsection, the Secretary shall consult
10 with the Tribes.

11 (f) DEADLINES.—The Secretary or any officer of the
12 Office of Hearing and Appeals before whom a proceeding
13 is pending under this section may extend any deadline or
14 enlarge any timeframe described in this section—

15 (1) at the discretion of the Secretary or the of-
16 ficer; or

17 (2) on a showing of good cause by any party.

18 (g) JUDICIAL REVIEW.—Any final action of the Sec-
19 retary or the Director made pursuant to this section shall
20 be subject to judicial review in accordance with chapter
21 7 of title 5, United States Code.

22 (h) EFFECT ON OTHER PROJECTS.—Nothing in this
23 section establishes any precedent or is binding on any Bu-
24 reau of Reclamation lease of power privilege, other than
25 for a project.

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