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Testimony

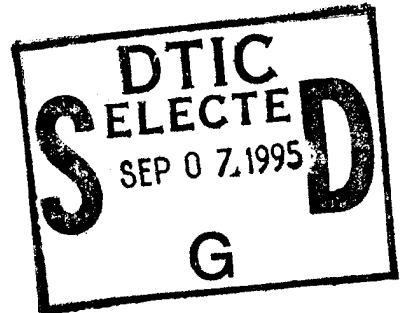
Before the Subcommittee on Energy and Power, Committee on Energy and Commerce; the Subcommittee on Water, Power and Offshore Energy Resources, Committee on Interior and Insular Affairs; and the Subcommittee on Fisheries and Wildlife Conservation and the Environment, Committee on Merchant Marine and Fisheries, House of Representatives

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HYDROELECTRIC DAMS

Proposed Legislation to
Restore Elwha River
Ecosystem and Fisheries

Statement of Keith O. Fultz,
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Messrs. Chairmen and Members of the Subcommittees:

I am pleased to be here today to discuss H.R. 4844, the Elwha River Ecosystem and Fisheries Restoration Act, and its companion bill, S. 2527. Although we have not performed an in-depth analysis of the impacts of the proposed legislation, we have issued five products over the past 3 years to the Chairman of the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, that address several issues relating to the bills.¹ Our most recent report is being released by the Chairman today. Our products have discussed (1) the Federal Energy Regulatory Commission's (FERC) authority to license the Elwha and Glines Canyon Dams on the Elwha River in the state of Washington, (2) the Department of the Interior's position on whether these hydroelectric dams should be removed to restore fisheries in the river, and (3) if the dams are removed, Interior's position on who should pay the costs associated with their removal.

In summary, we have found that Interior and the Department of Commerce's National Marine Fisheries Service (NMFS) agree with our opinion that FERC does not have authority to relicense the Glines Canyon Dam. The dam is within the boundaries of the Olympic National Park and FERC does not have authority to license dams in national parks. FERC disagrees and the issue is now before the U.S. 9th Circuit Court of Appeals. Interior, NMFS, and FERC do agree that removing both the dams offers the best prospects for restoring the Elwha River fisheries and ecosystem that includes the Olympic National Park. Interior has stated, however, that the federal government should not be required to assume all the potential liabilities and costs of restoration. Instead, Interior believes that the liabilities and costs should be allocated among the various parties in proportion to the benefits they have received from the dams or will receive from the restoration of the river.

In our opinion, the proposed legislation would resolve the legal dispute over FERC's authority to relicense Glines Canyon Dam. The bills would allow ownership of both dams to be transferred to the Secretary of the Interior, and FERC does not have authority to license federal dams.

The bills may not, however, resolve other issues. For example, they would not require that the two dams be removed.

¹See Hydroelectric Dams: Interior Favors Removing Elwha River Dams, but Who Should Pay Is Undecided (GAO/RCED-92-168, June 5, 1992) and Hydroelectric Dams: Costs and Alternatives for Restoring Fisheries in the Elwha River (GAO/RCED-91-104, Mar. 27, 1991). Also see our legal opinions of February 16, 1990 (B-236481); August 16, 1990 (B-236481.2); and June 5, 1991 (B-236481.4).

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Instead, they would require that a task force be convened to prepare a plan to fully restore, enhance, and protect the ecosystem, fisheries, and wildlife of the Elwha River basin, while preserving the quality and continued availability of Elwha River water to its users. The task force is to recommend and the Secretary of the Interior is to approve and implement a plan that may include removal of the dams.

The proposed legislation may also require the federal government to assume all the liabilities and costs of restoration. According to Interior and others, the costs of the proposed legislation could be substantial and could include the costs to remove the dams, restore the fisheries, subsidize the replacement power, and build and operate new water treatment facilities. In addition, Interior has raised concern that the legislation may require the federal government to assume all liability for any claims that Indian tribes may have had against the former and current owners of the dams for the dams' impact on their rights reserved by treaties, particularly as they relate to the fishery resource.

BACKGROUND

The Elwha River flows for about 45 miles from its source in the Olympic Mountains of Washington State through the Olympic National Park to the Strait of San Juan de Fuca. Two dams are located along the river: the Glines Canyon Dam, located about 13 miles from the river's mouth and wholly within the Olympic National Park, and the Elwha Dam, located about 8 miles downstream from the Glines Canyon Dam and outside the park. The Elwha Dam was built in 1911 and rebuilt in 1913, and the Glines Canyon Dam was built in 1927. The sole purpose of these dams is to provide about 40 percent of the electricity used by a local pulp and paper mill in Port Angeles, Washington. The remaining electricity used by the mill is provided by the Bonneville Power Administration (BPA) through a local utility.

The Glines Canyon Dam was originally licensed to provide hydroelectric power for a period of 50 years. Since the original license expired in 1976, FERC has renewed the license annually. The Elwha Dam has never been licensed.

The Elwha River historically supported large populations of wild anadromous fish, including four species of Pacific salmon and three species of trout. Since construction of the Elwha Dam, these native fish have been unable to migrate upstream to spawn and have been eliminated from the river above the dam. As a result, various wildlife that depend upon anadromous fish for food have had to relocate. This situation has adversely affected the Elwha River ecosystem, especially that which is within the Olympic National Park. According to Interior, the two dams also have affected the federal government's treaty obligations to Indian tribes and the

federal trust responsibility to protect Indian rights and resources, particularly as they relate to the fishery resource and associated Indian fishing rights in the Elwha River basin.

THE PROPOSED LEGISLATION WOULD RESOLVE THE
DISPUTE OVER FERC'S AUTHORITY TO
RELICENSE GLINES CANYON DAM

Under the Federal Power Act, FERC does not have authority to license dams in national parks. When the Glines Canyon Dam was first licensed, it was in the Olympic National Forest. In 1940, the boundaries of the Olympic National Park were extended to include the dam. In our opinion, FERC does not have authority to relicense the project because the dam is now within the park. Interior and NMFS agree with our opinion; however, FERC disagrees. FERC's authority to relicense Glines Canyon Dam has been challenged in the U.S. 9th Circuit Court of Appeals by a number of parties, including NMFS.

As stated in our June 1992 report, the proposed legislation would resolve the legal dispute over FERC's authority to relicense Glines Canyon Dam. Under the proposed legislation, the current owner of the two dams would be allowed to transfer ownership of the dams to the Secretary of the Interior. FERC does not have authority to license federal dams.

SUPPORT FOR REMOVING THE DAMS

In our June 1992 report, we stated that, according to Interior officials, a successful project to remove the dams would require unified administration positions on removing them and on who should pay the removal costs. Interior had not, as of May 1, 1992, (the period covered by our most recent report) resolved these questions with FERC and the Office of Management and Budget. However, in a June 12, 1991, letter to FERC, Interior stated that the dams need to be removed from the Elwha River to (1) ensure restoration of all species of anadromous fish to their former habitat within the Elwha River basin, (2) ensure restoration of the basin's ecosystem, including the Olympic National Park, and (3) facilitate access of resident Indian tribes to their usual and accustomed fishing places, as required under U.S. treaty obligations with the tribes. In his June 4, 1992, statement on the proposed legislation before the Senate Committee on Energy and Natural Resources, Interior's Assistant Secretary for Fish and Wildlife and Parks reasserted this position, stating that Interior presently believes that removal of the two dams is the best way to achieve the goal of restoring the Elwha River.

At the June 4, 1992, Senate hearing, a NMFS official testified that NMFS has publicly stated that only the removal of both dams will achieve the goal of restoring anadromous fish stocks that historically inhabited the largely pristine habitat above Elwha

Dam. At this hearing, the Deputy Administrator of BPA, while not endorsing the removal of the dams, stated that BPA supports the concept of restoring the Elwha River ecosystem and fisheries.

Although FERC's February 1991 draft environmental impact statement, prepared in response to applications by the owner of the dams to license them, did not present a preferred alternative, FERC staff informed us that dam removal would provide the best potential for restoring wild, self-sustaining runs of anadromous fish as well as natural environmental conditions within the Olympic National Park. FERC stated, however, that such restoration is mutually exclusive of an objective of providing renewable hydroelectric energy.

While not requiring that the two dams be removed, the proposed legislation would direct the Secretary of the Interior to convene a task force, comprised of federal, state, and local entities. This task force would be charged with preparing a comprehensive and multidisciplinary analysis of the most effective and reliable alternatives for fully restoring, enhancing, and protecting the ecosystem, fisheries, and wildlife of the Elwha River basin, while preserving the quality and continued availability of Elwha River water to its users. The task force would prepare a plan based on its findings and make recommendations to the Secretary of the Interior. Upon approval of the plan, the Secretary would be authorized and directed to implement the plan, including authority to remove the dams.

THE POTENTIAL LIABILITIES AND COSTS OF THE PROPOSED LEGISLATION ARE UNCERTAIN

According to Interior, the proposed legislation may require the federal government to assume the liabilities and costs of restoration, the magnitude of which is currently unknown. Proponents of the legislation have estimated the cost of the legislation at between \$30 and \$100 million, depending on the eventual restoration alternative selected. They also have noted that this estimate compares favorably with the federal investments in salmon restoration in other Pacific Northwest river basins. The estimate, however, does not include certain costs and potential liabilities.

In its draft environmental impact statement, FERC estimated the cost of removing both dams at about \$61 million. The cost could increase to about \$124.6 million if the large amount of sediment that has accumulated in the reservoirs behind the dams has to be hauled to a disposal site several miles away, rather than stabilized in place. In addition, FERC estimated that new fish hatchery facilities needed to restore fisheries upriver from the dams would cost \$3.1 million to construct and \$2 million over 10 years to operate.

In addition to the costs associated with removing the dams and restoring the fisheries, Interior, in its June 4, 1992, statement before the Senate, noted that under the proposed legislation (1) the federal government would assume a yet to be determined liability for any claims the Indian tribes may have had against the former and current owners of the dams during the 65 to 80 years that the projects have been in operation and (2) replacement power would be provided the owner of the mill at a statutorily controlled rate that is less than the priority firm rate BPA charges its preferred customers, with the difference (estimated by BPA to have a net present value of \$29 million in 1992 dollars) passed on to the U.S. Treasury in the form of forgiveness of BPA debt. Similarly, the mayor of Port Angeles, Washington, stated that the treatment facilities required to maintain the high quality water provided by the Elwha River after the dams are removed would cost \$30 million to build and \$2.5 million a year to operate. Under the proposed legislation, these costs are to be borne by the Secretary of the Interior.

Interior has stated that the federal government should not be required to assume all the liabilities and open-ended costs of restoration. Instead, Interior believes that the liabilities and costs of restoration should be allocated among the various parties in proportion to the benefits they have received from the dams or will receive from the restoration of the river. BPA is opposed to charging the owner of the mill a rate that is more favorable than the rates provided other customers. BPA also believes that forgiveness of BPA's debt to the U.S. Treasury would result in an inappropriate use of taxpayer receipts.

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In summary, Mr. Chairman, whether and how to restore the Elwha River ecosystem and fisheries are essentially public policy decisions in which value judgments must be made about costs, benefits, and trade-offs. While we have not verified the estimated costs and potential liabilities addressed above, we believe that a better understanding of their magnitude would provide a better basis for more informed public policy decisions on whether and how best to restore the ecosystem and fisheries of the Elwha River and who should be responsible for paying the costs of restoration.

Messrs. Chairmen, this concludes my statement. I will be happy to respond to any questions that you or other Members of the Subcommittees may have.

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