

115TH CONGRESS
1ST SESSION

H. R. 2872

To amend the Federal Power Act to promote hydropower development at existing nonpowered dams, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 2017

Mr. BUCSHON introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Federal Power Act to promote hydropower development at existing nonpowered dams, 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 “Promoting Hydro-
5 power Development at Existing Nonpowered Dams Act”.

6 **SEC. 2. PROMOTING HYDROPOWER DEVELOPMENT AT EX-**
7 **ISTING NONPOWERED DAMS.**

8 Part I of the Federal Power Act (16 U.S.C. 792 et
9 seq.) is amended by adding at the end the following:

1 **“SEC. 34. PROMOTING HYDROPOWER DEVELOPMENT AT**
2 **EXISTING NONPOWERED DAMS.**

3 “(a) EXEMPTIONS FOR QUALIFYING FACILITIES.—

4 “(1) EXEMPTION QUALIFICATIONS.—Subject to
5 the requirements of this subsection, the Commission
6 may grant an exemption in whole or in part from
7 the requirements of this part, including any license
8 requirements contained in this part, to any facility
9 the Commission determines is a qualifying facility.

10 “(2) CONSULTATION WITH FEDERAL AND
11 STATE AGENCIES.—In granting any exemption under
12 this subsection, the Commission shall consult with—

13 “(A) the United States Fish and Wildlife
14 Service, the National Marine Fisheries Service,
15 and the State agency exercising administrative
16 control over the fish and wildlife resources of
17 the State in which the facility will be located,
18 in the manner provided by the Fish and Wild-
19 life Coordination Act;

20 “(B) any Federal department supervising
21 any public lands or reservations occupied by the
22 project; and

23 “(C) any Indian tribe affected by the
24 project.

25 “(3) EXEMPTION CONDITIONS.—

1 “(A) IN GENERAL.—The Commission shall
2 include in any exemption granted under this
3 subsection only such terms and conditions that
4 the Commission determines are—

5 “(i) necessary to protect public safety;
6 or

7 “(ii) reasonable, economically feasible,
8 and essential to prevent loss of or damage
9 to, or to mitigate adverse effects on, fish
10 and wildlife resources directly caused by
11 the construction and operation of the
12 qualifying facility, as compared to the envi-
13 ronmental baseline existing at the time the
14 Commission grants the exemption.

15 “(B) NO CHANGES TO RELEASE RE-
16 GIME.—No Federal authorization required with
17 respect to a qualifying facility, including an ex-
18 emption granted by the Commission under this
19 subsection, may include any condition or other
20 requirement that results in any material change
21 to the storage, control, withdrawal, diversion,
22 release, or flow operations of the associated
23 qualifying nonpowered dam.

24 “(4) ENVIRONMENTAL REVIEW.—The Commis-
25 sion’s environmental review under the National En-

1 vironmental Policy Act of 1969 of a proposed ex-
2 emption under this subsection shall consist only of
3 an environmental assessment, unless the Commis-
4 sion determines, by rule or order, that the Commis-
5 sion's obligations under such Act for granting ex-
6 emptions under this subsection can be met through
7 a categorical exclusion.

8 “(5) VIOLATION OF TERMS OF EXEMPTION.—
9 Any violation of a term or condition of any exemp-
10 tion granted under this subsection shall be treated
11 as a violation of a rule or order of the Commission
12 under this Act.

13 “(6) ANNUAL CHARGES FOR ENHANCEMENT
14 ACTIVITIES.—Exemptees under this subsection for
15 any facility located at a non-Federal dam shall pay
16 to the United States reasonable annual charges in
17 an amount to be fixed by the Commission for the
18 purpose of funding environmental enhancement
19 projects in watersheds in which facilities exempted
20 under this subsection are located. Such annual
21 charges shall be equivalent to the annual charges for
22 use of a Government dam under section 10(e), un-
23 less the Commission determines, by rule, that a
24 lower charge is appropriate to protect exemptees' in-
25 vestment in the project or avoid increasing the price

1 to consumers of power due to such charges. The pro-
2 ceeds of charges made by the Commission under this
3 paragraph shall be paid into the Treasury of the
4 United States and credited to miscellaneous receipts.
5 Subject to annual appropriation Acts, such proceeds
6 shall be available to Federal and State fish and wild-
7 life agencies for purposes of carrying out specific en-
8 vironmental enhancement projects in watersheds in
9 which one or more facilities exempted under this
10 subsection are located. Not later than 180 days after
11 the date of enactment of this section, the Commis-
12 sion shall establish rules, after notice and oppor-
13 tunity for public comment, for the collection and ad-
14 ministration of annual charges under this para-
15 graph.

16 “(7) EFFECT OF JURISDICTION.—The jurisdic-
17 tion of the Commission over any qualifying facility
18 exempted under this subsection shall extend only to
19 the qualifying facility exempted and any associated
20 primary transmission line, and shall not extend to
21 any conduit, dam, impoundment, shoreline or other
22 land, or any other project work associated with the
23 qualifying facility exempted under this subsection.

24 “(b) DEFINITIONS.—For purposes of this section:

1 “(1) FEDERAL AUTHORIZATION.—The term
2 ‘Federal authorization’—

3 “(A) means any authorization required
4 under Federal law with respect to an applica-
5 tion for a license, license amendment, or exemp-
6 tion under this part; and

7 “(B) includes any permits, special use au-
8 thorizations, certifications, opinions, or other
9 approvals as may be required under Federal law
10 to approve or implement the license, license
11 amendment, or exemption under this part.

12 “(2) QUALIFYING CRITERIA.—The term ‘quali-
13 fying criteria’ means, with respect to a facility—

14 “(A) as of the date of enactment of this
15 section, the facility is not licensed under, or ex-
16 empted from the license requirements contained
17 in, this part;

18 “(B) the facility will be associated with a
19 qualifying nonpowered dam;

20 “(C) the facility will be constructed, oper-
21 ated, and maintained for the generation of elec-
22 tric power;

23 “(D) the facility will use for such genera-
24 tion any withdrawals, diversions, releases, or
25 flows from the associated qualifying nonpow-

1 ered dam, including its associated impoundment
2 or other infrastructure; and

3 “(E) the operation of the facility will not
4 result in any material change to the storage,
5 control, withdrawal, diversion, release, or flow
6 operations of the associated qualifying nonpow-
7 ered dam.

8 “(3) QUALIFYING FACILITY.—The term ‘quali-
9 fying facility’ means a facility that is determined
10 under this section to meet the qualifying criteria.

11 “(4) QUALIFYING NONPOWERED DAM.—The
12 term ‘qualifying nonpowered dam’ means any dam,
13 dike, embankment, or other barrier—

14 “(A) the construction of which was com-
15 pleted on or before the date of enactment of
16 this section;

17 “(B) that is operated for the control, re-
18 lease, or distribution of water for agricultural,
19 municipal, navigational, industrial, commercial,
20 environmental, recreational, aesthetic, or flood
21 control purposes;

22 “(C) that, as of the date of enactment of
23 this section, is not equipped with hydropower
24 generating works that are licensed under, or ex-

1 empted from the license requirements contained
2 in, this part; and

3 “(D) that, in the case of a non-Federal
4 dam, has been certified by an independent con-
5 sultant approved by the Commission as com-
6 plying with the Commission’s dam safety re-
7 quirements.”.

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