

H.R.1727

Everglades National Park Protection and Expansion Act of 1989 (Enrolled as Agreed to or Passed by Both House and Senate)

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*One Hundred First Congress of the United States of America
AT THE FIRST SESSION*

Begun and held at the City of Washington on Tuesday, the third day of January,
one thousand nine hundred and eighty-nine

An Act

To modify the boundaries of the Everglades National Park and to provide for the protection of lands, waters, and natural resources within the park, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Everglades National Park Protection and Expansion Act of 1989'.

TITLE I--EVERGLADES NATIONAL PARK EXPANSION

SEC. 101. FINDINGS, PURPOSES AND DEFINITION OF TERMS.

(a) FINDINGS- The Congress makes the following findings:

- (1) The Everglades National Park is a nationally and internationally significant resource and the park has been adversely affected and continues to be adversely affected by external factors which have altered the ecosystem including the natural hydrologic conditions within the park.
- (2) The existing boundary of Everglades National Park excludes the contiguous lands and waters of the Northeast Shark River Slough that are vital to long-term protection of the park and restoration of natural hydrologic conditions within the park.
- (3) Wildlife resources and their associated habitats have been adversely impacted by the alteration of natural hydrologic conditions within the park, which has contributed to an overall decline in fishery resources and a 90 percent population loss of wading birds.
- (4) Incorporation of the Northeast Shark River Slough and the East Everglades within the park will limit further losses suffered by the park due to habitat destruction outside the present park boundaries and will preserve valuable ecological resources for use and enjoyment by future generations.
- (5) The State of Florida and certain of its political subdivisions or agencies have indicated a willingness to transfer approximately 35,000 acres of lands under their jurisdiction to the park in order to protect lands and water within the park, and may so transfer additional lands in the future.
- (6) The State of Florida has proposed a joint Federal-State effort to protect Everglades National Park through the acquisition of additional lands.

(b) PURPOSE- The purposes of this Act are to--

- (1) increase the level of protection of the outstanding natural values of Everglades National Park and to enhance and restore the ecological values, natural hydrologic conditions, and public enjoyment of such area by adding the area commonly known as the Northeast Shark River Slough and the East Everglades to Everglades National Park; and
- (2) assure that the park is managed in order to maintain the natural abundance, diversity, and ecological integrity of native plants and animals, as well as the behavior of native animals, as a part of their ecosystem.

(c) DEFINITIONS- As used in this Act:

- (1) The term 'Secretary' means the Secretary of the Interior.
- (2) The term 'addition' means the approximately 107,600 acre area of the East Everglades area authorized to be added to Everglades National Park by this Act.
- (3) The term 'park' means the area encompassing the existing boundary of Everglades National Park and the addition area described in paragraph (2).

(4) The term 'project' means the Central and Southern Florida Project.

SEC. 102. BOUNDARY MODIFICATION.

- (a) **AREA INCLUDED-** The park boundary is hereby modified to include approximately 107,600 acres as generally depicted on the map entitled 'Boundary Map, Everglades National Park Addition, Dade County, Florida', numbered 160-20,013B and dated September 1989. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.
- (b) **BOUNDARY ADJUSTMENT-** The Secretary may from time to time make minor revisions in the boundaries of the park in accordance with section 7(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 and following). In exercising the boundary adjustment authority the Secretary shall ensure all actions will enhance resource preservation and shall not result in a net loss of acreage from the park.
- (c) **ACQUISITION-** (1) Within the boundaries of the addition described in subsection (a), the Secretary may acquire lands and interests in land by donation, purchase with donated or appropriated funds, or exchange. For purposes of acquiring property by exchange, the Secretary may, notwithstanding any other provision of law, exchange the approximately one acre of Federal land known as 'Gilberts' Marina' for non-Federal land of equal value located within the boundaries of the addition. Any lands or interests in land which are owned by the State of Florida or any political subdivision thereof, may be acquired only by donation.
- (2) It is the express intent of Congress that acquisition within the boundaries of the addition shall be completed not later than 5 years after the date of enactment of this section. The authority provided by this section shall remain in effect until all acquisition is completed.
- (d) **ACQUISITION OF TRACTS PARTIALLY OUTSIDE BOUNDARIES-** When any tract of land is only partly within boundaries referred to in subsection (a), the Secretary may acquire all or any portion of the land outside of such boundaries in order to minimize the payment of severance costs. Land so acquired outside of the boundaries may be exchanged by the Secretary for non-Federal lands within the boundaries, and any land so acquired and not utilized for exchange shall be reported to the General Services Administration for disposal under the Federal Property and Administrative Services Act of 1949 (63 Stat. 377).
- (e) **OFFERS TO SELL-** In exercising the authority to acquire property under this Act, the Secretary shall give prompt and careful consideration to any offer made by any person owning property within the boundaries of the addition to sell such property, if such owner notifies the Secretary that the continued ownership of such property is causing, or would result in undue hardship.
- (f) **AUTHORIZATION OF APPROPRIATIONS-** (1) Subject to the provisions of paragraph (2), there are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.
- (2) With respect to land acquisition within the addition, not more than 80 percent of the cost of such acquisition may be provided by the Federal Government. Not less than 20 percent of such cost shall be provided by the State of Florida.
- (g) **ASSISTANCE-** Upon the request of the Governor of the State of Florida, the Secretary is authorized to provide technical assistance and personnel to assist in the acquisition of lands and waters within the Kissimmee River/Lake Okeechobee/Everglades Hydrologic Basin, including the Big Cypress Swamp, through the provision of Federal land acquisition personnel, practices, and procedures. The State of Florida shall reimburse the Secretary for such assistance in such amounts and at such time as agreed upon by the Secretary and the State. Notwithstanding any other provision of law, reimbursement received by the Secretary for such assistance shall be retained by the Secretary and shall be available without further appropriation for purposes of carrying out any authorized activity of the Secretary within the boundaries of the park.

SEC. 103. ADMINISTRATION.

- (a) **IN GENERAL-** The Secretary shall administer the areas within the addition in accordance with this Act and other provisions of law applicable to the Everglades National Park, and with the provisions of law generally applicable to units of the national park system, including the Act entitled 'An Act to establish a National Park Service, and for other purposes', approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-4). In order to further preserve and protect Everglades National Park, the Secretary shall utilize such other statutory authority as may be available to him for the preservation of wildlife and natural resources as he deems necessary to carry out the purposes of this Act.
- (b) **PROTECTION OF ECOSYSTEM-** The Secretary shall manage the park in order to maintain the natural abundance, diversity, and ecological integrity of native plants and animals, as well as the behavior of native animals, as a part of their ecosystem.

- (c) **PROTECTION OF FLORA AND FAUNA-** The park shall be closed to the operation of airboats--
(1) except as provided in subsection (d); and
(2) except that within a limited capacity and on designated routes within the addition, owners of record of registered airboats in use within the addition as of January 1, 1989, shall be issued nontransferable, nonrenewable permits, for their individual lifetimes, to operate personally-owned airboats for noncommercial use in accordance with rules prescribed by the Secretary to determine ownership and registration, establish uses, permit conditions, and penalties, and to protect the biological resources of the area.
- (d) **CONCESSION CONTRACTS-** The Secretary is authorized to negotiate and enter into concession contracts with the owners of commercial airboat and tour facilities in existence on or before January 1, 1989, located within the addition for the provision of such services at their current locations under such rules and conditions as he may deem necessary for the accommodation of visitors and protection of biological resources of the area.
- (e) **VISITOR CENTER-** The Secretary is authorized and directed to expedite the construction of the visitor center facility at Everglades City, Florida, as described in the Development Concept Plan, Gulf Coast, dated February 1989, and upon construction shall designate the visitor center facility as 'The Marjory Stoneman Douglas Center' in commemoration of the vision and leadership shown by Mrs. Douglas in the protection of the Everglades and Everglades National Park.

SEC. 104. MODIFICATION OF CERTAIN WATER PROJECTS.

- (a) **IMPROVED WATER DELIVERIES-** (1) Upon completion of a final report by the Chief of the Army Corps of Engineers, the Secretary of the Army, in consultation with the Secretary, is authorized and directed to construct modifications to the Central and Southern Florida Project to improve water deliveries into the park and shall, to the extent practicable, take steps to restore the natural hydrological conditions within the park.
(2) Such modifications shall be based upon the findings of the Secretary's experimental program authorized in section 1302 of the 1984 Supplemental Appropriations Act (97 Stat. 1292) and generally as set forth in a General Design Memorandum to be prepared by the Jacksonville District entitled 'Modified Water Deliveries to Everglades National Park'. The Draft of such Memorandum and the Final Memorandum, as prepared by the Jacksonville District, shall be submitted as promptly as practicable to the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate and the Committee on Interior and Insular Affairs and the Committee on Public Works and Transportation of the United States House of Representatives.
(3) Construction of project modifications authorized in this subsection and flood protection systems authorized in subsections (c) and (d) are justified by the environmental benefits to be derived by the Everglades ecosystem in general and by the park in particular and shall not require further economic justification.
(4) Nothing in this section shall be construed to limit the operation of project facilities to achieve their design objectives, as set forth in the Congressional authorization and any modifications thereof.
- (b) **DETERMINATION OF ADVERSE EFFECT-** (1) Upon completion of the Final Memorandum referred to in subsection (a), the Secretary of the Army, in consultation with the South Florida Water Management District, shall make a determination as to whether the residential area within the East Everglades known as the 'Eight and One-Half Square Mile Area' or adjacent agricultural areas, all as generally depicted on the map referred to in subsection 102(a), will be adversely affected by project modifications authorized in subsection (a).
(2) In determining whether adjacent agricultural areas will be adversely affected, the Secretary of the Army shall consider the impact of any flood protection system proposed to be implemented pursuant to subsection (c) on such agricultural areas.
- (c) **FLOOD PROTECTION; EIGHT AND ONE-HALF SQUARE MILE AREA-** If the Secretary of the Army makes a determination pursuant to subsection (b) that the 'Eight and One-Half Square Mile Area' will be adversely affected, the Secretary of the Army is authorized and directed to construct a flood protection system for that portion of presently developed land within such area.
- (d) **FLOOD PROTECTION; ADJACENT AGRICULTURAL AREA-** (1) If the Secretary of the Army determines pursuant to subsection (b) that an adjacent agricultural area will be adversely affected, the Secretary of the Army is authorized and directed to construct a flood protection system for such area. Such determination shall be based on a finding by the Secretary of the Army that:
(A) the adverse effect will be attributable solely to a project modification authorized in subsection (a) or to a flood protection system implemented pursuant to subsection (c), or both; and
(B) such modification or flood protection system will result in a substantial reduction in the economic utility of such area based on its present agricultural use.

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- (2) No project modification authorized in subsection (a) which the Secretary of the Army determines will cause an adverse effect pursuant to subsection (b) shall be made operational until the Secretary of the Army has implemented measures to prevent such adverse effect on the adjacent agricultural area: *Provided*, That the Secretary of the Army or the South Florida Water Management District may operate the modification to the extent that the Secretary of the Army determines that such operation will not adversely affect the adjacent agricultural area: *Provided further*, That any preventive measure shall be implemented in a manner that presents the least prospect of harm to the natural resources of the park.
- (3) Any flood protection system implemented by the Secretary of the Army pursuant to this subsection shall be required only to provide for flood protection for present agricultural uses within such adjacent agricultural area.
- (4) The acquisition of land authorized in section 102 shall not be considered a project modification.
- (e) PERIODIC REVIEW- (1) Not later than 18 months after the completion of the project modifications authorized in subsection (a), and periodically thereafter, the Secretary of the Army shall review the determination of adverse effect for adjacent agricultural areas.
- (2) In conducting such review, the Secretary of the Army shall consult with all affected parties, including, but not limited to, the Secretary, the South Florida Water Management District and agricultural users within adjacent agricultural areas.
- (3) If, on the basis of such review, the Secretary of the Army determines that an adjacent agricultural area has been, or will be adversely affected, the Secretary of the Army is authorized and directed, in accordance with the provisions of subsection (d), to construct a flood protection system for such area: *Provided*, That the provisions of subsection (d)(2) shall be applicable only to the extent that the Secretary, in consultation with the Secretary of the Army, determines that the park will not be adversely affected.
- (4) The provisions of this subsection shall only be applicable if the Secretary of the Army has previously made a determination that such adjacent agricultural area will not be adversely affected.
- (f) CURRENT CANAL OPERATING LEVELS- Nothing in this section shall be construed to require or prohibit the Secretary of the Army or the South Florida Water Management District from maintaining the water level within any project canal below the maximum authorized operating level as of the date of enactment of this Act.
- (g) NO LIMITATION ON OTHER CLAIMS- If the Secretary of the Army makes a determination of no adverse effect pursuant to subsection (b), such determination shall not be considered as a limitation or prohibition against any available legal remedy which may otherwise be available.
- (h) COORDINATION- The Secretary and the Secretary of the Army shall coordinate the construction program authorized under this section and the land acquisition program authorized in section 102 in such a manner as will permit both to proceed concurrently and as will avoid unreasonable interference with property interests prior to the acquisition of such interests by the Secretary under section 102.
- (i) WEST DADE WELLFIELD- No Federal license, permit, approval, right-of-way or assistance shall be granted or issued with respect to the West Dade Wellfield (to be located in the Bird Drive Drainage Basin, as identified in the Comprehensive Development Master Plan for Dade County, Florida) until the Secretary, the Governor of the State of Florida, the South Florida Water Management District and Dade County, Florida enter into an agreement providing that the South Florida Water Management District's water use permit for the wellfield, if granted, must include the following limiting conditions: (1) the wellfield's peak pumpage rate shall not exceed 140,000,000 gallons per day; (2) the permit shall include reasonable, enforceable measures to limit demand on the wellfield in times of water shortage; and (3) if, during times of water shortage, the District fails to limit demand on the wellfield pursuant to (2), or if the District limits demand on the wellfield pursuant to (2), but the Secretary certifies that operation of the wellfield is still causing significant adverse impacts on the resources of the Park, the Governor shall require the South Florida Water Management District to take necessary actions to alleviate the adverse impact, including, but not limited to, temporary reductions in the pumpage from the wellfield.
- (j) PROTECTION OF NATURAL VALUES- The Secretary of the Army is directed in analysis, design and engineering associated with the development of a general design memorandum for works and operations in the 'C-111 basin' area of the East Everglades, to take all measures which are feasible and consistent with the purposes of the project to protect natural values associated with Everglades National Park. Upon completion of a general design memorandum for the area, the Secretary shall prepare and transmit a report to the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate and the Committee on Interior and Insular Affairs and the Committee on Public Works and Transportation of the United States House of Representatives on the status of the natural resources of the C-111 basin and functionally related lands.