

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

May 11, 2018

To: All Subcommittee on Water, Power and Oceans Members

From: Majority Committee Staff
Subcommittee on Water, Power and Oceans (x58331)

Markup: **H.R. 4419 (Rep. Dan Newhouse, R-WA)**, To facilitate and streamline the Bureau of Reclamation and Bureau of Indian Affairs processes for creating or expanding certain water projects, and for other purposes.
Wednesday, May 16, 2018; 1324 Longworth HOB.

H.R. 4419 (Rep. Dan Newhouse), *“Bureau of Reclamation and Bureau of Indian Affairs Water Project Streamlining Act”*

Bill Summary

H.R. 4419 requires the U.S. Bureau of Reclamation to accelerate studies and provide more accountability in the agency’s process to study the feasibility of new or expanded water projects. The legislation would provide the same streamlined water project development process for the Bureau of Reclamation and Bureau of Indian Affairs that the Water Resources Reform and Development Act of 2014 (Public Law 113-121) provided for the U.S. Army Corps of Engineers. The goal of the legislation is to reform the current cumbersome, lengthy process so that there is a mechanism to build new water projects in the West.

Cosponsors Rep. David Reichert (R-WA) and Rep. Tom McClintock (R-CA)

Background

The U.S. Bureau of Reclamation (Reclamation) is the largest water wholesaler in the nation, providing water to 31 million people and helping irrigate 10 million acres of farmland that produce 60% of the nation’s vegetables and 25% of its fruits and nuts.¹ Many of Reclamation’s projects are multi-purpose in nature, and its reservoirs and dams further generate enough emissions-free electricity to serve at least 3.5 million homes annually.² This is accomplished through the operation of 53 hydroelectric power plants that have annually

¹ <http://www.usbr.gov/main/about/fact.html>

² Id. note 1

produced, on average, 40 billion kilowatt-hours over the last 10 years.³ In addition, the Bureau of Indian Affairs (BIA) oversees 15 revenue-generating irrigation projects that include 6,200 miles of canals and drains and over 5,000 irrigation structures.⁴ These projects serve 25,000 water users and irrigate more than 780,000 acres of land.⁵

Water stored behind many of these Reclamation facilities provides year-round flows and cold-water fishery habitat. The vast majority of these projects are financed under the “beneficiary pays” principle, which requires users to re-pay the initial federal investment in these facilities through long-term contracts. The Columbia Basin Project in Washington State, the Central Valley Project in California and the Central Arizona Project are just some of the Reclamation’s projects that have transformed western regional economies. However, these projects contribute to the approximately 90 percent of Reclamation projects that were built more than 50 years ago.⁶

Although it is indisputable that surface storage continues to serve a key role in making the West what it is today, the region’s water supply is at a crossroads due to several factors. Population growth is one such factor. In California alone, the current water system was designed to serve 22 million people, yet the State currently has 39 million residents and is expected to double in population by 2050.⁷ Calls for new storage in California, where record-setting drought coupled with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other regulations have diverted water from farms and cities to the ocean, are at a high level.⁸

With a few exceptions, the construction of new multi-purpose surface water storage has largely stalled in the region. Except for the Animas-La Plata project in southwestern Colorado, Reclamation has not built any large multi-purpose dams and reservoirs over the last generation, due in part to environmental permitting and other regulatory requirements and cost. In California specifically, Reclamation and the California Department of Water Resources began the North-of-the-Delta Offstream Storage Investigation in 2002 for the proposed Sites Reservoir.⁹ As of 2012, Reclamation spent \$12.7 million conducting this study, and it is not yet completed.¹⁰

³ <http://www.usbr.gov/main/about/fact.html>

⁴ https://openei.org/w/images/e/e1/Federal_Hydropower_-_Bureau_of_Indian_Affairs.pdf.

⁵ <https://www.bia.gov/bia/ots/dwp/irrigation-power>.

⁶ <https://www.usbr.gov/newsroom/presskit/factsheet/detail.cfm?recordid=2>.

⁷ <http://www.water.ca.gov/swp/delta.cfm>

⁸ Testimony of Mr. Dan Keppen, before the House Water and Power Subcommittee, Legislative Hearing on H.R. 5412, 113th Congress, p. 2.

⁹ [Testimony of Mr. Thad Bettner before the House Water and Power Subcommittee, Oversight Hearing on “Water for Our Future and Job Creation: Examining Regulatory and Bureaucratic Barriers to New Surface Storage Infrastructure”, 112th Congress, p. 2.](#)

¹⁰ Id.

Under Reclamation’s current feasibility study process (called Directives and Standards), the agency must use a formula to decide the costs and benefits of such project. Specifically, a 1:1 cost-benefit ratio triggers a favorable recommendation for construction but if the costs outweigh the benefits, a negative recommendation occurs. This formula determines the actual cost of constructing the dam and any environmental mitigation for such construction while assessing the water supply, hydropower, recreation, flood control and environmental benefits. Regarding the proposed Sites Reservoir feasibility study process, Mr. Thad Bettner, General Manager of the Glenn-Colusa Irrigation District, said “despite [the \$12.7 million] effort and the many promised benefits... we still find ourselves in a place where it is difficult to clearly articulate the benefits of the project, the costs, and how the project will be funded.”¹¹

In light of these difficulties, H.R. 4419 is designed to speed up and provide more certainty to the feasibility study process on certain water projects that “would be owned, funded, or operated in whole or in part” by the Reclamation or BIA.¹² Specifically, the bill seeks to facilitate the construction of new or expanded surface water storage projects, Title XVI projects, rural water supply projects, and federal portions of an integrated water resources management plan that has been subject to a review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).¹³ The legislation establishes reporting and transparency requirements to provide agency justifications on why feasibility studies are not being completed in a timely manner, and also contains a mechanism to offset the federal costs for these projects. H.R. 4419 creates a process for Congress to authorize Reclamation and BIA projects that have met the criteria established in the bill. For example, if a feasibility report is completed for a qualifying project, that study would be included in the reporting mechanism under section 6 of this bill.

As mentioned above, the bill closely resembles provisions included in the Water Resources Reform and Development Act.¹⁴ The conference report for this law, which includes nearly identical provisions for the U.S. Army Corps of Engineers, passed the House 412-4¹⁵ and in the Senate by a 91-7 margin.¹⁶

¹¹ Id.

¹² H.R. 4419, Section 2(9)

¹³ H.R. 4419, Section 2(5)(A)

¹⁴ P.L. 113-121 <https://www.gpo.gov/fdsys/pkg/PLAW-113publ121/pdf/PLAW-113publ121.pdf>

¹⁵ House Roll Call Vote: <http://clerk.house.gov/evs/2013/roll560.xml>

¹⁶ Senate Roll Call Vote:

https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=113&session=2&vote=00163

Major Provisions/Analysis of H.R. 4419

Section 3 requires future feasibility studies for Bureau of Reclamation or Bureau of Indian Affairs (BIA) projects to be completed with three years after the date of initiation and have a maximum federal cost of \$3 million. The section provides for a maximum seven-year extension of that time and cost if the Secretary of the Interior provides a detailed justification to the non-federal project sponsor and Congress.

Section 4 requires the Secretary of the Interior to expedite the completion of any ongoing feasibility studies initiated before the date of enactment. If the Secretary determines that the project is justified in a completed report, the Secretary shall proceed to pre-construction planning, engineering and design of the project.

Section 5 directs the Secretary to develop and implement a coordinated environmental review process with Reclamation and the non-federal project sponsor as lead agencies for expedited environmental review of a project. The section further directs the lead agencies to establish a schedule for completion of a study and lays out financial penalties if timelines are not met.

Section 6 directs the Secretary to develop and submit a report to the relevant committees in Congress that identifies project reports, proposed project studies, and proposed modifications to projects and studies. The reports shall include a description of the benefits and federal and non-federal cost estimates. These reports would be similar to the feasibility studies listed in section 7002 of Public Law 113-121, which authorize construction of projects by Congress.

Section 7 identifies various sections of the Water Infrastructure Improvement for the National Act (WIIN Act, Public Law 114-322) that are excluded from the process established in this bill.

Section 8 contains a table of projects that meet the criteria in the bill and are authorized to be carried out in accordance with this section. These projects include: Phase III of the Yakima River Basin Water Enhancement Project in Washington, Equus Beds Division of the Wichita Project in Kansas, Musselshell-Judith Rural Water System in Montana, and the Shasta Lake Water Resources Investigation in California.

Section 9 establishes a process to offset the federal costs of projects listed in section 8.

Cost

The Congressional Budget Office has yet to complete a cost estimate of this bill.

Administration Position

Mr. Alan Mikkelsen, then-Deputy Commissioner for the Bureau of Reclamation, testified in support of the themes of the bill at a November 30, 2017, Subcommittee on Water, Power and Oceans hearing, stating “as the Bureau of Reclamation is committed to sound, efficient, and streamlined environmental review processes in order to avoid unnecessary construction delays and increased costs of water projects, the Department supports the goals of H.R. 4419.”¹⁷

Anticipated Amendments

Amendment anticipated to modify projects authorized under section 8 to reflect the Shasta dam and reservoir enlargement project inclusion in the Consolidated Appropriations Act, 2018 (Public Law 115-141).

Effect on Current Law (Ramseyer)

None.

¹⁷ https://naturalresources.house.gov/uploadedfiles/bor_testimony_on_hr_4419.final.pdf