

LAKE BERRYESSA RECREATION ENHANCEMENT ACT OF
2014

DECEMBER 22, 2014.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural
Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4166]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4166) to transfer recreational management authority for Lake Berryessa in the State of California from the Bureau of Reclamation to the Bureau of Land Management, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Lake Berryessa Recreation Enhancement Act of 2014”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; purposes.
- Sec. 3. Definitions.
- Sec. 4. Transfer of administrative jurisdiction.
- Sec. 5. Management of Recreation Area.
- Sec. 6. Continued authorities of Commissioner of Reclamation.
- Sec. 7. Existing authorizations.

SEC. 2. FINDINGS; PURPOSES.

(a) **FINDINGS.**—Congress finds that—

(1) the Monticello Dam—

(A) was authorized by the Reclamation Project Act of 1939 (53 Stat. 1187);

(B) resulted in the formation of Lake Berryessa; and

- (C) is operated by the Bureau of Reclamation;
- (2) Lake Berryessa—
 - (A) covers approximately 28,915 acres of surface water and land;
 - (B) has 165 miles of shoreline;
 - (C) has a 2,000 acre wildlife area on the east side;
 - (D) is located less than 100 miles from both Sacramento, California and San Francisco, California; and
 - (E) has become an important regional recreation destination; and
- (3) the recreational use at Lake Berryessa generates tourism that is important to local economies.
- (b) PURPOSES.—The purposes of this Act are—
 - (1) to provide diverse, high quality recreational facilities and services on the water and land surrounding Lake Berryessa;
 - (2) to conserve the natural, scenic, scientific, historic, economic, recreational, and other resource values contributing to the public use and enjoyment of that land and water;
 - (3) to promote cooperation between the Federal Government and private entities to manage that exceptional resource;
 - (4) to authorize the Secretary to manage certain resources under the Bureau of Land Management; and
 - (5) to transfer administrative jurisdiction over certain Federal land for management as a unit of the Bureau of Land Management.

SEC. 3. DEFINITIONS.

In this Act:

- (1) DAM.—The term “Dam” means—
 - (A) the Monticello Dam; and
 - (B) any facility relating to the Monticello Dam.
- (2) RECREATION AREA.—The term “Recreation Area” means the Lake Berryessa Recreation Area designated by section 4(a).
- (3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.
- (4) STATE.—The term “State” means the State of California.

SEC. 4. TRANSFER OF ADMINISTRATIVE JURISDICTION.

(a) ESTABLISHMENT.—Subject to valid existing rights, there is established the Lake Berryessa Recreational Area, the boundaries of which are described in subsection (c). In administering the Recreation Area, the Secretary shall not—

- (1) diminish the levels of day-use occupancy, short-term occupancy and annual occupancy as set forth in the recreational use plan adopted by the Bureau of Reclamation on June 2, 2006, for the Recreation Area;
- (2) diminish motorized boating or alter the “Water Surface Zoning and Restrictions” developed under Action 17 of the 1993 Recreation Area Management Plan Record of Decision and continued in the recreational use plan adopted by the Bureau of Reclamation on June 2, 2006, for the Recreation Area;
- (3) close trails or limit recreational hiking and equine access to trails on lands in the Recreation Area; and
- (4) negatively impact hunting, fishing, shooting sports, or trapping on the lands and waters within the boundaries of the Recreation Area.

(b) TRANSFER OF ADMINISTRATIVE JURISDICTION.—Administrative jurisdiction over the Federal land described in subsection (c), including any improvements thereon, is transferred from the Bureau of Reclamation to the Bureau of Land Management for administration of the Recreation Area.

(c) DESCRIPTION OF LAND.—The land referred to in subsection (a) is the approximately 30,221 acres of land administered by the Bureau of Reclamation that is underlying or adjacent to Lake Berryessa and identified as “Lake Berryessa Reclamation Lands Solono Project” on the map dated September 15, 2014.

SEC. 5. MANAGEMENT OF RECREATION AREA.

(a) IN GENERAL.—Subject to the authority of the Secretary under section 6, the Secretary shall manage the Recreation Area in accordance with sections 601 through 604 of Public Law 93–493.

(b) APPLICABLE LAW.—Subject to valid existing rights, the Secretary shall administer the Recreation Area in accordance with laws (including regulations) applicable to units of the public lands of the Bureau of Land Management.

(c) WATERS.—Nothing in this Act—

- (1) affects the use or allocation, in existence on the date of the enactment of this Act, of any water, water right, or interest in water;
- (2) affects any vested absolute or decreed conditional water right in existence on the date of the enactment of this Act, including any water right held by the United States;

(3) affects any interstate water compact in existence on the date of the enactment of this Act;

(4) authorizes or imposes any new reserved Federal water rights;

(5) relinquishes or reduces any water rights reserved or appropriated by the United States in the State on or before the date of the enactment of this Act;

(6) impairs the ability of the Bureau of Reclamation and its managing partners to operate, maintain, or manage Monticello Dam and other Solano Project facilities in accordance with the purposes of such project; or

(7) modifies, changes, or supersedes any water contract or agreements approved or administered by the Bureau of Reclamation or Solano County Water Agency or Solano Irrigation District.

(d) EXISTING AGREEMENTS.—To benefit the interests of the public, the Secretary shall act in accordance with any agreement in existence on the date of the enactment of this Act, including those with any organization for the management of—

(1) campgrounds located in the Recreation Area;

(2) marinas located in the Recreation Area;

(3) lodging facilities located in the Recreation Area;

(4) food and beverage services located in the Recreation Area; and

(5) boating and boat rental facilities located in the Recreation Area.

(e) ADOPTION OF RECREATIONAL USE PLAN.—To manage the Recreation Area, the Secretary shall adopt and use the recreational use plan adopted by the Bureau of Reclamation on June 2, 2006, for the Recreational Area. The adoption of this plan shall not constitute a major federal action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). This action is not subject to judicial review.

SEC. 6. CONTINUED AUTHORITIES OF COMMISSIONER OF RECLAMATION.

Nothing in this Act or any subsequent management plan shall impair the ability of the Bureau of Reclamation and its managing partners to operate, maintain, or manage Monticello Dam, Lake Berryessa, and other Solano Project facilities in accordance with that project's authorized purposes. The Commissioner of Reclamation shall continue to administer and operate—

(1) the Dam; and

(2) any power facility relating to the Dam.

SEC. 7. EXISTING AUTHORIZATIONS.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), nothing in this Act affects any authorization in effect as of the date of the enactment of this Act made by any department or agency of the Federal Government for the use of land or water located within the Recreation Area (referred to in this section as an “existing authorization”).

(b) ASSUMPTION OF EXISTING AUTHORIZATION.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall assume the administration of any existing authorization, with such revisions as necessary to align the authorization with existing law and policies of the Bureau of Land Management.

(c) RENEWAL OF EXISTING AUTHORIZATION.—The renewal of any existing authorization shall be made in accordance with such terms and conditions as the Secretary may prescribe.

PURPOSE OF THE BILL

The purpose of H.R. 4166 is to transfer recreational management authority for Lake Berryessa in the State of California from the Bureau of Reclamation to the Bureau of Land Management.

BACKGROUND AND NEED FOR LEGISLATION

The Bureau of Reclamation has 289 project areas, including Lake Berryessa, that have recreation facilities and opportunities available for public use. Lake Berryessa is a 1.6 million acre feet capacity reservoir created by the Monticello Dam, which impounds Putah Creek in northern California's Solano and Napa Counties. Reclamation derives much of its recreational management authorization at Lake Berryessa pursuant to “The Reclamation Development Act of 1974” (Public Law 93–493) and Public Law 96–375, which states:

. . . the Secretary of the Interior is authorized to enter into new negotiated concession agreements with the present concessionaires at Lake Berryessa, California. Such agreements shall be for a term ending not later than May 26, 1989, and may be renewed at the request of the concessionaire with the consent of the Secretary of the Interior for no more than two consecutive terms of 10 years each. Concession agreements may be renegotiated preceding renewal.

Reclamation, under President George W. Bush's Administration, chose not to extend the concession arrangements when the concessions contracts expired in 2008 and 2009. As part of this effort, Reclamation initiated work for a new Visitor Services Plan (VSP) in 2000 and published a Draft Environmental Impact Statement (EIS) in October 2003. After considering comments, Reclamation published a Final EIS in October 2005. A Record of Decision was signed in June 2006, based upon the fundamental assumption from the VSP that new contractors would invest significant capital to develop a broad range of recreation facilities for short-term visitor use at all of the Lake's seven concession areas. Reclamation chose one concessioner to manage five of the seven concessions in May 2010.

The subsequent concessioner contract with Reclamation stipulated that several of the resorts had to be leveled then rebuilt under specific timelines. However, Reclamation terminated that 40-year contract in December 2012 after disagreements between Reclamation and the concessioner. After the contract termination, Reclamation signed interim contracts with other concessionaires to operate the seven sub-areas while producing a prospectus for new long-term concessionaire contracts. Reclamation estimates that it intends to offer such contracts in 2015.

In response to lower visitation numbers and the contract disputes, H.R. 4166 was introduced to transfer recreational management responsibilities from Reclamation to the Bureau of Land Management (BLM). Napa County and other local entities support the bill. The Administration testified in support of H.R. 4166 at a Water and Power Subcommittee hearing on June 10, 2014, but with a qualified endorsement: "While we support this transfer, the Department notes that given the site conditions, available resources, and applicable authorities, the BLM may not be able to meet the public's expectations nor manage the recreation area as the sponsor intends under the bill as written." In addition, a local recreationalist, Mr. Peter Kilkus, the editor of the Lake Berryessa News and long-time Lake Berryessa resident, questioned the effect of the transfer in submitted testimony: "H.R. 4166 is NOT a bill aimed at 'government efficiency.' There is no real evidence that if the BLM had managed the VSP/Bid Prospectus process, the outcome would have been any different. Nor is there any guarantee that the BLM would do a better job in the future . . . On a cautionary note, the usual exclusionist suspects have already begun floating the idea that some of the resorts should not be reopened at all, reopened with limited amenities, or reopened for day use only."

H.R. 4166, as amended, seeks to remedy some of these concerns by ensuring that nothing in the bill diminishes motorized boating,

hiking access, horseback riding, or hunting and fishing activities. In addition, the amendment adopted in committee requires BLM to follow the current Bureau of Reclamation recreational use plan in place to ensure BLM does not create a new plan that will cost millions of taxpayer dollars to develop and one which may not guarantee existing recreational access.

COMMITTEE ACTION

H.R. 4166 was introduced on March 6, 2014, by Congressman Mike Thompson (D–CA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittees on Water and Power and Public Lands and Environmental Regulation. On June 10, 2014, the Subcommittee on Water and Power held a hearing on the bill. On September 18, 2014, the Full Natural Resources Committee met to consider the bill. The Subcommittees on Water and Power and Public Lands and Environmental Regulation were discharged by unanimous consent. Congressman Tom McClintock (R–CA) offered an amendment designated #1 to the bill; the amendment was adopted by unanimous consent. The bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 4166—Lake Berryessa Recreation Enhancement Act of 2014

H.R. 4166 would transfer administrative jurisdiction over 30,221 acres of federal land underlying or adjacent to Lake Berryessa in California from the Bureau of Reclamation (BOR) to the Bureau of Land Management (BLM). Based on information provided by the affected agencies and assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost \$3 million over the 2015–2019 period. Because enacting the legislation would increase direct spending, pay-as-you-go procedures apply. However, we estimate that the net budgetary effect of those

changes would not be significant. Enacting H.R. 4166 would not affect revenues.

Under current law, CBO expects that BOR would collect receipts from concession contracts and franchise fees from recreational activities near Lake Berryessa totaling less than \$100,000 a year. Those fees are classified as offsetting receipts, which are treated as reductions in direct spending. Based on information provided by BLM, CBO expects that, under the bill, the agency would collect a similar amount of fees. However, because BLM would probably use its existing authorities to retain and spend a portion of those amounts, we estimate that enacting the bill would increase direct spending by less than \$50,000 a year.

In addition, CBO estimates that, under current law, BOR would spend about \$3 million a year to administer the affected lands, assuming appropriation of the necessary amounts. Under the bill, BLM would carry out similar activities to administer the affected lands plus certain additional activities related to endangered species preservation, hazardous fuels removal, and habitat preservation. Based on information provided by BLM, and assuming appropriation of the necessary amounts, CBO estimates that conducting those activities would cost an additional \$3 million over the 2015–2019 period, assuming appropriation of the necessary amounts.

H.R. 4166 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, and tribal governments.

The CBO staff contacts for this estimate are Aurora Swanson and Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information provided by the affected agencies and assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost \$3 million over the 2015–2019 period. Because enacting the legislation would increase direct spending, pay-as-you-go procedures apply. However, CBO estimates that the net budgetary effect of those changes would not be significant (less than \$50,000 a year). Enacting H.R. 4166 would not affect revenues.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to transfer recreational management authority for Lake Berryessa in the State of California from the Bureau of Reclamation to the Bureau of Land Management.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

DISSENTING VIEWS

H.R. 4166—LAKE BERRYESSA RECREATION ENHANCEMENT ACT OF 2014

H.R. 4166 would transfer recreational management authority of Lake Berryessa from the Bureau of Reclamation (BOR) to the Bureau of Land Management (BLM). The legislation would further direct the Secretary of Interior to implement the recreational use plan adopted by the BOR on June 2, 2006 for the Recreational Area. The Recreation Area is comprised of 30,221 acres of federal land underlying or adjacent to Lake Berryessa in California.

While we support transferring recreational management authority of Lake Berryessa to BLM, a number of amendments made to H.R. 4166 during the markup process would make the current bill difficult to implement. Prior to Full Committee consideration of this legislation, the bill's sponsor worked with the Department of the Interior to draft changes to address the Department's concerns. These changes were shared with the Majority prior to markup but not included in the Subcommittee Chairman's amendment. Instead, the amendment adopted by the Committee included language requiring the Secretary to maintain certain use levels without any management flexibility.

We look forward to working with the Majority to resolve the issues with H.R. 4166 as it is currently written so that BOR and BLM can start working on a smooth management transfer that enhances recreational opportunities for visitors to the lake.

PETER DEFAZIO,
*Ranking Member, Committee
on Natural Resources.*

GRACE NAPOLITANO,
*Ranking Member, Sub-
committee on Water and
Power.*

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