

BUREAU OF RECLAMATION PUMPED STORAGE
HYDROPOWER DEVELOPMENT ACT

—————
JUNE 2, 2017.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 1967]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1967) to amend the Reclamation Project Act of 1939 to authorize pumped storage hydropower development utilizing multiple Bureau of Reclamation reservoirs, 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.

This Act may be cited as the “Bureau of Reclamation Pumped Storage Hydropower Development Act”.

SEC. 2. AUTHORITY FOR PUMPED STORAGE HYDROPOWER DEVELOPMENT UTILIZING MULTIPLE BUREAU OF RECLAMATION RESERVOIRS.

Section 9(c)(1) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)(1)) is amended by inserting “and pumped storage hydropower development exclusively utilizing Bureau of Reclamation reservoirs” after “including small conduit hydropower development”.

PURPOSE OF THE BILL

The purpose of H.R. 1967 is to amend the Reclamation Project Act of 1939 to authorize pumped storage hydropower development utilizing multiple Bureau of Reclamation reservoirs.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1967 authorizes pumped storage at Bureau of Reclamation (Reclamation) facilities in order to clear up regulatory confusion and stimulate non-federal pumped storage hydropower development in the seventeen western states.

The arid western United States, once sparsely populated due in large part to scarce water supplies, is now home to more than 70 million people and is one of the most productive agricultural regions in the world. Reclamation, a federal agency created in 1902, played a pivotal role in developing and maintaining much of the water infrastructure in the West. 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. This is accomplished through the operation of 53 hydroelectric power plants that, according to Reclamation, have annually produced an average of 40 billion kilowatt (kW) hours over the last 10 years. Nationally, hydropower accounts for almost 7% of domestic electricity generation, divided equally between federal and non-federal output.

Pumped storage hydropower facilities pump water stored at a lower reservoir to an upper reservoir during periods of low electricity demand. During periods of high electricity demand, water is released from the upper reservoir and run through turbines to produce electricity. This not only provides power for baseload needs and peak times, but also serves as a backup generation source for other intermittent renewable energies such as wind and solar.

When Reclamation allows non-federal entities to produce hydropower at its facilities, it uses a "lease of power privilege" (LOPP) process. A LOPP is a contractual right given to a non-federal entity to use a Reclamation facility for electric power generation that is consistent with the project's purposes. As part of this arrangement, the entity pays a fee (commonly referred to as a "falling water charge") to Reclamation for the use of the facilities, and that fee is credited towards the capital repayment of the Reclamation facility. There are currently thirteen LOPP projects at Reclamation facilities: seven dams and six conduits with a combined capacity of nearly 46,000 kW. According to Reclamation, the national potential for new pumped storage is 34,000 megawatts, although it would be far less at the agency's facilities.

Under the LOPP process, Reclamation solicits proposals through a public process and then reviews each proposal received. According to the Reclamation's Directives and Standards, some of the topic areas that must be considered during the review process include: public and dam safety impacts/modifications; site characteristics and existing facilities; land and water rights; project features and designs; power production; operations and maintenance plans; consultation with involved Native American tribal governments; and an environmental analysis suitable for Reclamation's use under the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, and the Endangered Species Act of 1973. A recipient is then selected based on the criteria set forth in the solicitation and issued a preliminary lease.

Even though the LOPP is used for Reclamation facilities that are authorized for hydropower development, there has been some his-

toric inconsistency over which federal agency would manage hydropower development at Reclamation's facilities. In some cases, Reclamation has clear authority to develop hydropower at a specific project given the project's legislative history and authorized project purposes. In other cases, the Federal Energy Regulatory Commission could have authority if the underlying project's authorization did not specifically include hydropower as a component. Congress cleared up some of this confusion when it passed and President Obama signed the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act (Public Law 113-24), which explicitly authorized hydropower development at Reclamation's canals and water pipelines.

There is still some confusion over which agency would oversee pumped storage development at certain Reclamation facilities. Some of Reclamation's water users have expressed a desire to work directly with Reclamation through the LOPP process but have run into uncertainty. For example, Columbia Basin Hydropower (CBHP) is looking to develop a pumped storage hydropower project in central Washington State near the Grand Coulee Dam. Since April 2012, it has been unclear which federal regulatory process should apply to the project. In an April 4, 2017, Water, Power and Oceans Subcommittee hearing on a discussion draft of H.R. 1967, a witness from CBHP testified: "Having to engage in this duplicative process would certainly add significant costs, certainly delay the timeframe for construction of our project, and the ability to meet a timeline for projected needs of capacity, ancillary services, and storage for the utilities of the Northwest." CBHP has expressed its desire to pursue the LOPP process, which would utilize two existing Reclamation reservoirs.

H.R. 1967 will help clarify and bring certainty to this process. An Administration official testified in support of a discussion draft of H.R. 1967 at the Water, Power and Oceans Subcommittee's April 4, 2017, hearing, stating: "The Department [Department of the Interior] supports the Discussion Draft, which aims to streamline the development and permitting of non-federal pumped-storage hydroelectric projects on Reclamation reservoirs."

H.R. 1967 authorizes pumped storage hydropower development that exclusively utilizes Reclamation reservoirs. This authorization makes it clear that Reclamation will be the lead agency that will oversee pumped storage hydropower development at these facilities.

The Committee is aware that, as part of the LOPP, Reclamation will consult with any affected federal Power Marketing Administrations (PMA). As part of that consultative process, the Committee expects an evaluation of any operational or financial impact on the power customers of the PMA. Projects constructed under this legislation should not result in any uncompensated adverse impact on PMA customers.

It is the Committee's expectation that, while a PMA may elect to purchase power from a project constructed under this legislation, no PMA is required to purchase the output of any project pursued under this legislation.

SECTION-BY-SECTION ANALYSIS

Section 1 states the short title of the bill as the “Bureau of Reclamation Pumped Storage Hydropower Development Act.”

Section 2 amends the Reclamation Project Act of 1939 to authorize pumped storage hydropower development exclusively utilizing Bureau of Reclamation reservoirs.

COMMITTEE ACTION

H.R. 1967 was introduced on April 6, 2017, by Congressman Doug Lamborn (R-CO). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Power and Oceans. On April 26, 2017, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Doug Lamborn offered an amendment designated #1 to the bill; it was adopted by unanimous consent. No further amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent on April 27, 2017.

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 AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 31, 2017.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1967, the Bureau of Reclamation Pumped Storage Hydropower Development Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1967—Bureau of Reclamation Pumped Storage Hydropower Development Act

Under current law, nonfederal entities that propose to develop facilities for pumped storage hydropower at reservoirs administered

by the Bureau of Reclamation (BOR) must enter into a lease contract with the bureau; at some reservoirs those entities need to obtain a license from the Federal Energy Regulatory Commission (FERC). (Pumped storage hydropower is a type of storage for hydroelectric energy used by electric power systems for load balancing.) H.R. 1967 would make the BOR the sole regulatory authority for pumped storage developers that are currently subject to regulation by both BOR and FERC.

CBO expects that BOR would need to allocate additional staff hours to negotiate lease agreements, but based on an analysis of information from BOR, CBO estimates that those costs would be insignificant and subject to the availability of appropriated funds. In addition, FERC recovers 100 percent of its costs, which are controlled by annual appropriations through user fees. Thus any reduction in FERC's cost resulting from shifting its licensing responsibilities to BOR would be offset by an equal change in fees, resulting in no net change in discretionary spending.

Enacting the bill would not affect direct spending or revenues, therefore pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 1967 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1967 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would benefit public entities that develop storage projects at BOR facilities. Any costs incurred by those entities under agreements with the federal government would result from participating in a voluntary federal program.

The CBO staff contacts for this estimate are Aurora Swanson (for federal costs) and Jon Sperl (for intergovernmental mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. 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 amend the Reclamation Project Act of 1939 to authorize pumped storage hydropower development utilizing multiple Bureau of Reclamation reservoirs.

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. This bill does not contain any directed rule makings.

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 MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

**SECTION 9 OF THE RECLAMATION PROJECT ACT OF
1939**

SEC. 9. (a) No expenditures for the construction of any new project, new division of a project, or new supplemental works on a project shall be made, nor shall estimates be submitted therefor, by the Secretary until after he has made an investigation thereof and has submitted to the President and to the Congress his report and findings on—

- (1) the engineering feasibility of the proposed construction;
- (2) the estimated cost of the proposed construction;
- (3) the part of the estimated cost which can properly be allocated to irrigation and probably be repaid by the water users;
- (4) the part of the estimated cost which can properly be allocated to power and probably be returned to the United States in net power revenues;
- (5) the part of the estimated cost which can properly be allocated to municipal water supply or other miscellaneous purposes and probably be returned to the United States.

If the proposed construction is found by the Secretary to have engineering feasibility and if the repayable and returnable allocations to irrigation, power, and municipal water supply or other miscellaneous purposes found by the Secretary to be proper, together with any allocation to flood control or navigation made under subsection (b) of this section, equal the total estimated cost of construction as determined by the Secretary, then the new project, new division of a project, or supplemental works on a project, covered by his findings, shall be deemed authorized and may be undertaken by the Secretary. If all such allocations do not equal said total estimated cost, then said new project, new division, or new supplemental works may be undertaken by the Secretary only after provision therefor has been made by Act of Congress enacted after the Secretary has submitted to the President and the Congress the report and findings involved.

(b) In connection with any new project, new division of a project, or supplemental works on a project there may be allocated to flood control or navigation the part of said total estimated cost which the Secretary may find to be proper. Items for any such allocations made in connection with projects which may be undertaken pursuant to subsection (a) of this section shall be included in the esti-

mates of appropriations submitted by the Secretary for said projects, and funds for such portions of the projects shall not become available except as directly appropriated or allotted to the Department of the Interior. In connection with the making of such an allocation, the Secretary shall consult with the Chief of Engineers and the Secretary of the Army, and may perform any of the necessary investigations or studies under a cooperative agreement with the Secretary of the Army. In the event of such an allocation the Secretary of the Interior shall operate the project for purposes of flood control or navigation, to the extent justified by said allocation therefor.

(c)

(1) The Secretary is authorized to enter into contracts to furnish water for municipal water supply or miscellaneous purposes: *Provided*, That any such contract either (A) shall require repayment to the United States, over a period of not to exceed forty years from the year in which water is first delivered for the use of the contracting party, with interest not exceeding the rate of 3½ per centum per annum if the Secretary determines an interest charge to be proper, of an appropriate share as determined by the Secretary of that part of the construction costs allocated by him to municipal water supply or other miscellaneous purposes; or (B) shall be for such periods, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, and shall require the payment of said rates each year in advance of delivery of water for said year. Any sale of electric power or lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed forty years, and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than 3 per centum per annum, and such other fixed charges as the Secretary deems proper: *Provided further*, That in said sales or leases preference shall be given to municipalities and other public corporations or agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 and any amendments thereof. Nothing in this subsection shall be applicable to provisions in existing contracts, made pursuant to law, for the use of power and miscellaneous revenues of a project for the benefit of users of water from such project. The provisions of this subsection respecting the sales of electric power and leases of power privileges shall be an authorization in addition to and alternative to any authority in existing laws related to particular projects, including small conduit hydropower development and pumped storage hydropower development exclusively utilizing Bureau of Reclamation reservoirs. No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges

shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes.

(2)(A) When carrying out this subsection, the Secretary shall first offer the lease of power privilege to an irrigation district or water users association operating the applicable transferred conduit, or to the irrigation district or water users association receiving water from the applicable reserved conduit. The Secretary shall determine a reasonable time frame for the irrigation district or water users association to accept or reject a lease of power privilege offer for a small conduit hydropower project.

(B) If the irrigation district or water users association elects not to accept a lease of power privilege offer under subparagraph (A), the Secretary shall offer the lease of power privilege to other parties in accordance with this subsection.

(3) The Bureau of Reclamation shall apply its categorical exclusion process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to small conduit hydropower development under this subsection, excluding siting of associated transmission facilities on Federal lands.

(4) The Power Resources Office of the Bureau of Reclamation shall be the lead office of small conduit hydropower policy and procedure-setting activities conducted under this subsection.

(5) Nothing in this subsection shall obligate the Western Area Power Administration, the Bonneville Power Administration, or the Southwestern Power Administration to purchase or market any of the power produced by the facilities covered under this subsection and none of the costs associated with production or delivery of such power shall be assigned to project purposes for inclusion in project rates.

(6) Nothing in this subsection shall alter or impede the delivery and management of water by Bureau of Reclamation facilities, as water used for conduit hydropower generation shall be deemed incidental to use of water for the original project purposes. Lease of power privilege shall be made only when, in the judgment of the Secretary, the exercise of the lease will not be incompatible with the purposes of the project or division involved, nor shall it create any unmitigated financial or physical impacts to the project or division involved. The Secretary shall notify and consult with the irrigation district or water users association operating the transferred conduit before offering the lease of power privilege and shall prescribe terms and conditions that will adequately protect the planning, design, construction, operation, maintenance, and other interests of the United States and the project or division involved.

(7) Nothing in this subsection shall alter or affect any existing agreements for the development of conduit hydropower projects or disposition of revenues.

(8) Nothing in this subsection shall alter or affect any existing preliminary permit, license, or exemption issued by the Federal Energy Regulatory Commission under Part

I of the Federal Power Act (16 U.S.C. 792 et seq.) or any project for which an application has been filed with the Federal Energy Regulatory Commission as of the date of the enactment of the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act.

(9) In this subsection:

(A) CONDUIT.—The term “conduit” means any Bureau of Reclamation tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

(B) IRRIGATION DISTRICT.—The term “irrigation district” means any irrigation, water conservation or conservancy district, or any separate public entity composed of two or more such districts and jointly exercising powers of its member districts.

(C) RESERVED CONDUIT.—The term “reserved conduit” means any conduit that is included in project works the care, operation, and maintenance of which has been reserved by the Secretary, through the Commissioner of the Bureau of Reclamation.

(D) TRANSFERRED CONDUIT.—The term “transferred conduit” means any conduit that is included in project works the care, operation, and maintenance of which has been transferred to a legally organized water users association or irrigation district.

(E) SMALL CONDUIT HYDROPOWER.—The term “small conduit hydropower” means a facility capable of producing 5 megawatts or less of electric capacity.

(d) No water may be delivered for irrigation of lands in connection with any new project, new division of a project, or supplemental works on a project until an organization, satisfactory in form and powers to the Secretary, has entered into a repayment contract with the United States, in a form satisfactory to the Secretary, providing among other things—

(1) That the Secretary may fix a development period for each irrigation block, if any, of not to exceed ten years from and including the first calendar year in which water is delivered for the lands in said block; and that during the development period water shall be delivered to the lands in the irrigation block involved at a charge per annum per acre-foot, or other charge, to be fixed by the Secretary each year and to be paid in advance of delivery of water: Provided, That where the lands included in an irrigation block are for the most part lands owned by the United States, the Secretary, prior to execution of a repayment contract, may fix a development period, but in such case execution of such a contract shall be a condition precedent to delivery of water after the close of the development period: Provided further, That when the Secretary, by contract or by notice given thereunder, shall have fixed a development period of less than ten years, and at any time thereafter but before commencement of the repayment period conditions arise which in the judgment of the Secretary would have

justified the fixing of a longer period, he may amend such contract or notice to extend such development period to a date not to exceed ten years from its commencement, and in a case where no development period was provided, he may amend such contract within the same limits: Provided further, That when the Secretary shall have deferred the payment of all or any part of any installments of construction charges under any repayment contract pursuant to the authority of the Act of September 21, 1959 (73 Stat. 584), he may, at any time prior to the due date prescribed for the first installment not reduced by such deferment, and by agreement with the contracting organization, terminate the supplemental contract by which such deferment was effected, credit the construction payments made, and exercise the authority granted in this section. After the close of the development period, any such charges collected and which the Secretary determines to be in excess of the cost of the operation and maintenance during the development period shall be credited to the construction cost of the project in the manner determined by the Secretary.

(2) That the part of the construction costs allocated by the Secretary to irrigation shall be included in a general repayment obligation of the organization; and that the organization may vary its distribution of construction charges in a manner that takes into account the productivity of the various classes of lands and the benefits accruing to the lands by reason of the construction: Provided, That no distribution of construction charges over the lands included in the organization shall in any manner be deemed to relieve the organization or any party or any land therein of the organization's general obligation to the United States.

(3) That the general repayment obligation of the organization shall be spread in annual installments, of the number and amounts fixed by the Secretary, over a period of not more than 40 years, exclusive of any development period fixed under paragraph (1) of this subsection, for any project contract unit or, if the project contract unit be divided into two or more irrigation blocks, for any such block, or as near to said period of not more than forty years as is consistent with the adoption and operation of a variable payment formula which, being based on full repayment within such period under average conditions, permits variance in the required annual payments in the light of economic factors pertinent to the ability of the organization to pay.

(4) That the first annual installment for any project contract unit, or for any irrigation block, as the case may be, shall accrue, on the date fixed by the Secretary, in the year after the last year of the development period or, if there be not development period, in the calendar year after the Secretary announces that the construction contemplated in the repayment contract is substantially completed or is advanced to a point where delivery of water can be made to substantially all of the lands in said unit or block to be irrigated; and if there be no development period fixed, that prior to and including the year in which the Secretary makes said announcement water shall

be delivered only on the toll charge basis hereinbefore provided for development periods.

(e) In lieu of entering into a repayment contract pursuant to the provisions of subsection (d) of this section to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation, the Secretary, in his discretion, may enter into either short- or long-term contracts to furnish water for irrigation purposes. Each such contract shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation; and shall require payment of said rates each year in advance of delivery of water for said year. In the event such contracts are made for furnishing water for irrigation purposes, the costs of any irrigation water distribution works constructed by the United States in connection with the new project, new division of a project, or supplemental works on a project, shall be covered by a repayment contract entered into pursuant to said subsection (d).

(f) No less than sixty days before entering into or amending any repayment contract or any contract for the delivery of irrigation water (except any contract for the delivery of surplus or interim irrigation water whose duration is for one year or less) the Secretary shall—

(1) publish notice of the proposed contract or amendment in newspapers of general circulation in the affected area and shall make reasonable efforts to otherwise notify interested parties which may be affected by such contract or amendment, together with information indicating to whom comments or inquiries concerning the proposed actions can be addressed; and

(2) provide an opportunity for submission of written data, views and arguments, and shall consider all substantive comments so received.