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115TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
115–166

WATER SUPPLY PERMITTING COORDINATION ACT

JUNE 12, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1654]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1654) to authorize the Secretary of the Interior to coordinate Federal and State permitting processes related to the construction of new surface water storage projects on lands under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture and to designate the Bureau of Reclamation as the lead agency for permit processing, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends 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 "Water Supply Permitting Coordination Act".

SEC. 2. DEFINITIONS.

In this Act:

(1) BUREAU.—The term "Bureau" means the Bureau of Reclamation.

(2) COOPERATING AGENCIES.—The term "cooperating agency" means a Federal agency with jurisdiction over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a qualifying project under applicable Federal laws and regulations, or a State agency subject to section 3(c).

(3) QUALIFYING PROJECTS.—The term "qualifying projects" means new surface water storage projects in the States covered under the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.) constructed on lands administered by the Department

of the Interior or the Department of Agriculture, exclusive of any easement, right-of-way, lease, or any private holding, unless the project applicant elects not to participate in the process authorized by this Act.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 3. ESTABLISHMENT OF LEAD AGENCY AND COOPERATING AGENCIES.

(a) ESTABLISHMENT OF LEAD AGENCY.—The Bureau is established as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, or other approvals or decisions required under Federal law to construct qualifying projects.

(b) IDENTIFICATION AND ESTABLISHMENT OF COOPERATING AGENCIES.—The Commissioner of the Bureau shall—

(1) identify, as early as practicable upon receipt of an application for a qualifying project, any Federal agency that may have jurisdiction over a review, analysis, opinion, statement, permit, license, approval, or decision required for a qualifying project under applicable Federal laws and regulations; and

(2) notify any such agency, within a reasonable timeframe, that the agency has been designated as a cooperating agency in regards to the qualifying project unless that agency responds to the Bureau in writing, within a timeframe set forth by the Bureau, notifying the Bureau that the agency—

(A) has no jurisdiction or authority with respect to the qualifying project;

(B) has no expertise or information relevant to the qualifying project or any review, analysis, opinion, statement, permit, license, or other approval or decision associated therewith; or

(C) does not intend to submit comments on the qualifying project or conduct any review of such a project or make any decision with respect to such project in a manner other than in cooperation with the Bureau.

(c) STATE AUTHORITY.—A State in which a qualifying project is being considered may choose, consistent with State law—

(1) to participate as a cooperating agency; and

(2) to make subject to the processes of this Act all State agencies that—

(A) have jurisdiction over the qualifying project;

(B) are required to conduct or issue a review, analysis, or opinion for the qualifying project; or

(C) are required to make a determination on issuing a permit, license, or approval for the qualifying project.

SEC. 4. BUREAU RESPONSIBILITIES.

(a) IN GENERAL.—The principal responsibilities of the Bureau under this Act are—

(1) to serve as the point of contact for applicants, State agencies, Indian tribes, and others regarding proposed qualifying projects;

(2) to coordinate preparation of unified environmental documentation that will serve as the basis for all Federal decisions necessary to authorize the use of Federal lands for qualifying projects; and

(3) to coordinate all Federal agency reviews necessary for project development and construction of qualifying projects.

(b) COORDINATION PROCESS.—The Bureau shall have the following coordination responsibilities:

(1) PREAPPLICATION COORDINATION.—Notify cooperating agencies of proposed qualifying projects not later than 30 days after receipt of a proposal and facilitate a preapplication meeting for prospective applicants, relevant Federal and State agencies, and Indian tribes—

(A) to explain applicable processes, data requirements, and applicant submissions necessary to complete the required Federal agency reviews within the timeframe established; and

(B) to establish the schedule for the qualifying project.

(2) CONSULTATION WITH COOPERATING AGENCIES.—Consult with the cooperating agencies throughout the Federal agency review process, identify and obtain relevant data in a timely manner, and set necessary deadlines for cooperating agencies.

(3) SCHEDULE.—Work with the qualifying project applicant and cooperating agencies to establish a project schedule. In establishing the schedule, the Bureau shall consider, among other factors—

(A) the responsibilities of cooperating agencies under applicable laws and regulations;

(B) the resources available to the cooperating agencies and the non-Federal qualifying project sponsor, as applicable;

(C) the overall size and complexity of the qualifying project;

(D) the overall schedule for and cost of the qualifying project; and

(E) the sensitivity of the natural and historic resources that may be affected by the qualifying project.

(4) ENVIRONMENTAL COMPLIANCE.—Prepare a unified environmental review document for each qualifying project application, incorporating a single environmental record on which all cooperating agencies with authority to issue approvals for a given qualifying project shall base project approval decisions. Help ensure that cooperating agencies make necessary decisions, within their respective authorities, regarding Federal approvals in accordance with the following timelines:

(A) Not later than 1 year after acceptance of a completed project application when an environmental assessment and finding of no significant impact is determined to be the appropriate level of review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) Not later than 1 year and 30 days after the close of the public comment period for a draft environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), when an environmental impact statement is required under the same.

(5) CONSOLIDATED ADMINISTRATIVE RECORD.—Maintain a consolidated administrative record of the information assembled and used by the cooperating agencies as the basis for agency decisions.

(6) PROJECT DATA RECORDS.—To the extent practicable and consistent with Federal law, ensure that all project data is submitted and maintained in generally accessible electronic format, compile, and where authorized under existing law, make available such project data to cooperating agencies, the qualifying project applicant, and to the public.

(7) PROJECT MANAGER.—Appoint a project manager for each qualifying project. The project manager shall have authority to oversee the project and to facilitate the issuance of the relevant final authorizing documents, and shall be responsible for ensuring fulfillment of all Bureau responsibilities set forth in this section and all cooperating agency responsibilities under section 5.

SEC. 5. COOPERATING AGENCY RESPONSIBILITIES.

(a) ADHERENCE TO BUREAU SCHEDULE.—

(1) TIMEFRAMES.—On notification of an application for a qualifying project, the head of each cooperating agency shall submit to the Bureau a timeframe under which the cooperating agency reasonably will be able to complete the authorizing responsibilities of the cooperating agency.

(2) SCHEDULE.—

(A) USE OF TIMEFRAMES.—The Bureau shall use the timeframes submitted under this subsection to establish the project schedule under section 4.

(B) ADHERENCE.—Each cooperating agency shall adhere to the project schedule established by the Bureau under subparagraph (A).

(b) ENVIRONMENTAL RECORD.—The head of each cooperating agency shall submit to the Bureau all environmental review material produced or compiled in the course of carrying out activities required under Federal law, consistent with the project schedule established by the Bureau under subsection (a)(2).

(c) DATA SUBMISSION.—To the extent practicable and consistent with Federal law, the head of each cooperating agency shall submit all relevant project data to the Bureau in a generally accessible electronic format, subject to the project schedule established by the Bureau under subsection (a)(2).

SEC. 6. FUNDING TO PROCESS PERMITS.

(a) IN GENERAL.—The Secretary, after public notice in accordance with subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the "Administrative Procedure Act"), may accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a qualifying project.

(b) EFFECT ON PERMITTING.—

(1) EVALUATION OF PERMITS.—In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall—

(A) be reviewed by the Regional Director of the Bureau of the region in which the qualifying project or activity is located (or a designee); and

(B) use the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.

(2) IMPARTIAL DECISIONMAKING.—In carrying out this section, the Secretary and the head of each cooperating agency receiving funds under this section for

a qualifying project shall ensure that the use of the funds accepted under this section for the qualifying project shall not—

(A) substantively or procedurally impact impartial decisionmaking with respect to the issuance of permits; or

(B) diminish, modify, or otherwise affect the statutory or regulatory authorities of the cooperating agency.

(c) LIMITATION ON USE OF FUNDS.—None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under subsection (b)(1)(A).

(d) PUBLIC AVAILABILITY.—The Secretary shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public, including on the Internet.

PURPOSE OF THE BILL

The purpose of H.R. 1654 is to authorize the Secretary of the Interior to coordinate Federal and State permitting processes relating to the construction of new surface water storage projects on lands under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture and to designate the Bureau of Reclamation as the lead agency for permit processing.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1654, as amended, creates a "one-stop-shop" permitting process through the Bureau of Reclamation to streamline the current multi-agency permitting processes for new or expanded non-federal surface storage facilities.

The regulatory process of constructing new surface water storage—whether federally or non-federally owned—often involves a host of federal, state, and local permits and approvals from various agencies. Throughout this process federal agencies are not required to coordinate their permits and approvals with one another and have little incentive to do so. As a result, conflicting agency permit requirements add time to the project planning and implementation process and increase the potential for last-minute surprises that could endanger the success of a project or require significant additional work. For example, it took 14 years to permit but just two years to build the 22,400 acre-foot High Savery Dam Project in Wyoming. At a 2012 Water and Power Subcommittee oversight hearing, Mr. Pat O'Toole, a local rancher testified, "the lead federal agency wasted a great deal of time making decisions on the project and at times seemed unable to make decisions. These delays not only postponed the project, they resulted in wasted time and money."

Previous Administrations have acknowledged the need for coordinating permitting and review. In October 2009, nine federal agencies entered into a Memorandum of Understanding (MOU) "to expedite the siting and construction of electric transmission infrastructure in the United States . . . and to improve coordination among project applicants, federal agencies, and states and tribes involved in the siting and permitting process." This MOU included provisions for the use of a single unified environmental review document for each project analysis. H.R. 1654 creates a similar "one-stop-shop" permitting process to expedite construction of new or expanded non-federal surface storage facilities. Specifically, the bill establishes Reclamation as the lead agency for purposes of coordinating all reviews, analysis, opinions, statements, permits, licenses, or other federal approvals required under federal law. As the point

of contact for the federal government, Reclamation shall coordinate the preparation of the unified environmental documentation that will serve as the basis for all federal decisions necessary to authorize the use of federal lands, as well as coordinate the project development and construction of qualifying projects. The consolidated permitting process authorized under this Title is modeled after the Obama Administration's "Interagency Rapid Response Team for Transmission."

Additionally, the bill allows the Secretary of the Interior to accept and spend funds contributed by a non-federal public entity to expedite the evaluation of a permit relating to the qualifying project—similar to the one authorized under Section 140 of Public Law 108–137—to finance upgrades to the Hetch Hetchy project in California. As amended, the bill allows project sponsors to opt out and pursue other pathways to development if they so choose. The bill is not intended to be a "one-size-fits-all" approach, but rather an approach to give water project sponsors the flexibility to choose which agency and process works best for them.

SECTION-BY-SECTION ANALYSIS

Section 1 provides short title for the bill: the "Water Supply Permitting Coordination Act".

Section 2 defines key terms used throughout the Act. As amended, qualifying projects include all new or expanded surface water storage projects, unless the project applicant elects not to participate in the process authorized under this Act.

Section 3 establishes Reclamation as the lead agency and sets forth the process by which cooperating agencies are identified and established. This process requires Reclamation to notify all agencies with permitting responsibilities related to proposed projects that those projects have been received, and gives agencies who are improperly identified an opportunity to opt out of the process if they will not be performing any review outside of the coordinated process. Section 3 also provides states with discretion to participate as cooperating agencies and to involve their state agencies in coordination with the other cooperating agencies.

Section 4 sets forth the responsibilities of Reclamation as the lead agency, including serving as the point of contact for applicants, state agencies, Indian tribes, and others regarding proposed qualifying projects. Reclamation must also coordinate the preparation of the unified environmental review document that serves as the basis for all federal decisions necessary to authorize the use of federal lands for new surface water storage construction. To begin the process, Section 4 requires Reclamation to notify cooperating agencies of proposed projects within 30 days and establishes a process by which Reclamation explains the process and the proposed project, establishes a schedule for the project and consults with cooperating agencies. Section 4 also requires that Reclamation prepare a unified environmental review document for each qualifying project, incorporating a single environmental record on which all cooperating agencies shall base project approval decisions, and to maintain a consolidated administrative record of the information assembled. Finally, Section 4 requires that all project data, to the extent practicable and consistent with existing law, be submitted

to Reclamation as the lead agency and made available online to the public.

Section 5 establishes the Cooperating Agency responsibilities, including adhering to the coordinated schedule set by Reclamation, cooperating with compilation of the environmental record and adhering to it for all decisions, and submitting all relevant data to Reclamation in a generally accessible format.

Section 6 establishes the process for third party financial contributions to the "one-stop-shop" review process and requires that the Secretary of the Interior shall remain impartial in all decision making with respect to permits both substantively and procedurally.

COMMITTEE ACTION

H.R. 1654 was introduced on March 21, 2017, by Congressman Tom McClintock (R–CA). 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 Full Natural Resources Committee met to consider the bill. The Subcommittee on Water, Power and Oceans was discharged by unanimous consent. Congressman McClintock offered amendment designated #1. It was adopted by voice vote. No further amendments were offered and on April 27, 2017, the bill as amended was ordered favorably reported by a bipartisan roll call of 24 ayes to 16 noes, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 04-27-17 Recorded Vote #: 5

Meeting on / Amendment on: FC Mark Up on 13 bills: **On Favorably Reporting** H.R. 1654 (Rep. Tom McClintock), *"Water Supply Permitting Coordination Act"*

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			**Mr. Cook, CA**	X		
Mr.Grijalva, AZ, Ranking Member		X		*Mr. Soto, FL*		X	
Mr. Young, AK, Chairman Emeritus	X			**Mr. Westerman, AR**	X		
Mrs. Napolitano, CA		X		*Mr. Panetta, CA*		X	
Mr. Gohmert, TX, Vice Chairman	X			**Mr. Graves, LA**	X		
Ms. Bordallo, Guam		X		*Mr. McEachin, VA*		X	
Mr. Lamborn, CO	X			**Mr. Hice, GA**	X		
Mr. Costa, CA	X			*Mr. Brown, MD*		X	
Mr. Wittman, VA	X			**Mrs. Radewagen, AS**	X		
Mr. Sablan, CNMI				*Mr. Clay, MO*		X	
Mr. McClintock, CA	X			**Mr. LaHood, IL**	X		
Ms. Tsongas, MA		X		**Mr. Webster, FL**	X		
Mr. Pearce, NM	X			**Mr. Rouzer, NC**	X		
Mr. Huffman, CA		X		**Mr. Bergman, MI**	X		
Mr. Thompson, PA	X			**Ms. Cheney, WY**	X		
Mr. Lowenthal, CA		X		**Mr. Johnson, LA**			
Mr. Gosar, AZ	X			**Ms. González-Colón, PR**			
Mr. Beyer, VA		X					
Mr. Labrador, ID	X						
Mrs. Torres, CA		X					
Mr. Tipton, CO	X						
Mr. Gallego, AZ		X					
Mr. LaMalfa, CA	X						
Ms. Hanabusa, HI		X					
Mr. Denham, CA	X						
Ms. Barragán, CA		X		**TOTAL:**	24	16	

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 11, 2017.

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

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1654, the Water Supply Permitting Coordination 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. 1654—Water Supply Permitting Coordination Act

H.R. 1654 would direct the Bureau of Reclamation (BOR) to act as the lead federal agency for coordinating with 17 western states for issuing permits to construct new water storage projects on land managed by the Department of the Interior or the Department of Agriculture. The bill also would impose deadlines for carrying out certain activities related to each project. Based on information from BOR and other federal agencies, CBO estimates that implementing those provisions would cost about $1 million a year for staff to coordinate agency reviews, to consolidate project data and documentation, to review projects, and for regional directors to review permits. Such spending would be subject to the availability of appropriated funds.

The bill also would authorize BOR to receive and spend funds contributed by nonfederal public entities to expedite the evaluation of permit applications for new projects. (With the aim of ensuring impartiality, amounts collected under the bill would not be used to cover the cost of final reviews required by regional directors; such spending would be subject to the availability of appropriated funds.) The amount collected each year would depend on the number of participants willing to contribute funds to expedite their permits. Based on an analysis of information from BOR, CBO estimates that in most years BOR would collect and spend less than $500,000 for such purposes and that the net effect on direct spend-

ing would be negligible. Because implementing those provisions would affect direct spending, pay-as-you-go procedures apply. Enacting H.R. 1654 would not affect revenues.

CBO estimates that enacting the bill would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1654 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The bill would benefit public entities by expediting permits for federal water supply projects that serve those entities. Any costs incurred by state, local, or tribal governments that participate as cooperating agencies, including cost-sharing contributions, would result from voluntary commitments.

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 authorize the Secretary of the Interior to coordinate Federal and State permitting processes relating to the construction of new surface water storage projects on lands under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture and to designate the Bureau of Reclamation as the lead agency for permit processing.

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

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

DISSENTING VIEWS

H.R. 1654 would impose arbitrary deadlines for completing key environmental reviews for new water storage projects and create an ill-conceived new review process at odds with the existing review process established under key laws such as the National Environmental Policy Act (NEPA).

Section 3 of the bill establishes the Bureau of Reclamation as the lead agency for all reviews, permits, approvals, and other requirements necessary for project construction. As lead agency, the Bureau of Reclamation could dictate deadlines and scope for environmental reviews, thereby undermining the management authority of expert federal agencies charged with implementing our nation's most important environmental laws such as the Endangered Species Act and Clean Water Act. Other bill sections mandate various deadlines and timelines for completing environmental reviews, determining project schedules, and consulting with cooperating agencies. The bill arises out of the Majority's notion that environmental regulations are a significant impediment to the construction of new dams.

Not a single water storage project has been denied construction because of a lack of coordination between the Bureau of Reclamation and other agencies or because of delays associated with review or permitting. According to the Bureau of Reclamation, project economics, pricing, and repayment challenges are the primary reasons for some projects being authorized but not constructed—not environmental compliance or a lack of coordination.

It is far from clear if the review process established in H.R. 1654 would dovetail or overlap with processes for review that already exists under the Fish and Wildlife Coordination Act, NEPA, and other major laws. For example, the bill's definition of "cooperating agency" conflicts with the definition of "cooperating agency" established under NEPA, which establishes tribal, local, state, and federal entities as potential cooperating agencies. In addition, the legislation uses undefined terms such as "unified environmental review document" with no further explanation. The confusion this bill would cause, coupled with the compressed timeframe it mandates to establish the merits of projects, will likely make favorable recommendations for construction projects less probable. For these reasons, we oppose H.R. 1654.

RAÚL M. GRIJALVA,
Ranking Member, House Committee on Natural Resources.
GRACE F. NAPOLITANO,
Ranking Member.
JARED HUFFMAN,

Ranking Member, Subcommittee on Water, Power and Oceans.
COLLEEN HANABUSA,
Member of Congress.
DARREN SOTO,
Member of Congress.
A. DONALD MCEACHIN,
Ranking Member, Subcommittee on Oversight and Investigations.
DONALD S. BEYER, Jr.,
Member of Congress.
NANETTE DIAZ BARRAGÁN,
Member of Congress.
JIMMY PANETTA,
Member of Congress.

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