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SENATE

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BUREAU OF RECLAMATION PUMPED STORAGE HYDROPOWER DEVELOPMENT ACT

NOVEMBER 26, 2018.—Ordered to be printed

Ms. MURKOWSKI, from the Committee on Energy and 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 Energy and Natural Resources, to which 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, reports favorably thereon with an amendment in the nature of a substitute, 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 “Bureau of Reclamation Pumped Storage Hydropower Development Act”.

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

Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) is amended—

(1) in paragraph (1), in the fourth sentence, by striking “, including small conduit hydropower development” and inserting “and reserve to the Secretary the exclusive authority to develop small conduit hydropower using Bureau of Reclamation facilities and pumped storage hydropower exclusively using Bureau of Reclamation reservoirs”; and

(2) in paragraph (8), by striking “has been filed with the Federal Energy Regulatory Commission as of August 9, 2013” and inserting “was filed with the Federal Energy Regulatory Commission before August 9, 2013, and is still pending”.

SEC. 3. LIMITATIONS ON ISSUANCE OF CERTAIN LEASES OF POWER PRIVILEGE.**(a) DEFINITIONS.—**In this section:

(1) **COMMISSION.**—The term “Commission” means the Federal Energy Regulatory Commission.

(2) **DIRECTOR.**—The term “Director” means the Director of the Office of Hearings and Appeals.

(3) **OFFICE OF HEARINGS AND APPEALS.**—The term “Office of Hearings and Appeals” means the Office of Hearings and Appeals of the Department of the Interior.

(4) **PARTY.**—The term “party”, with respect to a study plan agreement, means each of the following parties to the study plan agreement:

(A) The proposed lessee.

(B) The Tribes.

(5) **PROJECT.**—The term “project” means a proposed pumped storage facility that—

(A) would use multiple Bureau of Reclamation reservoirs; and

(B) as of June 1, 2017, was subject to a preliminary permit issued by the Commission pursuant to section 4(f) of the Federal Power Act (16 U.S.C. 797(f)).

(6) **PROPOSED LESSEE.**—The term “proposed lessee” means the proposed lessee of a project.

(7) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(8) **STUDY PLAN.**—The term “study plan” means the plan described in subsection (d)(1).

(9) **STUDY PLAN AGREEMENT.**—The term “study plan agreement” means an agreement entered into under subsection (b)(1) and described in subsection (c).

(10) **TRIBES.**—The term “Tribes” means—

(A) the Confederated Tribes of the Colville Reservation; and

(B) the Spokane Tribe of Indians of the Spokane Reservation.

(b) REQUIREMENT FOR ISSUANCE OF LEASES OF POWER PRIVILEGE.—The Secretary shall not issue a lease of power privilege pursuant to section 9(c)(1) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)(1)) (as amended by section 2) for a project unless—

(1) the proposed lessee and the Tribes have entered into a study plan agreement; or

(2) the Secretary or the Director, as applicable, makes a final determination for—

(A) a study plan agreement under subsection (c)(2); or

(B) a study plan under subsection (d).

(c) STUDY PLAN AGREEMENT REQUIREMENTS.—

(1) **IN GENERAL.**—A study plan agreement shall—

(A) establish the deadlines for the proposed lessee to formally respond in writing to comments and study requests about the project previously submitted to the Commission;

(B) allow for the parties to submit additional comments and study requests if any aspect of the project, as proposed, differs from an aspect of the project, as described in a preapplication document provided to the Commission;

(C) except as expressly agreed to by the parties or as provided in paragraph (2) or subsection (d), require that the proposed lessee conduct each study described in—

(i) a study request about the project previously submitted to the Commission; or

(ii) any additional study request submitted in accordance with the study plan agreement;

(D) require that the proposed lessee study any potential adverse economic effects of the project on the Tribes, including effects on—

(i) annual payments to the Confederated Tribes of the Colville Reservation under section 5(b) of the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (Public Law 103–436; 108 Stat. 4579); and

(ii) annual payments to the Spokane Tribe of Indians of the Spokane Reservation authorized after the date of enactment of this Act, the amount of which derives from the annual payments described in clause (i);

(E) establish a protocol for communication and consultation between the parties;

(F) provide mechanisms for resolving disputes between the parties regarding implementation and enforcement of the study plan agreement; and

- (G) contain other provisions determined to be appropriate by the parties.
- (2) DISPUTES.—
- (A) IN GENERAL.—If the parties cannot agree to the terms of a study plan agreement or implementation of those terms, the parties shall submit to the Director, for final determination on the terms or implementation of the study plan agreement, notice of the dispute, consistent with paragraph (1)(F), to the extent the parties have agreed to a study plan agreement.
- (B) INCLUSION.—A dispute covered by subparagraph (A) may include the view of a proposed lessee that an additional study request submitted in accordance with paragraph (1)(B) is not reasonably calculated to assist the Secretary in evaluating the potential impacts of the project.
- (C) TIMING.—The Director shall issue a determination regarding a dispute under subparagraph (A) not later than 120 days after the date on which the Director receives notice of the dispute under that subparagraph.
- (d) STUDY PLAN.—
- (1) IN GENERAL.—The proposed lessee shall submit to the Secretary for approval a study plan that details the proposed methodology for performing each of the studies—
- (A) identified in the study plan agreement of the proposed lessee; or
- (B) determined by the Director in a final determination regarding a dispute under subsection (c)(2).
- (2) INITIAL DETERMINATION.—Not later than 60 days after the date on which the Secretary receives the study plan under paragraph (1), the Secretary shall make an initial determination that—
- (A) approves the study plan;
- (B) rejects the study plan on the grounds that the study plan—
- (i) lacks sufficient detail on a proposed methodology for a study identified in the study plan agreement; or
- (ii) is inconsistent with the study plan agreement; or
- (C) imposes additional study plan requirements that the Secretary determines are necessary to adequately define the potential effects of the project on—
- (i) the exercise of the paramount hunting, fishing, and boating rights of the Tribes reserved pursuant to the Act of June 29, 1940 (54 Stat. 703, chapter 460; 16 U.S.C. 835d et seq.);
- (ii) the annual payments described in clauses (i) and (ii) of subsection (c)(1)(D);
- (iii) the Columbia Basin project (as defined in section 1 of the Act of May 27, 1937 (50 Stat. 208, chapter 269; 57 Stat. 14, chapter 14; 16 U.S.C. 835));
- (iv) historic properties and cultural or spiritually significant resources; and
- (v) the environment.
- (3) OBJECTIONS.—
- (A) IN GENERAL.—Not later than 30 days after the date on which the Secretary makes an initial determination under paragraph (2), the Tribes or the proposed lessee may submit to the Director an objection to the initial determination.
- (B) FINAL DETERMINATION.—Not later than 120 days after the date on which the Director receives an objection under subparagraph (A), the Director shall—
- (i) hold a hearing on the record regarding the objection; and
- (ii) make a final determination that establishes the study plan, including a description of studies the proposed lessee is required to perform.
- (4) NO OBJECTIONS.—If no objections are submitted by the deadline described in paragraph (3)(A), the initial determination of the Secretary under paragraph (2) shall be final.
- (e) CONDITIONS OF LEASE.—
- (1) CONSISTENCY WITH RIGHTS OF TRIBES; PROTECTION, MITIGATION, AND ENHANCEMENT OF FISH AND WILDLIFE.—
- (A) IN GENERAL.—Any lease of power privilege issued by the Secretary for a project under subsection (b) shall contain conditions—
- (i) to ensure that the project is consistent with, and will not interfere with, the exercise of the paramount hunting, fishing, and boating rights of the Tribes reserved pursuant to the Act of June 29, 1940 (54 Stat. 703, chapter 460; 16 U.S.C. 835d et seq.); and
- (ii) to adequately and equitably protect, mitigate damages to, and enhance fish and wildlife, including related spawning grounds and habi-

tat, affected by the development, operation, and management of the project.

(B) RECOMMENDATIONS OF THE TRIBES.—The conditions required under subparagraph (A) shall be based on joint recommendations of the Tribes.

(C) RESOLVING INCONSISTENCIES.—

(i) IN GENERAL.—If the Secretary determines that any recommendation of the Tribes under subparagraph (B) is not reasonably calculated to ensure the project is consistent with subparagraph (A) or is inconsistent with the requirements of the Reclamation Project Act of 1939 (43 U.S.C. 485 et seq.), the Secretary shall attempt to resolve any such inconsistency with the Tribes, giving due weight to the recommendations and expertise of the Tribes.

(ii) PUBLICATION OF FINDINGS.—If, after an attempt to resolve an inconsistency under clause (i), the Secretary does not adopt in whole or in part a recommendation of the Tribes under subparagraph (B), the Secretary shall issue each of the following findings, including a statement of the basis for each of the findings:

(I) A finding that adoption of the recommendation is inconsistent with the requirements of the Reclamation Project Act of 1939 (43 U.S.C. 485 et seq.).

(II) A finding that the conditions selected by the Secretary to be contained in the lease of power privilege under subparagraph (A) comply with the requirements of clauses (i) and (ii) of that subparagraph.

(2) ANNUAL CHARGES PAYABLE BY LICENSEE.—

(A) IN GENERAL.—Subject to subparagraph (B), any lease of power privilege issued by the Secretary for a project under subsection (b) shall contain conditions that require the lessee of the project to make direct payments to the Tribes through reasonable annual charges in an amount that recompenses the Tribes for any adverse economic effect of the project identified in a study performed pursuant to the study plan agreement for the project.

(B) AGREEMENT.—

(i) IN GENERAL.—The amount of the annual charges described in subparagraph (A) shall be established through agreement between the proposed lessee and the Tribes.

(ii) CONDITION.—The agreement under clause (i), including any modification of the agreement, shall be deemed to be a condition to the lease of power privilege issued by the Secretary for a project under subsection (b).

(C) DISPUTE RESOLUTION.—

(i) IN GENERAL.—If the proposed lessee and the Tribes cannot agree to the terms of an agreement under subparagraph (B)(i), the proposed lessee and the Tribes shall submit notice of the dispute to the Director.

(ii) RESOLUTION.—The Director shall resolve the dispute described in clause (i) not later than 180 days after the date on which the Director receives notice of the dispute under that clause.

(3) ADDITIONAL CONDITIONS.—The Secretary may include in any lease of power privilege issued by the Secretary for a project under subsection (b) other conditions determined appropriate by the Secretary, on the condition that the conditions shall be consistent with the Reclamation Project Act of 1939 (43 U.S.C. 485 et seq.).

(4) CONSULTATION.—In establishing conditions under this subsection, the Secretary shall consult with the Tribes.

(f) DEADLINES.—The Secretary or any officer of the Office of Hearing and Appeals before whom a proceeding is pending under this section may extend any deadline or enlarge any timeframe described in this section—

(1) at the discretion of the Secretary or the officer; or

(2) on a showing of good cause by any party.

(g) JUDICIAL REVIEW.—Any final action of the Secretary or the Director made pursuant to this section shall be subject to judicial review in accordance with chapter 7 of title 5, United States Code.

(h) EFFECT ON OTHER PROJECTS.—Nothing in this section establishes any precedent or is binding on any Bureau of Reclamation lease of power privilege, other than for a project.

PURPOSE

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 (BOR or Reclamation) reservoirs.

BACKGROUND AND NEED

Pumped storage hydropower projects generate electricity by moving water between an upper and lower reservoir based on electricity prices and demand, and other operational considerations. Under current law, and pursuant to two Memorandum of Understanding agreements between the BOR and the Federal Energy Regulatory Commission (FERC) dated 1981 and 1992, Reclamation has jurisdiction over hydropower development at its projects when hydropower is an authorized project purpose. For those BOR facilities where hydropower is not an authorized purpose, FERC has jurisdiction over hydropower development. BOR asserts its permitting authority through a Lease of Power Privilege (LOPP) program under the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), while FERC is authorized by the Federal Power Act to issue hydropower licenses (16 U.S.C. 797).

Given this framework, a pumped storage project using two Reclamation dams may require both a FERC license and a BOR LOPP where one reservoir is authorized for hydropower development but the other is not. Concerns have been raised that requiring two separate Federal permitting processes for a single project is inefficient and may serve as a disincentive for future pumped storage development. H.R. 1967 clarifies that BOR has exclusive authority to permit the development of non-Federal pumped storage hydropower if the project uses two BOR-owned facilities.

At the time of this legislation's consideration, the only active non-Federal pumped storage hydropower project now facing these dual processes is located in Washington State. The proposed project seeks to use Banks Lake and Lake Roosevelt, both of which are owned and operated by Reclamation. Developers are currently seeking a FERC license for Banks Lake (the upper reservoir), and will also be required to obtain a LOPP from BOR for Lake Roosevelt (the lower reservoir).

This specific project is unique in that the project developer initiated a FERC licensing process prior to the introduction of H.R. 1967 and the Confederated Tribes of the Colville Reservation and the Spokane Tribe of Indians of the Spokane Reservation (Tribes), with reservations located on Lake Roosevelt, have formally engaged on a number of issues through that process. Additionally, these Tribes maintain that they have dedicated significant resources to the process with the expectation that FERC's dispute resolution process for study requests, the Federal Power Act's mandatory conditioning authority for the Department of the Interior, and State and Federal fish and wildlife recommendations, would be available. As such, a detailed process to address this single project that was already seeking a FERC license has been included in H.R. 1967 as amended, but will not apply to any future pumped storage projects employing two Reclamation facilities.

LEGISLATIVE HISTORY

H.R. 1967 was introduced by Congressman Lamborn in the House of Representatives on March 6, 2017. The bill was favorably reported, as amended, by the Committee on Natural Resources on March 27, 2017, and passed the House of Representatives by voice vote on June 27, 2017.

The Water and Power Subcommittee held a hearing on H.R. 1967 on June 13, 2018.

The Senate Committee on Energy and Natural Resources met in an open business session on October 2, 2018, and ordered H.R. 1967 favorably reported, as amended.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on October 2, 2018, by a majority voice vote of a quorum present, recommends that the Senate pass H.R. 1967, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of H.R. 1967, the Committee adopted an amendment in the nature of a substitute. The substitute amendment made several technical changes to section 2 and added a section 3 that sets forth a detailed process for the only active project that would be impacted by the Act. The amendment is further described in the section-by-section analysis.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

Section 1 provides a short title.

Sec. 2. Authority for pumped storage hydropower development using multiple bureau of reclamation reservoirs

Section 2 amends the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) to provide the Secretary of the Interior (Secretary) with the sole authority for development of pumped storage hydropower exclusively using Reclamation reservoirs.

Sec. 3. Limitations of issuance of certain leases of power privilege

Subsection (a) defines key terms for section 3.

Subsection (b) prohibits the Secretary from issuing a LOPP for the project unless the proposed lessee and the Tribes have entered into a study plan agreement or the Secretary or the Director of the Office of Hearings and Appeals (Director), as applicable, make a final determination on a study plan agreement or a study plan.

Subsection (c) specifies the requirements of a study plan agreement, including allowing the parties to submit additional comments and study requests, and requiring the proposed lessee to study any potential adverse economic effects of the project on the Tribes, including on annual payments to the Tribes as part of the Grand Coulee Dam Settlement (Public Law 103–436). This subsection also sets forth a protocol for communication and consultation between the parties, and dispute resolution procedures in the

event the parties cannot resolve the study plan agreement terms or implementation.

Subsection (d) requires the project developer to submit the study plan to the Secretary for approval. The subsection also requires the Secretary to make an initial determination to approve, reject, or impose additional requirements on the study plan within 60 days of submittal. This subsection further allows the Tribes or the project lessee to submit to the Director an objection to the Secretary's initial determination, and requires the Director to hold a hearing on the record regarding the objection and make a final determination within 120 days of receiving an objection.

Subsection (e)(1) requires the Secretary to include conditions on the LOPP for the project, to be based on joint recommendation of the Tribes, to ensure that the Tribes' paramount hunting, fishing and boating rights are not interfered with, that the project is consistent with those rights, and that fish and wildlife are adequately and equitably protected. This subsection also directs the Secretary to attempt to resolve any inconsistency with the Tribes' recommendations, and requires the Secretary to publish findings, including a statement of the basis for each of the findings.

Subsection (e)(2) directs the Secretary to condition the LOPP to require the lessee to make direct payments to the Tribes through reasonable annual charges for adverse economic effects, and sets forth a process to determine the payment amount and the settlement of disputes.

Subsection (e)(3) authorizes the Secretary to impose additional conditions on the project consistent with the Reclamation Project Act of 1939.

Subsection (f) allows the Secretary or any officer of the Office of Hearing and Appeals to extend deadlines set by the Act.

Subsection (g) states that final actions made pursuant to this section remain subject to judicial review.

Subsection (h) states that nothing in section 3 is precedential or binding on any future project.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the costs of this measure has been provided by the Congressional Budget Office:

Under current law, nonfederal entities that propose to develop hydropower at reservoirs administered by the Bureau of Reclamation (BOR) must enter into a lease contract with BOR or obtain a license from the Federal Energy Regulatory Commission (FERC). The regulatory jurisdiction of each reservoir was previously negotiated by the agencies to ensure that nonfederal entities seeking to develop hydropower at a BOR reservoir would be subject to only one permitting process.

At least one project proposed by a nonfederal entity to develop pumped storage hydropower within BOR's Columbia Basin Project (CBP) in the state of Washington would need to seek permits from both agencies because it would be constructed on two reservoirs; Banks Lake would require a BOR lease contract and Lake Roosevelt reservoir would require a FERC license. (Pumped storage hydropower is a type of storage for hydroelectric energy used by electric power systems for load balancing.) Enacting H.R. 1967 would simplify the regulatory process by making BOR the sole regulatory

authority for pumped storage developers that are currently subject to regulation by both BOR and FERC.

The bill also would require a nonfederal developer to negotiate an agreement with the Confederated Tribes of Colville Reservation and the Spokane Tribe of Indians of the Spokane Reservation as a condition for a BOR lease contract on CBP facilities. The agreement would establish the terms for interactions between the developer and tribes. The plan would involve preparing studies to analyze the potential adverse effects of the project on annual payments due to the tribes under their respective settlements; on hunting, fishing, and boating rights of the Tribes; and on the environment. The bulk of the costs for that work would be incurred by the developer and any cost incurred by BOR would be paid to BOR by the developer in advance.

Enacting H.R. 1967 would increase offsetting receipts (which are recorded as reductions in direct spending) from payments the project developer would make to BOR for additional staff hours to negotiate lease agreements and to facilitate development of the planned studies and agreement between the developer and tribes. Using information from BOR, CBO estimates that those offsetting receipts would total about \$500,000 over the 2019–2028 period; however, because BOR would spend those amounts over the same period, the net effect on direct spending would be negligible. Because enacting the bill would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

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.

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 2029.

H.R. 1967 contains no intergovernmental or private-sector mandates as defined in Unfunded Mandates Reform Act.

On May 31, 2017, CBO transmitted a cost estimate for H.R. 1967, the Bureau of Reclamation Pumped Storage Hydropower Development Act, as ordered reported by the House Committee on Natural Resources on April 27, 2017. CBO's estimates of the budgetary effects of implementing either piece of legislation are similar; however, CBO estimates the Senate version would affect direct spending.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 1967. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 1967, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 1967, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the June 13, 2018, hearing on H.R. 1967 follows:

STATEMENT OF TIMOTHY R. PETTY, PH.D., ASSISTANT SECRETARY FOR WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR

Chairman Flake, Ranking Member Cortez Masto and members of the Subcommittee, I am Dr. Tim Petty, Assistant Secretary for Water and Science at the U.S. Department of the Interior (Department). Thank you for the opportunity to provide the views of the Department on H.R. 1967, the Bureau of Reclamation Pumped Storage Hydro-power Development Act. For the reasons I will discuss below, the Department supports this bill.

H.R. 1967 aims to streamline the development and permitting of non-federal pumped-storage hydroelectric projects on Reclamation reservoirs. As noted in previous hearings, the Department has an aggressive sustainable hydropower agenda, which we continue to implement under existing authorities.

Pumped-storage can be a premiere, utility-scale energy storage solution, able to provide both firm power and ancillary services—to support the transmission of capacity and energy in a safe, reliable manner. With that said, pumped-storage deployment requires both significant, up-front capital investment and specific topographical features. Therefore, we see this bill as providing opportunities to streamline the permitting process which may encourage the development of these projects.

Reclamation is the second largest producer of hydroelectric power in the United States, operating 53 hydroelectric power facilities, comprising 14,730 megawatts of capacity. Each year, Reclamation generates approximately 40 million megawatt-hours of electricity (the equivalent demand of approximately 3.5 million U.S. homes) and producing over one billion dollars in Federal revenue.

In 2010, the Department of the Interior, Department of Energy, and Department of the Army (through the US Army Corps of Engineers) entered a Memorandum of Understanding (MoU) for Hydropower. The MoU advances reliable, low-cost, and environmentally sustainable hydropower through a collaborative, interagency framework, prioritizing like-goals and aligning ongoing and future renewable energy development efforts. Interior's MoU par-

ticipation is administered through Reclamation, given our mission and authorities in hydropower generation.

In 2011 and 2012, Reclamation coordinated with MoU partners to publish two resource assessment reports identifying technical hydropower potential at non-powered Reclamation dams and conduits. At this time, seven assessment sites, comprising over 21 megawatts have been developed by non-federal entities—with an additional nineteen assessment sites, comprising approximately 74 megawatts in some stage of development.

Reclamation has also coordinated with MoU partners to assess pumped-storage potential at existing Reclamation reservoirs and associated projects. Specifically, the assessment reports (one completed in 2013 and the other in 2014) evaluated the technical, environmental, and economic merits of over 200 unique pumped-storage configurations at 60 Reclamation reservoirs that passed topography and storage screening criteria. Reclamation is using these assessment results to inform further study should sufficient customer interest exists.

Reclamation would be happy to discuss with the Committee these, and other MoU products. All MoU documents are available on the Reclamation hydropower program webpage: <https://www.usbr.gov/power/>.

In terms of non-federal development—both Reclamation and the Federal Energy Regulatory Commission (FERC) are authorized to permit the use of Reclamation dams and reservoirs to non-federal entities for the purposes of hydropower development—Reclamation via a Lease of Power Privilege (LOPP) contract or FERC via a License.¹ Per the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2013 (Public Law 113–24), permitting authority on Reclamation conduits is reserved, exclusively to Reclamation via a LOPP.

Reclamation is committed to facilitating the development of non-federal hydropower on our existing assets—through either Reclamation’s or FERC’s permitting processes. Acting on this commitment, Reclamation has worked diligently with our customer and stakeholder groups to define our LOPP permitting process, detailed in Reclamation Manual Directive and Standard (D&S) *Lease of Power Privilege (LOPP) Processes, Responsibilities, Timelines, and Charges* (FAC 04–08). Reclamation has conducted ongoing outreach to communicate and update LOPP permitting process requirements and revised LOPP materials to ensure consistent LOPP program administration. Current LOPP process requirements implement Public Law 113–24 authorities related to non-federal development on Reclamation conduits.

It is important to note that any non-federal hydroelectric project developed on a Reclamation asset must not impair the efficiency of any Reclamation generated power or water deliveries, jeopardize public safety, or negatively affect any other Reclamation project purpose. For these reasons, project oversight is necessary—either through the

LOPP contract or FERC License conditioning requirements. In addition, Reclamation would review any pumped storage application under this authority to ensure the proposed LOPP does not conflict with the statutory obligations of the Power Marketing Administrations (PMAs). Consistent with Reclamation's existing directives and standards, Reclamation would contact the respective PMA when a non-federal developer approaches Reclamation to develop a non-federal hydroelectric project, and will work with the respective PMA on any necessary right of first refusal or other agreement that preserves the PMA's statutory responsibilities.

In total, 13 LOPP facilities currently operate on Reclamation assets, comprising 46 megawatts. Nine of the 13 facilities were brought online since 2009, with three of the 13 online facilities initiated following the passage of Public Law 113–24. Likewise, 52 FERC facilities currently operate on Reclamation assets, comprising 466 megawatts of capacity. Approximately 50 non-federal projects—through either the LOPP or FERC processes—are currently in some stage of active development on Reclamation assets.

Based on feedback we have received from our customers and operating partners, industry, and other stakeholders, Reclamation, with this Committee's support, has been successful in administering our leasing authorities.

Under current law, both Reclamation and FERC are authorized to permit the use of Reclamation assets to non-federal entities for the purposes of hydropower development. Reclamation and FERC have entered two MoUs (one in 1981 and one in 1992) to define jurisdictional boundaries and responsibilities. Per those MoUs, each Reclamation asset is subject to one—and only one—permitting process, meaning that non-federal entities seeking to utilize a Reclamation asset for the purposes of hydropower development would be required to obtain either a Reclamation LOPP or FERC License—but not both.

The problem the bill addresses relates to non-federal pumped storage projects utilizing multiple Reclamation reservoirs which may, under the current regulatory framework, require both a LOPP and FERC License in the circumstance that one reservoir is within Reclamation's jurisdiction and the other reservoir is within FERC's jurisdiction. Whereas both agencies are acting within their respective authorities, the result is a fragmented, cumbersome permitting process. The legislation as drafted would minimize the regulatory burden in these circumstances by requiring only a single LOPP approval.

The general premise of the MoU agreements is that, unless otherwise specified in law, Reclamation assets reserved exclusively for Federal power development under Federal Reclamation law require a LOPP, and all other Reclamation assets require a FERC License. An exception is for Reclamation conduits, which were reserved for LOPP development by Public Law 113–24.

Section 2 of the bill would specifically authorize Reclamation to enter into LOPP contracts that permit the development of non-federal pumped-storage hydropower utilizing multiple Reclamation reservoirs. Reclamation interprets this LOPP authorization to encompass all project works associated with the non-federal pumped-storage project sited on multiple Reclamation reservoirs. This language would streamline permitting requirements and development of affected projects.

We interpret Section 2 as containing the same protections for authorized, existing uses of Reclamation assets as exist in any LOPP context. The LOPP authorization, for example, does not affect existing contracts for the use of power and miscellaneous revenues of a project for the benefit of users of water from such project, and LOPP contracts cannot, in the judgement of the Secretary, impair the efficiency of the project for irrigation purposes. In practice, these protections have meant that LOPP contracts generally do not modify the existing project operations that project users have come to rely on. To protect existing project users, Reclamation's policy to implement LOPP contracts requires extensive consultation among existing project users and the non-federal LOPP applicant.

Reclamation is aware of one, active non-federal pumped-storage project that would benefit from the proposed legislation—sited on Banks Lake and Lake Roosevelt reservoirs, which are part of Reclamation's Columbia Basin Project in Washington State. Given the current regulatory framework, non-federal project works sited on Banks Lake would proceed through a FERC License—and those works sited on Lake Roosevelt would proceed through a Reclamation LOPP. This legislation would streamline the permitting from two distinct processes to one.

The bill's language would not affect non-federal pumped-storage projects utilizing one Reclamation reservoir and a second *non-Reclamation* reservoir (private or otherwise) outside Reclamation jurisdiction. Such projects would be required to obtain appropriate authorization to develop the Reclamation reservoir (either LOPP or FERC License, dependent upon the authorized reservoir purpose(s)), in addition to appropriate authorization from the non-Reclamation regulator (likely FERC) to develop the non-Reclamation reservoir. Reclamation would be happy to work with the Committee—and FERC—to discuss opportunities to streamline permitting and project development in this instance.

In conclusion, as stated at previous hearings on hydro-power-related issues before this subcommittee, Reclamation will continue to review and assess potential new hydropower projects that provide a high economic return for the nation, are both clean and energy efficient, and can be accomplished in accordance with protections for fish and wildlife, the environment, and recreation. As the nation's second largest hydropower producer, Reclamation strongly

believes in the past, present and bright future of this important electricity resource.

The Department is pleased to support this legislation.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by H.R. 1967, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

RECLAMATION PROJECTS ACT OF 1939

Act of August 4, 1939 (53 Stat. 1187; 43 U.S.C. 495 et seq.), as amended

AN ACT

To provide a feasible and comprehensive plan for the variable payment of construction charges on United States reclamation projects, to protect the investment of the United States in such projects, and for other purposes.

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SEC. 9. (a) * * *
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(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. 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 reserve to the Secretary the exclusive authority to develop small conduit hydropower using Bureau of Reclamation facilities and pumped storage hydropower exclusively using 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 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 plan-

ning, 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 August 9, 2013] *was filed with the Federal Energy Regulatory Commission before August 9, 2013, and is still pending.*

(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, multicounty 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.

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