

TO AMEND THE AQUIFER RECHARGE FLEXIBILITY ACT
TO CLARIFY A PROVISION RELATING TO CONVEYANCES
FOR AQUIFER RECHARGE PURPOSES

APRIL 17, 2025.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. WESTERMAN, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 331]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 331) to amend the Aquifer Recharge Flexibility Act to clarify a provision relating to conveyances for aquifer recharge 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. CONVEYANCE FOR AQUIFER RECHARGE PURPOSES.

(a) **IN GENERAL.**—Subsection (c)(3) of the Aquifer Recharge Flexibility Act (43 U.S.C. 390g–9) is amended—

(1) by striking “The holder” and inserting the following:

“(A) **IN GENERAL.**—The holder”;

(2) in subparagraph (A) (as so designated), by striking “may transport water for aquifer recharge purposes without requiring additional authorization from the Secretary where the use does not expand or modify the operation” and inserting “may, acting for the holder or on behalf of a State, political subdivision of a State, Indian Tribe, or public entity and subject to subparagraphs (B) and (C), use the existing right-of-way, easement, permit, or other authorization for the purpose of aquifer recharge and the transport and use of water rights for aquifer recharge without requiring additional authorization from the Secretary, which use shall not be considered an expansion, modification, or substantial deviation”; and

(3) by adding at the end the following:

“(B) **NOTICE REQUIRED.**—

“(i) **IN GENERAL.**—Not less than 30 days before using an existing right-of-way, easement, permit, or other authorization for the purpose of aquifer recharge under subparagraph (A), the holder of the right-of-

way, easement, permit, or other authorization shall submit to the Bureau of Land Management notice of the intended use, in accordance with clause (ii).

“(ii) REQUIREMENTS.—A notice submitted under clause (i) shall—

“(I) identify the State, political subdivision of the State, Indian Tribe, or public entity intending to use the existing right-of-way, easement, permit, or other authorization for the purpose of aquifer recharge;

“(II) identify the existing right-of-way, easement, permit, other authorization, or recognized authorized use for ditches and canals constructed on public land before or on October 21, 1976, under the authority of sections 2339 and 2340 of the Revised Statutes (43 U.S.C. 661) intended to be used;

“(III) provide details on the intended use and scope of use for the purpose of aquifer recharge of the existing right-of-way, easement, permit, or other authorization; and

“(IV) provide a copy of the agreement between the State, political subdivision of the State, Indian Tribe, or public entity and the holder of the right-of-way, easement, permit, or other authorization to use the existing right-of-way, easement, permit, or other authorization for the purpose of aquifer recharge.”.

(b) EFFECT.—Subsection (c)(4) of the Aquifer Recharge Flexibility Act (43 U.S.C. 390g–9) is amended—

(1) by striking “Act creates” and inserting “section—

“(A) creates”;

(2) in subparagraph (A) (as so designated), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end of the following:

“(B) waives the obligation of the holder of a right-of-way, easement, permit, or other authorization described in paragraph (3)(A) to comply with all applicable—

“(i) Federal laws; and

“(ii) policies of the Bureau; or

“(C) provides authority to construct, modify, or expand any existing infrastructure covered under subsection (c)(3).”.

(c) TECHNICAL AMENDMENTS.—The Aquifer Recharge Flexibility Act (43 U.S.C. 390g–9) is amended in each of subsections (a) and (c)(5) by striking “Act” each place it appears and inserting “section”.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 331 is to amend the Aquifer Recharge Flexibility Act to clarify a provision relating to conveyances for aquifer recharge purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 331, as amended, would amend the Aquifer Recharge Flexibility Act (P.L. 116–260) to allow holders of an existing right-of-way (ROW) to utilize that grant for the purposes of aquifer recharge without further authorization from the Secretary of the Interior. The Aquifer Recharge Flexibility Act was enacted in 2020 to facilitate aquifer recharge programs using existing federally owned irrigation canals and ditches on lands owned by the U.S. Bureau of Land Management.

H.R. 331, as amended, also clarifies that this use shall not be considered an expansion or modification and ensures that the intent of the current law can be fully implemented. The holder of the right-of-way, easement, permit, or other authorization is required to provide 30 days’ notice to the Bureau of Land Management identifying what entity is intending to transfer water for aquifer recharge, identifying the existing right-of-way, easement, permit, or other authorization, providing details on the intended use and

scope for the purpose of aquifer recharge, and providing a copy of the agreement between the entities.

COMMITTEE ACTION

H.R. 331 was introduced on January 13, 2025, by Rep. Russ Fulcher (R-ID). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Wildlife and Fisheries. On January 23, 2025, the Subcommittee on Water, Wildlife and Fisheries held a hearing on the bill. On February 12, 2025, the Committee on Natural Resources met to consider the bill. The Subcommittee on Water, Wildlife and Fisheries was discharged from further consideration of H.R. 331 by unanimous consent. Chairman Bruce Westerman (R-AR) offered an amendment designated Westerman #1. The amendment was agreed to by unanimous consent. The bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent.

HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Water, Wildlife and Fisheries held on January 23, 2025.

SECTION-BY-SECTION ANALYSIS

Section 1. Conveyance for aquifer recharge purposes

Section 1, as amended, amends the Aquifer Recharge Flexibility Act to allow for the holder of an existing water right, acting for themselves or on behalf of another entity the ability to use the existing right-of-way, easement, permit, or other authorization for the purpose of aquifer recharge without requiring additional authorization from the Secretary of the Interior.

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:

H.R. 331, a bill to amend the Aquifer Recharge Flexibility Act to clarify a provision relating to conveyances for aquifer recharge purposes			
As ordered reported by the House Committee on Natural Resources on February 12, 2025			
By Fiscal Year, Millions of Dollars	2025	2025-2030	2025-2035
Direct Spending (Outlays)	*	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2036?	*	Statutory pay-as-you-go procedures apply?	Yes
		Mandate Effects	
		Contains intergovernmental mandate?	No
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2036?	*	Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 331 would amend the Aquifer Recharge Flexibility Act to allow holders of existing rights-of-way, easements, permits, or other authorizations granted by the Bureau of Land Management (BLM) to use existing rights-of-way for aquifer recharge on behalf of third parties without further authorization. The bill would define those third parties as a state, political subdivision, Indian tribe, or other public entity. The bill also would clarify that using an existing right-of-way for aquifer recharge would not constitute an expansion or modification.

By removing the need for public entities to obtain new rights-of-way in such cases, H.R. 331 could reduce offsetting receipts from the fees charged to issue those permissions; such receipts are recorded as reductions in direct spending. Using information from BLM, CBO expects that those reductions would result in an insignificant increase in direct spending over the 2025–2035 period, because most public entities are exempt from paying such fees.

CBO expects that the cost of implementing the bill's requirements would be less than \$500,000 over the 2025–2030 period. Any related spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Alaina Rhee. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

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 Aquifer Recharge Flexibility Act to clarify a provision relating to conveyances for aquifer recharge purposes.

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.

UNFUNDED MANDATES REFORM ACT STATEMENT

According to the Congressional Budget Office, H.R. 331 contains no unfunded mandates as defined by the Unfunded Mandates Reform Act.

EXISTING PROGRAMS

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.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

AQUIFER RECHARGE FLEXIBILITY ACT

SEC. 1105. AQUIFER RECHARGE FLEXIBILITY.

(a) **SHORT TITLE.**—This section may be cited as the “Aquifer Recharge Flexibility **[Act]** *section*”.

(b) **DEFINITIONS.**—In this Act:

(1) **BUREAU.**—The term “Bureau” means the Bureau of Reclamation.

(2) **COMMISSIONER.**—The term “Commissioner” means the Commissioner of Reclamation.

(3) **ELIGIBLE LAND.**—The term “eligible land”, with respect to a Reclamation project, means land that—

(A) is authorized to receive water under State law; and

- (B) shares an aquifer with land located in the service area of the Reclamation project.
- (4) NET WATER STORAGE BENEFIT.—The term “net water storage benefit” means an increase in the volume of water that is—
- (A) stored in 1 or more aquifers; and
 - (B)(i) available for use within the authorized service area of a Reclamation project; or
 - (ii) stored on a long-term basis to avoid or reduce groundwater overdraft.
- (5) RECLAMATION FACILITY.—The term “Reclamation facility” means each of the infrastructure assets that are owned by the Bureau at a Reclamation project.
- (6) RECLAMATION PROJECT.—The term “Reclamation project” means any reclamation or irrigation project, including incidental features thereof, authorized by Federal reclamation law or the Act of August 11, 1939 (commonly known as the “Water Conservation and Utilization Act”) (53 Stat. 1418, chapter 717; 16 U.S.C. 590y et seq.), or constructed by the United States pursuant to such law, or in connection with which there is a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the Secretary through the Bureau for the reclamation of land.
- (c) FLEXIBILITY TO ALLOW GREATER AQUIFER RECHARGE IN WESTERN STATES.—
- (1) USE OF RECLAMATION FACILITIES.—
- (A) IN GENERAL.—The Commissioner may allow the use of excess capacity in Reclamation facilities for aquifer recharge of non-Reclamation project water, subject to applicable rates, charges, and public participation requirements, on the condition that—
- (i) the use—
 - (I) shall not be implemented in a manner that is detrimental to—
 - (aa) any power service or water contract for the Reclamation project; or
 - (bb) any obligations for fish, wildlife, or water quality protection applicable to the Reclamation project;
 - (II) shall be consistent with water quality guidelines for the Reclamation project;
 - (III) shall comply with all applicable—
 - (aa) Federal laws; and
 - (bb) policies of the Bureau; and
 - (IV) shall comply with all applicable State laws and policies; and
 - (ii) the non-Federal party to an existing contract for water or water capacity in a Reclamation facility consents to the use of the Reclamation facility under this subsection.
- (B) EFFECT ON EXISTING CONTRACTS.—Nothing in this subsection affects a contract—
- (i) in effect on the date of enactment of this Act; and

(ii) under which the use of excess capacity in a Bureau conveyance facility for carriage of non-Reclamation project water for aquifer recharge is allowed.

(2) AQUIFER RECHARGE ON ELIGIBLE LAND.—

(A) IN GENERAL.—Subject to subparagraphs (C) and (D), the Secretary may contract with a holder of a water service or repayment contract for a Reclamation project to allow the contractor, in accordance with applicable State laws and policies—

(i) to directly use water available under the contract for aquifer recharge on eligible land; or

(ii) to enter into an agreement with an individual or entity to transfer water available under the contract for aquifer recharge on eligible land.

(B) AUTHORIZED PROJECT USE.—The use of a Reclamation facility for aquifer recharge under subparagraph (A) shall be considered an authorized use for the Reclamation project if requested by a holder of a water service or repayment contract for the Reclamation facility.

(C) MODIFICATIONS TO CONTRACTS.—The Secretary may contract with a holder of a water service or repayment contract for a Reclamation project under subparagraph (A) if the Secretary determines that a new contract or contract amendment described in that subparagraph is—

(i) necessary to allow for the use of water available under the contract for aquifer recharge under this subsection;

(ii) in the best interest of the Reclamation project and the United States; and

(iii) approved by the contractor that is responsible for repaying the cost of construction, operations, and maintenance of the facility that delivers the water under the contract.

(D) REQUIREMENTS.—The use of Reclamation facilities for the use or transfer of water for aquifer recharge under this subsection shall be subject to the requirements that—

(i) the use or transfer shall not be implemented in a manner that materially impacts any power service or water contract for the Reclamation project; and

(ii) before the use or transfer, the Secretary shall determine that the use or transfer—

(I) results in a net water storage benefit for the Reclamation project; or

(II) contributes to the recharge of an aquifer on eligible land; and

(iii) the use or transfer complies with all applicable—

(I) Federal laws and policies; and

(II) interstate water compacts.

(3) CONVEYANCE FOR AQUIFER RECHARGE PURPOSES.—[The holder]

(A) IN GENERAL.—*The holder of a right-of-way, easement, permit, or other authorization to transport water across public land administered by the Bureau of Land Management [may transport water for aquifer recharge*

purposes without requiring additional authorization from the Secretary where the use does not expand or modify the operation] may, acting for the holder or on behalf of a State, political subdivision of a State, Indian Tribe, or public entity and subject to subparagraphs (B) and (C), use the existing right-of-way, easement, permit, or other authorization for the purpose of aquifer recharge and the transport and use of water rights for aquifer recharge without requiring additional authorization from the Secretary, which use shall not be considered an expansion, modification, or substantial deviation of the right-of-way, easement, permit, or other authorization across public land.

(B) NOTICE REQUIRED.—

(i) *IN GENERAL.*—Not less than 30 days before using an existing right-of-way, easement, permit, or other authorization for the purpose of aquifer recharge under subparagraph (A), the holder of the right-of-way, easement, permit, or other authorization shall submit to the Bureau of Land Management notice of the intended use, in accordance with clause (ii).

(ii) *REQUIREMENTS.*—A notice submitted under clause (i) shall—

(I) identify the State, political subdivision of the State, Indian Tribe, or public entity intending to use the existing right-of-way, easement, permit, or other authorization for the purpose of aquifer recharge;

(II) identify the existing right-of-way, easement, permit, other authorization, or recognized authorized use for ditches and canals constructed on public land before or on October 21, 1976, under the authority of sections 2339 and 2340 of the Revised Statutes (43 U.S.C. 661) intended to be used;

(III) provide details on the intended use and scope of use for the purpose of aquifer recharge of the existing right-of-way, easement, permit, or other authorization; and

(IV) provide a copy of the agreement between the State, political subdivision of the State, Indian Tribe, or public entity and the holder of the right-of-way, easement, permit, or other authorization to use the existing right-of-way, easement, permit, or other authorization for the purpose of aquifer recharge.

(4) EFFECT.—Nothing in this [Act creates] section—

(A) creates, impairs, alters, or supersedes a Federal or State water right[.];

(B) waives the obligation of the holder of a right-of-way, easement, permit, or other authorization described in paragraph (3)(A) to comply with all applicable—

(i) Federal laws; and

(ii) policies of the Bureau; or

(C) provides authority to construct, modify, or expand any existing infrastructure covered under subsection (c)(3).

(5) EXEMPTION.—This **【Act】** *section* shall not apply to the State of California.

(6) ADVISORY GROUP.—The Secretary may participate in any State-led collaborative, multi-stakeholder advisory group created in any watershed the purpose of which is to monitor, review, and assess aquifer recharge activities.

