

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

April 24, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Water, Power and Oceans (x5-8331)

Mark-Up: **H.R. 1654 (Rep. Tom McClintock, R-CA)**, 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.
April 26-27, 2017; 1324 Longworth HOB

H.R. 1654 (Rep. Tom McClintock, R-CA), “Water Supply Permitting Coordination Act.”

Bill Summary:

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

Cosponsors:

Reps. Liz Cheney (R-WY), Paul Cook (R-CA), Kevin Cramer (R-ND), Paul Gosar (R-AZ), Darrell Issa (R-CA), Doug LaMalfa (R-CA), Dana Rohrabacher (R-CA), and Scott Tipton (R-CO).

Background:

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.¹ Throughout this process, many federal agencies are not required to coordinate their permits and approvals with one another.² As a result, conflicting agency permit requirements add time to the project planning and implementation process and increases the

¹ Testimony of Pat O’Toole, President, Family Farm Alliance, Committee on Natural Resources, 113th Cong., “*Legislative Hearing on Water Supply Permitting Coordination Act*,” Feb. 5, 2014.

² Testimony of Robert Shibatani, CEO, The SHIBATANI GROUP, Inc., Committee on Natural Resources, 113th Cong., “*A Roadmap for Increasing Our Water and Hydropower Supplies: The Need for New and Expanded Multi-Purpose Surface Storage Facilities*,” Oct. 29, 2013.

potential for last-minute surprises that could endanger the success of a project or require significant additional work.³ As an example, it took fourteen years to permit but just two years to build the 22,400 acre-foot High Savery Dam Project in Wyoming.⁴ A local rancher testified at a 2012 Water and Power Subcommittee oversight hearing on the permitting time: “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.”⁵

The need for coordinated permitting and review was acknowledged by the previous Administration. 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.”⁶ This MOU included provisions for the use of a single unified environmental review document for each project analysis.⁷

H.R. 1654 codifies a “one-stop-shop” permitting process to expedite construction of for all new or expanded surface 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.”⁸

The bill also 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. This process is based on provisions authorized under Section 140 of P.L. 108-137 to

³ Testimony of Pat O’Toole, President, Family Farm Alliance, Committee on Natural Resources, 112th Cong., “*Water for Our Future and Job Creation: Examining Regulatory and Bureaucratic Barriers to New Storage Projects*” Feb. 7, 2012.

⁴ Id.

⁵ Id.

⁶ <https://energy.gov/sites/prod/files/Transmission%20Siting%20on%20Federal%20Lands%20MOU%20October%2023%2C%202009.pdf>

⁷ Id., at V

⁸ <https://obamawhitehouse.archives.gov/administration/eop/ceq/initiatives/interagency-rapid-response-team-for-transmission>

finance upgrades to the Hetch Hetchy project, which provides water supplies to San Francisco California.⁹

The House Natural Resources Committee passed nearly identical legislation [H.R. 3980 (Rep. McClintock, R-CA and Rep. Lummis, R-WY)] in the 113th Congress.¹⁰ A similar provision was included in H.R. 2898, the “Western Water and American Food Security Act of 2015” which passed the House last Congress.¹¹

Major Provisions/Analysis of H.R. 1654:

Section 3 establishes the Bureau of 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

⁹ Making Appropriations for Energy and Water Development for the Fiscal Year Ending September 30, 2004, and for Other Purposes, P. L. No. 108-137, § 140(2)(2003).

¹⁰<http://thomas.loc.gov/cgi-bin/bdquery/D?d113:1:./temp/~bdwdj3:@@L&summ2=m&/home/LegislativeData.php?n=BSS;c=113>

¹¹ <https://www.congress.gov/bill/114th-congress/house-bill/2898/text?q=%7B%22search%22%3A%5B%22hr+2898%22%5D%7D&r=1>, at Title VII

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 Interior Secretary shall remain impartial in all decision making with respect to permits both substantively and procedurally.

Cost:

The Congressional Budget Office (CBO) has not completed a cost estimate of this bill at this time; however, in its cost estimate of a similar bill in the 113th Congress (H.R. 3980), CBO indicated that implementing the provisions would cost \$5 million in discretionary spending over the 2015-2019 period.

Administration Position:

Unknown.

Anticipated Amendments:

There will likely be amendments offered to the bill.

Effect on Current Law (Ramseyer):

Not applicable