



HOUSE COMMITTEE ON  
**NATURAL RESOURCES**  
CHAIRMAN BRUCE WESTERMAN

**To:** Subcommittee on Water, Wildlife and Fisheries Republican Members  
**From:** Subcommittee on Water, Wildlife and Fisheries staff,  
Annick Miller ([annick.miller@mail.house.gov](mailto:annick.miller@mail.house.gov)) and Doug Levine  
([doug.levine@mail.house.gov](mailto:doug.levine@mail.house.gov)); x5-8331  
**Date:** Thursday, September 28, 2023  
**Subject:** Legislative Hearing on **H.R. 2437, H.R. 3415, H.R. 4385, and H.R. 5490**

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The Subcommittee on Water, Wildlife and Fisheries will hold a legislative hearing on H.R. 2437 (Rep. Murphy), To revise the boundaries of a unit of the John H. Chafee Coastal Barrier Resources System in Topsail, North Carolina, and for other purposes; H.R. 3415 (Rep. Hageman), *Pilot Butte Power Plant Conveyance Act*; H.R. 4385 (Rep. Neguse), *Drought Preparedness Act*; and H.R. 5490 (Rep. Kiggans), *BEACH Act* **on Thursday, September 28, 2023, at 10:00 a.m. EDT in 1324 Longworth House Office Building.**

Member offices are requested to notify Thomas Shipman ([thomas.shipman@mail.house.gov](mailto:thomas.shipman@mail.house.gov)) by 4:30 p.m. on Wednesday, September 27, 2023, if their Member intends to participate in the hearing.

## I. KEY MESSAGES

- From transferring western water infrastructure to local control to updating coastal barrier maps, the bills under consideration at the hearing address issues of local importance, remove barriers created by federal processes and bureaucracy and put local communities back in the driver's seat.
- H.R. 2437 by Rep. Murphy fixes errors made by the U.S. Fish and Wildlife Service (USFWS) in designating parts of North Topsail Beach, NC in the Coastal Barrier Resources Act (CBRA) System.
- H.R. 3415 by Rep. Hageman provides greater flexibility and autonomy to the Midvale Irrigation District by conveying the Pilot Butte Power Plant to the district.
- H.R. 4385 by Rep. Neguse extends authorizations for emergency authorities that allow the Bureau of Reclamation to mitigate the impacts of severe drought in western states.
- H.R. 5490 by Rep. Kiggans gives congressional approval to modified CBRA maps that update the CBRA System post-Hurricane Sandy. Additionally, the bill makes improvements to CBRA that make it more transparent and flexible.

## II. WITNESSES

- **Mr. Matt Strickler**, Deputy Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior, Washington, D.C. (H.R. 2437 and H.R. 5490)

- **Mr. Steve Lynn**, Manager, Midvale Irrigation District, Pavillion, WY (H.R. 3415)
- **Mr. Tom Leonard**, Alderman, Town of North Topsail Beach, NC (H.R. 2437)
- **Dr. Christopher Hein**, Associate Professor, Virginia Institute of Marine Science, Gloucester Point, VA (H.R. 5490)
- **Mr. William “Skip” A. Stiles, Jr.**, Senior Advisor, Wetlands Watch, Norfolk, VA (H.R. 5490) (Minority Witness)

### III. BACKGROUND

#### Coastal Barrier Resources Act (CBRA or Act)

Enacted in 1982, CBRA established the John H. Chafee Coastal Barrier Resources System (System), which is made up of undeveloped coastal barriers and other areas of the eastern seaboard, the Great Lakes, U.S. Caribbean territories, and the Gulf of Mexico.<sup>1</sup> CBRA restricts the use of new federal funding that may encourage development on or around certain coastal barriers.<sup>2</sup> The intention of these restrictions is to “minimize the loss of human life, wasteful expenditure of federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers.”<sup>3</sup> CBRA is administered by the U.S. Fish and Wildlife Service (USFWS) and the System currently encompasses 3.5 million acres.

Under CBRA, an undeveloped coastal barrier is defined as a “depositional geologic feature,” such as a barrier or barrier island, that is subject to “wave, tidal, and wind energies” and protects landward aquatic habitats from direct wave attacks, as well as associated aquatic habitat such as marshes or estuaries.<sup>4</sup> It is important to note that lands within the system are not treated like traditional federal lands, as private property can also be classified as a CBRA zone. CBRA does not prohibit development or regulate that development on lands within the System, but it does prohibit federal funds from facilitating that development. The Act enumerates all federal financial assistance that is prohibited with designated CBRA zones, which includes funds from the National Flood Insurance Program.<sup>5</sup>

#### **H.R. 5490 (Rep. Jen Kiggans, R-VA), the “Bolstering Ecosystems Against Coastal Harm Act (BEACH) Act.”**

H.R. 5490 would codify into law modified CBRA maps along the Atlantic coast of the United States that have been proposed by the USFWS. The bill would also make reforms to the CBRA statute by requiring owners who are selling or leasing property in a CBRA zone to disclose that the property is in a CBRA zone to the buyer or lessee. The bill also adds further exemptions to allow federal funds to be used within CBRA zones if the funds are used to save private property and human life under certain sections of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The bill reauthorizes CBRA appropriation through Fiscal Year (FY) 2031, which is set at \$2 million per fiscal year.

<sup>1</sup> [Pub. L. No. 97-348, §3, Oct. 18, 1982, 96 Stat. 1653.](#)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> [Pub. L. No. 97-348, §3, Oct. 18, 1982, 96 Stat. 1654.](#)

<sup>5</sup> *Id.*

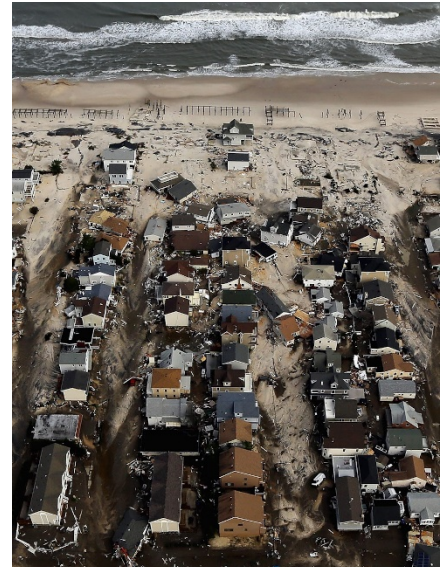
### Hurricane Sandy Mapping Project

In October 2012, Hurricane Sandy made landfall along the East coast of the U.S. and caused \$85.9 billion in damages (in 2023 dollars), the fifth costliest Hurricane in U.S. history.<sup>6</sup> The two states hit hardest by the storm were New York and New Jersey, with over 600,000 homes destroyed and considerable damage to vital infrastructure and businesses.<sup>7</sup>

On January 29, 2013, the Disaster Relief Appropriations Act (Public Law 113-2) was signed into law, which provided \$50 billion in disaster aid to the effected region.<sup>8</sup> In 2014, with the use of \$5 million provided from that law, USFWS undertook to modernize the System maps in the nine states most impacted by Hurricane Sandy. These states were: New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia.<sup>9</sup>

USFWS submitted a report to Congress in April 2022 that contained the final recommended maps for Congress to consider ([here](#)). In addition to the maps, the report also contained summaries and responses to comments and corrections of previous mapping errors.<sup>10</sup> The recommendations in the report also make an effort to fulfill that statutory requirement Congress passed in the CBRA Reauthorization Act of 2005 (Public Law 109-226) that the USFWS digitize and provide more accessible System data.<sup>11</sup> By digitizing this data and making it more accessible, planning coastal infrastructure, habitat conservation, and flood risk mitigation projects will ideally be streamlined.

According to the USFWS, the final recommended maps for this project result in 438 System units that cover a total of 846,918 acres.<sup>12</sup> The recommended maps remove 1,361 acres that were wrongly included in past System maps, these areas are mainly upland areas that do not meet CBRA criteria.<sup>13</sup>



**Figure 1:** Damage caused by Hurricane Sandy in Seaside Heights, NJ.  
**Source:** National Geographic

<sup>6</sup> “Costliest U.S. Tropical Cyclones.” National Oceanic and Atmospheric Administration. [dcmi.pdf \(noaa.gov\)](#)

<sup>7</sup> “Testimony of Stephen Guertin.” Senate Committee on Environment and Public Works. June 15, 2022. [Pending Legislation | U.S. Department of the Interior \(doi.gov\)](#)

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> “Report to Congress: John H. Chafee Coastal Barrier Resources System Hurricane Sandy Remapping Project.” U.S. Fish and Wildlife Service. 2022. [https://www.fws.gov/sites/default/files/documents/Hurricane-Sandy-CBRS-Remapping-Report-to-Congress-2022\\_0.pdf](https://www.fws.gov/sites/default/files/documents/Hurricane-Sandy-CBRS-Remapping-Report-to-Congress-2022_0.pdf)

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

**H.R. 2437 (Rep. Greg Murphy, R-NC), “To revise the boundaries of a unit of the John H. Chafee Coastal Barrier Resources System in Topsail, North Carolina, and for other purposes.”**

H.R. 2437 would require the Secretary of the Interior (Secretary) to remove infrastructure from the CBRA Unit L06 located in North Topsail Beach, North Carolina within 30 days of enactment of the legislation.

In 2000, Congress passed the “Coastal Barrier Resources Reauthorization Act” (CBRRA), which included provisions that defined what constitutes whether a coastal barrier is developed or not at the time it is included in the System.<sup>14</sup> The parameters included in that bill originated from a 1982 proposed rulemaking entitled, “Federal Flood Insurance Prohibition for Undeveloped Coastal Barriers; Proposed Identification and Submission of Report to Congress,”<sup>15</sup> which has served as guideline for USFWS CBRA mapping efforts since, even though it was never finalized. Under CBRRA and the proposed rule, the Secretary must consider if:

- The density of development is less than 1 structure per 5 acres of land above mean high tide; and
- There is not existing infrastructure consisting of:
  - 1) a road, with a reinforced roadbed, to each lot or building site in the area;
  - 2) a wastewater disposal system sufficient to serve each lot or building site in the area;
  - 3) electric service for each lot or building site in the area; and
  - 4) a fresh water supply for each lot or building site in the area.<sup>16</sup>

The original CBRA maps adopted in 1982, and amended in 1990, include sections of the town of North Topsail Beach, NC in the System’s Unit L06, which the town has long disputed.<sup>17</sup> According to the town, they meet the criteria set out by the CBRRA that constitute these areas **not** being considered an undeveloped coastal barrier.

When areas were determined for CBRA designations in 1982, aerial pictures were used to assess areas that were under consideration. When the USFWS utilized aerial photographs of the area that now encompasses Unit L06, they could not determine the infrastructure that existed underground at the site. According to the town, “North Topsail Water and Sewer Corporation began constructing, operating, and maintaining water, sewer and street treatment in 1979. These infrastructure improvements were available to each of



**Figure 2:** The Boundaries of Unit L06  
**Source:** WCTI News Channel 12

<sup>14</sup> [Pub. L. 106–514, §1, Nov. 13, 2000, 114 Stat. 2394](#)

<sup>15</sup> [FR 47 35696](#)

<sup>16</sup> [16 USC Chapter 55](#)

<sup>17</sup> “Evidence of a Full Complement of Infrastructure, as defined by the Coastal Barrier Resources Act of 2000, in North Topsail Beach, North Carolina.” Topsail Island Shoreline Protection Commission.

[https://naturalresources.house.gov/uploadedfiles/evidence\\_of\\_a\\_full\\_complement\\_of\\_infrastructure\\_in\\_north\\_topsail\\_beach.pdf](https://naturalresources.house.gov/uploadedfiles/evidence_of_a_full_complement_of_infrastructure_in_north_topsail_beach.pdf)

the lots in the January 15, 1982, zoning maps.”<sup>18</sup> In addition to sewer systems, reinforced roads, electrical services, and water systems were in place within L06 by 1982.<sup>19</sup>

Separately, in 2021 the USFWS [transmitted a map](#) for Unit L06 that makes minor and technical corrections, correcting an error by removing about 2.5 acres from the System.<sup>20</sup>

H.R. 2437 is cosponsored by Representative David Rouzer (R-NC).

### **H.R. 3415 (Rep. Harriet Hageman, R-WY), the “Pilot Butte Powerplant Conveyance Act.”**

H.R. 3415 would require the Bureau of Reclamation (Reclamation) to enter into good faith negotiations with the Midvale Irrigation District (District) in Pavillion, Wyoming, to convey the Pilot Butte Power Plant (Power Plant) to the District. The bill directs Reclamation and the District to pay an equal share of the administrative costs of the transfer, as well as equal shares of the real estate transfer costs and environmental law compliance costs.



**Figure 3:** The Pilot Butte Power Plant  
**Source:** Bureau of Reclamation

Reclamation’s title transfer program is designed to divest Reclamation from interests in water infrastructure and to transfer that interest to the project beneficiary.<sup>21</sup> The purpose of these title transfers is to give greater responsibility, autonomy, and flexibility to project beneficiaries, in this case, Midvale Irrigation District. Since 1995, thirty reclamation projects have been transferred to beneficiaries by Congress.<sup>22</sup> However, until recently, for transfers to take effect, an act of Congress was required.

In 2019, the John D. Dingell, Jr. Conservation, Management and Recreation Act (P.L. 116-9) was signed into law which granted Reclamation the ability to transfer certain projects to beneficiaries without an act of Congress.<sup>23</sup> However, that bill did not give Reclamation the authority to transfer so called “reserved works” without Congressional action. A reserved work is considered any infrastructure that is owned, operated, or maintained by Reclamation. The Power Plant is considered a reserve work and therefore is not eligible under the P.L. 116-9 authorities.<sup>24</sup>

The Power Plant was removed from service in 2008 because it was considered not economically viable to operate and it has not been in operation since. Specifically, the facility needed \$3.2

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> U.S. Fish and Wildlife Service, John H. Chafee Coastal barrier Resources System, Topsail Until L06.

<https://www.fws.gov/cbra/projects/technical-corrections/37-023C-L06-Draft-Map.pdf>

<sup>21</sup> “Title Transfer of Projects and Facilities.” Title Transfer. Bureau of Reclamation. [Title Transfer | Bureau of Reclamation \(usbr.gov\)](#)

<sup>22</sup> “Statement of Camille Calimlim Touton.” Senate Energy and Natural Resources Committee. July 19, 2023. [8B0FC197-6740-485F-A24C-2AFABD64D158 \(senate.gov\)](#)

<sup>23</sup> [P.L. 116-9](#)

<sup>24</sup> “Statement of Camille Calimlim Touton.” Senate Energy and Natural Resources Committee. July 19, 2023. [8B0FC197-6740-485F-A24C-2AFABD64D158 \(senate.gov\)](#)

million worth of repairs in order to operate.<sup>25</sup> That number was updated in 2016 and was estimated to be between \$4.4 and \$8.3 million in repair costs.<sup>26</sup> According to testimony given by Bureau of Reclamation Commissioner Camille Touton before the Senate Energy and Natural Resources Committee in the summer of 2023, she stated that “as the facilities have been removed from service, transfer of the facilities would minimally reduce costs associated with ongoing operation and maintenance and would potentially eliminate costs associated with removal and demolition, as necessary.”<sup>27</sup>

An identical Senate companion of H.R. 3415 has been introduced by Senator John Barrasso (R-WY) and is cosponsored by Senator Cynthia Lummis (R-WY). That bill, S. 1662, received a hearing on July 19, 2023, in the Senate Energy and Natural Resources Subcommittee on Water and Power. The Biden administration testified in support of the bill.

### **H.R. 4385 (Rep. Joe Neguse, D-CO), the “Drought Preparedness Act.”**

H.R. 4385 extends the authorities included in Title 1 of the Reclamation State Emergency Drought Relief Act (RSEDRA) of 1991 and the authorized appropriations for RSEDRA through FY 2028. The authorizations for both programs expire at the end of FY 2023.

Title 1 of RSEDRA gives the Bureau temporary emergency authorities to take certain measures to mitigate the impacts of drought in the 17 Reclamation states as well as the territories.<sup>28</sup> These measures include: the construction of temporary water infrastructure, the purchase of water from willing sellers, participation in state water banks, and the ability to make loans to water users to build drought mitigation infrastructure.<sup>29</sup> The bill also gives Reclamation the authority to make available water from certain projects for use outside the authorized project service area in order to mitigate drought conditions.<sup>30</sup> Reclamation is also authorized to make water available for the purposes of protecting or restoring fish and wildlife resources that are at risk due to drought conditions.<sup>31</sup> Reclamation is currently authorized to spend no more than \$130 million over the lifetime of the program, of that amount \$12 million remain available to be appropriated.<sup>32</sup>

Last month, the National Oceanic and Atmospheric Administration (NOAA) published data that showed 18 percent of the contiguous United States was being affected by severe to extreme drought, while 29 percent of the contiguous United States was being affected by moderate to extreme drought.<sup>33</sup> Included in these areas are parts of the reclamation states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Washington.<sup>34</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> “WaterSMART, Drought Response Program.” Reclamation State Emergency Drought Relief Act of 1991, Public Law 102-250, 106, Stat. 53, as amended. Bureau of Reclamation. [Reclamation State Emergency Drought Relief Act of 1991, Public Law 102-250, 106, Stat. 53, as amended | Drought Response Program \(usbr.gov\)](#)

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> [43 USC Ch. 40: Reclamation States Emergency Drought Relief](#)

<sup>33</sup> “August 2023 Drought Report.” National Oceanic and Atmospheric Administration. September 14, 2023. [https://www.ncei.noaa.gov/access/monitoring/monthly-report/drought/202308#:~:text=According%20to%20the%20weekly%20U.S.,\(D1%2DD4\)%20drought.](https://www.ncei.noaa.gov/access/monitoring/monthly-report/drought/202308#:~:text=According%20to%20the%20weekly%20U.S.,(D1%2DD4)%20drought.)

<sup>34</sup> *Id.*

H.R. 4385 is bipartisan, as its one cosponsor is Representative Juan Ciscomani (R-AZ).

#### IV. MAJOR PROVISIONS & ANALYSIS

##### **H.R. 5490 (Rep. Jen Kiggins, R-VA), Bolstering Ecosystems Against Coastal Harm (BEACH) Act.**

- Gives Congressional authorization to modified CBRA system maps that were developed as a part of the Hurricane Sandy Mapping Project.
- Requires the Secretary to work with the Secretary of Housing and Urban Development to develop regulations requiring property owners to disclose if their property is within a CBRA zone to a prospective buyer of that property.
- Creates an exemption to CBRA allowing for federal funds to be spent within the CBRA System if they are used to protect private property and human life if such actions are performed pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act.
- Reauthorizes CBRA at \$2 million per year through FY 2031.

##### **H.R. 2437 (Rep. Greg Murphy, R-NC), To revise the boundaries of a unit of the John H. Chafee Coastal Barrier Resources System in Topsail, North Carolina, and for other purposes.**

- Not later than 30 days after the date of enactment, the Secretary of the Interior shall make such corrections as necessary to exclude certain areas from unit L06 (North Topsail Beach unit) of the John H. Chafee Coastal Barrier Resources System.

##### **H.R. 3415 (Rep. Harriet Hageman, R-WY), the “Pilot Butte Powerplant Conveyance Act.”**

- Requires Reclamation to enter into good faith negotiations with the Midvale Irrigation District in Pavillion, Wyoming, within 2 years of the bill’s enactment, to convey the Pilot Butte Power Plant to the District.
- The bill directs Reclamation and the District to pay an equal share of the administrative costs of the transfer, as well as equal shares of the real estate transfer costs and environmental law compliance costs.

##### **H.R. 4385 (Rep. Joe Neguse, D-CO), the “Drought Preparedness Act.”**

- Extends the authorization of Section 104(c) and Section 301 of the Reclamation State Emergency Drought Relief Act (RSEDRA) of 1991 until 2028. The bill does not increase funding for this program.

#### V. COST

The Congressional Budget Office has not provided cost estimates for these bills.

**VI. EFFECT ON CURRENT LAW**

[H.R. 4385](#)

[H.R. 5490](#)