

PACIFIC NORTHWEST PUMPED STORAGE HYDROPOWER
DEVELOPMENT ACT OF 2021

DECEMBER 15, 2022.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 2641]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2641) 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 without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 2641 is to amend the Reclamation Project Act of 1939 to authorize pumped storage hydropower development utilizing multiple Bureau of Reclamation reservoirs.

BACKGROUND AND NEED FOR LEGISLATION

Pumped storage hydropower projects move water between two reservoirs located at different elevations in order to generate electricity and store energy. Power is generated when water stored in an upper reservoir is released to the lower reservoir through hydroelectric turbines. When electricity demand is low, water is pumped from the lower to the upper reservoir to store that water—and its energy potential—at the higher reservoir for later use.

Both the U.S. Bureau of Reclamation (Reclamation) and the Federal Energy Regulatory Commission (FERC) are authorized to permit the use of Reclamation facilities to non-federal entities for the purposes of hydropower development, including pumped storage hydropower. Whether a hydropower project is subject to Reclama-

tion or FERC jurisdiction depends on whether a Reclamation facility was originally authorized for hydropower development. For Reclamation projects with hydropower as an authorized project purpose, Reclamation is responsible for permitting through its Lease of Power Privilege process. All other hydropower projects using Reclamation facilities are subject to FERC jurisdiction pursuant to the Federal Power Act.¹ For pumped storage hydropower projects, which require the use of multiple reservoirs, a situation can arise in which a single project is subject to both Reclamation and FERC's permitting processes.

H.R. 2641 amends the Reclamation Project Act of 1939² to specify that pumped storage hydropower projects that use multiple Reclamation reservoirs shall be subject to a single Reclamation permitting process. Reclamation's permitting process requires pumped storage projects to comply with the National Environmental Policy Act (NEPA), the Endangered Species Act, the National Historic Preservation Act, and other statutory requirements.

The proposed Banks Lake pumped storage project in Washington State is one project that prior to this bill was subject to both Reclamation and FERC's permitting processes. The project proposes to pump water between Roosevelt Lake (subject to Reclamation jurisdiction) and Banks Lake (subject to FERC jurisdiction). Section 3 of H.R. 2641 incorporates feedback from the Confederated Tribes of the Colville Reservation and the Spokane Tribe of Indians of the Spokane Reservation to ensure additional opportunities for tribal consultation and input during Reclamation's permitting process for the proposed Banks Lake pumped storage project. This section does not apply to other pumped storage projects employing two Reclamation facilities.

H.R. 2641 was enacted as sections 40335 and 40336 of the Infrastructure Investment and Jobs Act³ (the "IIJA," or sometimes called the Bipartisan Infrastructure Framework or "BIF" or the Bipartisan Infrastructure Law or "BIL"), which became public law on November 15, 2021. With the enactment of the IIJA, the jurisdiction of the proposed Banks Lake project is now fully under Reclamation.

COMMITTEE ACTION

H.R. 2641 was introduced on April 19, 2021, by Representative Dan Newhouse (R-WA). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Oceans, and Wildlife and to the Subcommittee for Indigenous Peoples of the United States. On May 26, 2021, the Natural Resources Committee met to consider the bill. The Subcommittees were discharged by unanimous consent. No amendments were offered, and the bill was adopted and ordered fa-

¹Act of June 10, 1920, ch. 285, § 4, 41 Stat. 1063, 1065, <http://uscode.house.gov/statviewer.htm?volume=41&page=1065> (codified as amended at 16 U.S.C. § 797, http://uscode.house.gov/table3/1920_285.htm) (statutory compilation as amended through P.L. 117-58 at <https://www.govinfo.gov/content/pkg/COMPS-834/pdf/COMPS-834.pdf>).

²Act of Aug. 4, 1939, ch. 418, § 53 Stat. 1187, <http://uscode.house.gov/statviewer.htm?volume=53&page=1187> (codified as amended at various, see http://uscode.house.gov/table3/1939_418.htm) (statutory compilation as amended through P.L. 117-58 at <https://www.govinfo.gov/content/pkg/COMPS-10509/pdf/COMPS-10509.pdf>).

³Pub. L. No. 117-58, 135 Stat. 429 (2021), <https://uscode.house.gov/statviewer.htm?volume=135&page=429>.

vorably reported to the House of Representatives by unanimous consent.

HEARINGS

Regarding clause 3(c)(6) of House rule XIII, the Committee does not expect the measure to be considered pursuant to a special order of business reported by the Committee on Rules, as it has already been enacted via another bill.

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, as well as clause 3(d) of rule XIII of the Rules of the House of Representatives, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 26, 2021.

Hon. RAÚL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2641, the Pacific Northwest Pumped Storage Hydropower Development Act of 2021.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 2641, Pacific Northwest Pumped Storage Hydropower Development Act of 2021			
As ordered reported by the House Committee on Natural Resources on May 26, 2021			
By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
Direct Spending (Outlays)	0	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and \$500,000.			

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

At least one project, a proposal to develop pumped storage hydropower within BOR's Colombia Basin Project (CBP) in the state of Washington, would need permits from both agencies because it would be constructed on two reservoirs; Banks Lake would require a BOR lease 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.) H.R. 2641 would make BOR the sole regulatory authority for developers seeking a lease for a pumped storage hydropower facility at federal reservoirs.

The bill also would require the nonfederal developer to negotiate an agreement with the Confederated Tribes of the Colville Reservation and the Spokane Tribe of Indians of the Spokane Reservation as a condition for a BOR lease on CBP facilities. The agreement would establish the terms for interactions between the developer and tribes including 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 those studies would be incurred by the project developer while the rest would be incurred by BOR; however, most of those costs to the agency would ultimately be paid by the developer under the terms of a cost recovery agreement between BOR and the developer.

CBO estimates that enacting H.R. 2641 would increase offsetting receipts (which are recorded as reductions in direct spending) from payments the project developer would make to BOR in advance for the costs of additional staff hours to negotiate lease agreements and to facilitate development of the planned studies and agreement

between the developer and the tribes. Using information from BOR, CBO estimates that those offsetting receipts would total about \$1 million over the 2021–2031 period. However, because BOR is authorized to spend amounts collected without further appropriations action, CBO estimates that the net effect on direct spending would be negligible over that period.

Some costs incurred by BOR to litigate appeals related to the agreement may not be recoverable from the project developer and instead would be covered by the agency's regular appropriation. CBO estimates that those costs would total less than \$500,000 over the 2021–2026 period; such spending would be subject to the availability of appropriated funds.

Lastly, FERC recovers 100 percent of its costs, which are controlled by annual appropriations, through user fees. Thus, any reduction in FERC's costs resulting from shifting its licensing responsibilities to BOR would be offset by an equivalent change in fees, resulting in no net change in discretionary spending.

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

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to amend the Reclamation Project Act of 1939 to authorize pumped storage hydropower development utilizing multiple Bureau of Reclamation reservoirs.

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 CBO, this bill contains no unfunded mandates as defined by the Unfunded Mandates Reform Act.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

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):

RECLAMATION PROJECT ACT OF 1939

* * * * *

SEC. 9. (a) No expenditures for the construction of any new project, new division of a project, or new supplemental works on a project shall be made, nor shall estimates be submitted therefor, by the Secretary until after he has made an investigation thereof and has submitted to the President and to the Congress his report and findings on—

- (1) the engineering feasibility of the proposed construction;
- (2) the estimated cost of the proposed construction;
- (3) the part of the estimated cost which can properly be allocated to irrigation and probably be repaid by the water users;
- (4) the part of the estimated cost which can properly be allocated to power and probably be returned to the United States in net power revenues;
- (5) the part of the estimated cost which can properly be allocated to municipal water supply or other miscellaneous purposes and probably be returned to the United States.

If the proposed construction is found by the Secretary to have engineering feasibility and if the repayable and returnable allocations to irrigation, power, and municipal water supply or other miscellaneous purposes found by the Secretary to be proper, together with any allocation to flood control or navigation made under subsection (b) of this section, equal the total estimated cost of construction as determined by the Secretary, then the new project, new division of a project, or supplemental works on a project, covered by his findings, shall be deemed authorized and may be undertaken by the Secretary. If all such allocations do not equal said total estimated cost, then said new project, new division, or new supplemental works may be undertaken by the Secretary only after provision therefor has been made by Act of Congress enacted after the Secretary has submitted to the President and the Congress the report and findings involved.

(b) In connection with any new project, new division of a project, or supplemental works on a project there may be allocated to flood control or navigation the part of said total estimated cost which the Secretary may find to be proper. Items for any such allocations made in connection with projects which may be undertaken pursuant to subsection (a) of this section shall be included in the estimates of appropriations submitted by the Secretary for said projects, and funds for such portions of the projects shall not become available except as directly appropriated or allotted to the Department of the Interior. In connection with the making of such an allocation, the Secretary shall consult with the Chief of Engineers and the Secretary of the Army, and may perform any of the necessary investigations or studies under a cooperative agreement

with the Secretary of the Army. In the event of such an allocation the Secretary of the Interior shall operate the project for purposes of flood control or navigation, to the extent justified by said allocation therefor.

(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 and any amendments thereof. 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 to 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 planning, 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 the date of the enactment of the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act**】** 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.

(d) No water may be delivered for irrigation of lands in connection with any new project, new division of a project, or supplemental works on a project until an organization, satisfactory in form and powers to the Secretary, has entered into a repayment contract with the United States, in a form satisfactory to the Secretary, providing among other things—

(1) That the Secretary may fix a development period for each irrigation block, if any, of not to exceed ten years from and including the first calendar year in which water is delivered for the lands in said block; and that during the development period water shall be delivered to the lands in the irrigation block involved at a charge per annum per acre-foot, or other charge, to be fixed by the Secretary each year and to be paid in advance of delivery of water: Provided, That where the lands included in an irrigation block are for the most part lands owned by the United States, the Secretary, prior to execution of a repayment contract, may fix a development period, but in such case execution of such a contract shall be a condition precedent to delivery of water after the close of the development period: Provided further, That when the Secretary, by contract or by notice given thereunder, shall have fixed a development period of less than ten years, and at any time thereafter but before commencement of the repayment period conditions arise which in the judgment of the Secretary would have justified the fixing of a longer period, he may amend such contract or notice to extend such development period to a date not to exceed ten years from its commencement, and in a case

where no development period was provided, he may amend such contract within the same limits: Provided further, That when the Secretary shall have deferred the payment of all or any part of any installments of construction charges under any repayment contract pursuant to the authority of the Act of September 21, 1959 (73 Stat. 584), he may, at any time prior to the due date prescribed for the first installment not reduced by such deferment, and by agreement with the contracting organization, terminate the supplemental contract by which such deferment was effected, credit the construction payments made, and exercise the authority granted in this section. After the close of the development period, any such charges collected and which the Secretary determines to be in excess of the cost of the operation and maintenance during the development period shall be credited to the construction cost of the project in the manner determined by the Secretary.

(2) That the part of the construction costs allocated by the Secretary to irrigation shall be included in a general repayment obligation of the organization; and that the organization may vary its distribution of construction charges in a manner that takes into account the productivity of the various classes of lands and the benefits accruing to the lands by reason of the construction: Provided, That no distribution of construction charges over the lands included in the organization shall in any manner be deemed to relieve the organization or any party or any land therein of the organization's general obligation to the United States.

(3) That the general repayment obligation of the organization shall be spread in annual installments, of the number and amounts fixed by the Secretary, over a period of not more than 40 years, exclusive of any development period fixed under paragraph (1) of this subsection, for any project contract unit or, if the project contract unit be divided into two or more irrigation blocks, for any such block, or as near to said period of not more than forty years as is consistent with the adoption and operation of a variable payment formula which, being based on full repayment within such period under average conditions, permits variance in the required annual payments in the light of economic factors pertinent to the ability of the organization to pay.

(4) That the first annual installment for any project contract unit, or for any irrigation block, as the case may be, shall accrue, on the date fixed by the Secretary, in the year after the last year of the development period or, if there be not development period, in the calendar year after the Secretary announces that the construction contemplated in the repayment contract is substantially completed or is advanced to a point where delivery of water can be made to substantially all of the lands in said unit or block to be irrigated; and if there be no development period fixed, that prior to and including the year in which the Secretary makes said announcement water shall be delivered only on the toll charge basis hereinbefore provided for development periods.

(e) In lieu of entering into a repayment contract pursuant to the provisions of subsection (d) of this section to cover that part of the

cost of the construction of works connected with water supply and allocated to irrigation, the Secretary, in his discretion, may enter into either short- or long-term contracts to furnish water for irrigation purposes. Each such contract shall be for such period, 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, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation; and shall require payment of said rates each year in advance of delivery of water for said year. In the event such contracts are made for furnishing water for irrigation purposes, the costs of any irrigation water distribution works constructed by the United States in connection with the new project, new division of a project, or supplemental works on a project, shall be covered by a repayment contract entered into pursuant to said subsection (d).

(f) No less than sixty days before entering into or amending any repayment contract or any contract for the delivery of irrigation water (except any contract for the delivery of surplus or interim irrigation water whose duration is for one year or less) the Secretary shall—

(1) publish notice of the proposed contract or amendment in newspapers of general circulation in the affected area and shall make reasonable efforts to otherwise notify interested parties which may be affected by such contract or amendment, together with information indicating to whom comments or inquiries concerning the proposed actions can be addressed; and

(2) provide an opportunity for submission of written data, views and arguments, and shall consider all substantive comments so received.

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SUPPLEMENTAL, MINORITY, ADDITIONAL, OR DISSENTING VIEWS

None.

