

TO CLARIFY JURISDICTION WITH RESPECT TO CERTAIN BUREAU OF RECLAMATION PUMPED STORAGE DEVELOPMENT, AND FOR OTHER PURPOSES

NOVEMBER 3, 2023.—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. 1607]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1607) to clarify jurisdiction with respect to certain Bureau of Reclamation pumped storage development, and for other 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. LAND WITHDRAWAL AND RESERVATION.**

(a) DEFINITIONS.—In this section:

(1) AGREEMENT.—The term “Agreement” means the agreement between the United States and the Association dated September 6, 1917, as amended.

(2) ASSOCIATION.—The term “Association” means the Salt River Valley Water Users’ Association.

(3) COVERED LAND.—The term “covered land” means the portion of the National Forest System land located on the south side of the Salt River from the March 9, 1903, 1-mile withdrawal area for the Bureau of Reclamation purposes extending an additional 2 miles from the Salt River at Roosevelt Dam to 18.25 river miles downstream, in the State of Arizona, not including the Superstition Mountain Wilderness Area and the Tonto National Monument, as depicted on the Map.

(4) DISTRICT.—The term “District” means the Salt River Project Agricultural Improvement and Power District.

(5) MAP.—The term “Map” means the map prepared under subsection (e)(1).

(6) SRP.—The term “SRP” means—

(A) the District; and

(B) the Association.

(b) RESERVATION OF COVERED LAND.—Subject to valid existing rights, the covered land is reserved to the United States, through the Secretary of the Interior, for the exclusive right to use the covered land and interests in the covered land for the development, generation, and transmission of electrical power and energy for the use

and benefit of the Salt River Federal Reclamation Project pursuant to the Agreement.

(c) WITHDRAWAL OF COVERED LAND.—The covered land is permanently withdrawn from—

- (1) all forms of entry, appropriation, and disposal under the public land laws;
- (2) location, entry, and patent under the mining laws; and
- (3) operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(d) FACILITIES.—With respect to facilities constructed by SRP on the covered land for the development, generation, and transmission of electrical power and energy—

(1) the design and specifications shall conform to Bureau of Reclamation standards, and final designs shall be subject to review and approval by the Secretary of the Interior;

(2) all construction work shall be subject to inspection and approval by the Secretary of the Interior;

(3) upon a determination of substantial completion of such facilities, the Secretary of the Interior shall accept title on behalf of the United States as part of the Salt River Federal Reclamation Project pursuant to—

(A) section 6 of the Act of June 17, 1902 (32 Stat. 389, chapter 1093; 43 U.S.C. 498); and

(B) the Agreement; and

(4) SRP shall be responsible for the care, operation, and maintenance pursuant to the Agreement.

(e) MAP.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary of Agriculture shall prepare a map depicting the boundary of the covered land.

(2) AVAILABILITY.—The Map shall be on file and available for public inspection in the appropriate offices of the Forest Service and the Bureau of Reclamation.

(f) MANAGEMENT OF COVERED LAND.—Management of the covered lands shall be in accordance with the Management Memorandum among the District, United States Department of Agriculture, Forest Service, and the Bureau of Reclamation, dated April 27, 1979, as amended.

(g) RELATION TO OTHER LAW.—

(1) COMPLIANCE WITH ENVIRONMENTAL LAWS.—The Secretary of the Interior is directed to carry out all necessary environmental compliance under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.), and all other applicable environmental laws and regulations, prior to construction of facilities on the covered land for the development, generation, and transmission of electrical power and energy.

(2) LEAD AGENCY.—The Bureau of Reclamation shall be the lead agency with respect to environmental compliance.

(3) WITHDRAWAL NOT MAJOR FEDERAL ACTION.—The withdrawal of the covered land shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.).

(4) ANTIDEFICIENCY.—The United States shall not be liable for failure to carry out any obligation or activity authorized to be carried out under this title (including any such obligation or activity under the Agreement) if adequate appropriations are not provided by Congress expressly to carry out the purposes of this Act.

#### PURPOSE OF THE LEGISLATION

The purpose of H.R. 1607 is to clarify jurisdiction with respect to certain Bureau of Reclamation pumped storage development, and for other purposes.

#### BACKGROUND AND NEED FOR LEGISLATION

The Salt River Project (SRP) was authorized in 1903 as one of the first Bureau of Reclamation (Reclamation) projects under the Reclamation Act of 1902.<sup>1</sup> The SRP service area is located near Phoenix, Arizona, and includes about 240,000 acres spanning por-

<sup>1</sup> Ch. 1093, 32 Stat. 388. <https://www.usbr.gov/lc/region/programs/contracts/Legislation.pdf>.

tions of Maricopa, Gila, and Pinal Counties in central Arizona.<sup>2</sup> The project receives water from the Salt and Verde Rivers and today SRP provides water and power to more than 2 million people.<sup>3</sup>

Currently, SRP is exploring a pumped storage hydropower project. Pumped storage hydropower acts like a battery, it can store energy and release it when needed. Typically, it is a configuration of two water reservoirs at different elevations that can generate power as water moves down from one reservoir to the other.<sup>4</sup> The project has the potential for approximately 2,000 megawatts (MW) of energy storage capacity for a duration of 10 hours.

H.R. 1607 would withdraw approximately 17,095 acres of federal lands from the National Forest System to the Bureau of Reclamation for the development of pumped storage hydropower and the development, generation, and transmission of electrical power and energy. Through the transfer of this land, the bill would allow the proposed pumped storage project to be developed entirely within the authorities and footprint of the federal Reclamation Project—streamlining development and maximizing federal Reclamation Project benefits. Without the legislation, the project would need to be permitted by Reclamation and the Federal Energy Regulatory Commission.

Since 1903, there have been over 50 federal land withdrawals made by Congress and the Department of the Interior on the Salt and Verde River and East Clear Creek watersheds to develop the SRP.<sup>5</sup> The management of the withdrawn lands would be consistent with the existing Memorandum of Understanding between the Forest Service, the SRP, and Reclamation, also known as the “Tri-party Agreement”. This ensures that these lands are managed the same as the preexisting adjoining withdrawn lands.

#### COMMITTEE ACTION

H.R. 1607 was introduced on March 14, 2023, by Rep. David Schweikert (R–AZ). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Wildlife and Fisheries. On June 14, 2023, the Subcommittee on Water, Wildlife and Fisheries held a hearing on the bill. On July 19, 2023, 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. 1607 by unanimous consent. Chairman Bruce Westerman (R–AR) offered an amendment in the nature of a substitute to H.R. 1607, designated Westerman ANS 035. The amendment was adopted by unanimous consent. H.R. 1607, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

<sup>2</sup> USBR, Salt River Project. <https://www.usbr.gov/projects/index.php?id=395>.

<sup>3</sup> Salt River Project, Our History. <https://www.srpnet.com/about/about-srp>.

<sup>4</sup> Department of Energy, Pumped Storage Hydropower. <https://www.energy.gov/eere/water/pumped-storage-hydropower>.

<sup>5</sup> Most of the withdrawals were accomplished administratively by the Secretary of the Interior under Section 3 of the Reclamation Act of 1902. Congress authorized the Secretary to withdraw land from public entry that were required for irrigation works. More recently, under Public Laws 108–445 and 112–445, Congress withdrew National Forest System land where the C.C. Cragin Dam and storage reservoir were located for Reclamation purposes to clarify that the Secretary retained jurisdiction over that facility as part of the Project.

## 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 House Natural Resources Subcommittee on Water, Wildlife and Fisheries held on June 14, 2023.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Land withdrawal and reservation*

Section 1 allows for the withdrawal of approximately 17,905 acres of federal land from the National Forest System to the Bureau of Reclamation for the development, generation, and transmission of hydropower.

## 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:

| <b>H.R. 1607, a bill to clarify jurisdiction with respect to certain Bureau of Reclamation pumped storage development, and for other purposes</b> |      |  |               |
|---|------|--|---------------|
| As ordered reported by the House Committee on Natural Resources on July 19, 2023  |      |  |               |
| By Fiscal Year, Millions of Dollars   | 2023 | 2023-2028                                    | 2023-2033     |
| Direct Spending (Outlays)   | 0    | 0  | 0             |
| Revenues  | 0    | 0  | 0             |
| Increase or Decrease (-) in the Deficit   | 0    | 0  | 0             |
| Spending Subject to Appropriation (Outlays)   | 0    | *  | not estimated |
| Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?  | No   | Statutory pay-as-you-go procedures apply? No |               |
|   |      | <b>Mandate Effects</b>                       |               |
| Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?   | No   | Contains intergovernmental mandate? No       |               |
|   |      | Contains private-sector mandate? No          |               |
| * = between zero and \$500,000.   |      |  |               |

H.R. 1607 would direct the Forest Service to withdraw land, which CBO expects would total about 17,000 acres, from the National Forest System in an area adjacent to the Salt River Project (SRP) in Arizona and transfer it to the Bureau of Reclamation (BOR). The bill also would clarify that regulatory jurisdiction to develop hydroelectricity and power transmission on that land would be the responsibility of BOR.

The SRP is owned and regulated by BOR and jointly operated by the Salt River Valley Water User's Association and the Salt River Project Agricultural Improvement and Power District. The project consists of seven dams and reservoirs, 1,300 miles of conveyance infrastructure, and five hydroelectric plants on the Salt and Verde Rivers that supply water and power to central Arizona.

Two agreements signed in 1917 and 1979 among the association, the district, the Forest Service, and BOR set guidelines for managing the lands withdrawn from the National Forest System for SRP purposes; such withdrawals have occurred about 50 times since 1903. The agreements also authorize the association and district to construct power infrastructure and retain receipts from power sales for the SRP.

Under current law, the association is pursuing hydropower development on the Salt River that will require a license from the Federal Energy Regulatory Commission (FERC) because the project will involve constructing a reservoir on land partly owned and administered by the Forest Service. Enacting H.R. 1607 would simplify the regulatory process because transferring the land would give BOR sole jurisdiction for the project and the association would no longer need to obtain a FERC license.

Using information from the affected agencies, CBO estimates that the Forest Service would incur insignificant costs to transfer the land and prepare new maps; any spending would be subject to the availability of appropriated funds. BOR would not incur additional costs because the association would be required to cover all costs incurred by BOR to approve and oversee the project.

Finally, 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 equal 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.

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 clarify jurisdiction with respect to certain Bureau of Reclamation pumped storage development, and for other 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. 1607 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

As ordered reported by the Committee on Natural Resources, H.R. 1607 would make no changes in existing law.