

# House Subcommittee on Water, Power and Oceans

John Fleming, Chairman  
Hearing Memo

June 22, 2015

To: House Subcommittee on Water, Power and Oceans Members

From: Water, Power and Oceans Subcommittee Republican Staff

Subject: June 25, 2015, 10:00 a.m. House Water, Power and Oceans Subcommittee Legislative Hearing on H.R. 1107, "*The Bureau of Reclamation Transparency Act*" (Gosar, R-AZ)

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## **Hearing Overview:**

On June 25, 2015, at 10:00 a.m. in 1324 Longworth, the House Water, Power and Oceans Subcommittee will hold a legislative hearing on H.R. 1107 "*The Bureau of Reclamation Transparency Act*" sponsored by Rep. Gosar .

## **Bill Summary:**

H.R. 1107, "*The Bureau of Reclamation Transparency Act,*" is a bipartisan bill that requires the Secretary of the Interior to publish reports detailing specific repairs and rehabilitation needs at Bureau of Reclamation facilities.<sup>1</sup>

## **Cosponsors:**

Reps. Mark Amodei (R-NV), Joe Barton (R-TX), Matt Cartwright (D-PA), Mike Coffman(R-CO), Jeff Denham (R-CA), Trent Franks (R-AZ),John Garamendi (D-CA),Crescent Hardy (R-NV), Joe Heck (R-NV), Jared Huffman (D-CA), Ann Kirkpatrick (D-AZ), Grace Napolitano (R-CA), Krysten Sinema (D-AZ), Ted Lieu (D-CA), Cynthia Lummis (R-WY), Tom McClintock (R-CA), Jeff Miller (R-FL), Steve Pearce (R-NM), Matt Salmon (R-AZ), Scott Tipton (R-CO), and Ryan Zinke (R-MT)

## **Background:**

Created in 1902, the U.S. Bureau of Reclamation (Reclamation) has been essential to western growth and development. Chartered with the mission of reclaiming the West's dry-arid deserts, Reclamation projects provide indispensable water to over 31 million Americans and electricity to 3.5 million homes in 17 western states.<sup>2</sup> As one of the nation's primary water management agencies, Reclamation supports projects that provide water to rural communities, growing municipalities, and for industrial uses.

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<sup>1</sup> *The Bureau of Reclamation Transparency Act*, H.R. 1107, 114<sup>th</sup> Cong. §§ 4,5 (2015).

<sup>2</sup> <http://www.usbr.gov/power/who/who.html>

Reclamation's inventory includes 476 dams and dikes, creating 337 reservoirs, and title to 76 hydroelectric power plants which generate 40 billion kilowatt hours of electricity annually.<sup>3</sup> With much of this infrastructure built over 50 years ago, ensuring proper maintenance is critical for the continued growth and survivability of Western communities.<sup>4</sup> Yet, the Department of the Interior has failed to provide adequate details on the depth and scope of the maintenance backlog at Reclamation facilities to some, including Members of Congress. As an example, U.S. Senator John Barrasso (R-WY) made the following remarks during a 2014 Senate Water and Power Subcommittee hearing on this issue:

*I am very concerned that the Interior Department and its leadership have been less than forthcoming about the depth and scope of this problem. In 2008, Reclamation testified that the backlog was \$3.2 billion; similar figures have been quoted by administrative officials since then. I still have not been able to get the information as to how these figures have been constructed, nor have I been able to get a complete written list of the complete maintenance backlog for my home state of Wyoming.*<sup>5</sup>

Reclamation operates a Facility Maintenance and Rehabilitation Program that identifies the needs of both its "transferred works" – infrastructure owned by Reclamation but operated by local project sponsors – and its "reserved works" – projects owned and operated solely by Reclamation. However, such reviews are not typically made public and exclude project specific needs.<sup>6</sup> In his testimony before the Senate Subcommittee on Water and Power last Congress, Mr. Charles Stern, a Specialist in Natural Resources Policy for the Congressional Research Service stated:

*...some agencies, such as the Environmental Protection Agency and the Department of Transportation, publish "need assessments" that include project level estimates for needed repairs and upgrades...*<sup>7</sup>

However, Mr. Stern went on to state that:

*...the availability of estimates for individual Reclamation facilities varies, and are generally not compiled or regularly updated in a centralized, public record.*<sup>8</sup>

H.R. 1107 requires Reclamation to do an Infrastructure Needs Assessment Report every two years as part of its existing Asset Management Plan reporting process.<sup>9</sup> As Congressman Paul Gosar, the sponsor of H.R.1107, has stated, "Our commonsense bill will allow Congress to

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<sup>3</sup> <http://www.doi.gov/budget/appropriations/2015/highlights/upload/BH035.pdf>

<sup>4</sup> *The Bureau of Reclamation Transparency Act*, H.R. 1107, 114<sup>th</sup> Cong. § 2 (2015).

<sup>5</sup> Statement by Senator John Barrasso, Senate Committee on Energy and Mineral Resources, 113<sup>th</sup> Cong., Legislative Hearing on S. 1800, Feb. 27, 2014

<sup>6</sup> Submitted testimony by Mr. Charles V. Stern, Specialist in Natural Resources Policy for the Congressional Research Service, Senate Committee on Energy and Mineral Resources, 113<sup>th</sup> Cong., Legislative Hearing on S. 1800, Feb. 27, 2014, p. 2

<sup>7</sup> *Id.*

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

<sup>9</sup> *The Bureau of Reclamation Transparency Act*, H.R. 1107, 114<sup>th</sup> Cong. §§ 4, 5 (2015).

better prioritize funds for critical infrastructure projects for the purposes of ensuring an abundant supply of clean water and power for future generations.”<sup>10</sup>

Last week in a Senate Water and Power Subcommittee hearing on an identical Senate companion bill (S. 593) to H.R. 1107, Deputy Commissioner for External and Intergovernmental Affairs for Reclamation, Ms. Dionne Thompson, noted the importance of the proposed legislation:

*...Reclamation recognizes the value in obtaining additional information on the status of our infrastructure. The bill is consistent with a draft Infrastructure Investment Strategy and process Reclamation has initiated proactively... the bill makes allowance for the valuable input from operating partners that is central to Reclamation’s asset management program.*<sup>11</sup>

The legislation requires future Reclamation Asset Management Plan reports to include: 1) an itemized list of major repair and rehabilitation needs at all federal management Reclamation facilities and projects; 2) a cost estimate of the expenditures needed to address those repairs; 3) a categorical safety rating using for addressing each item; and 4) a similar reporting requirement for privately managed, but federally owned, Reclamation facilities and projects.<sup>12</sup>

### **Major Provisions/Analysis of H.R. 1107**

*Section 2* contains Congressional Findings about the need for a report addressing Reclamation’s aging infrastructure.<sup>13</sup>

*Section 3* includes definitions of terms.<sup>14</sup>

*Section 4* directs the Secretary to submit a report to manage Reclamation facilities considered reserved works which includes facilities and structures that are owned by Reclamation.<sup>15</sup> The report will also help to standardize and streamline data reporting processes and expands on the information otherwise provided in Asset Management Reports, including a detailed assessment of major repair and rehabilitation needs, with a cost estimate for completion of each item and a categorical rating.<sup>16</sup> This Section also allows the Secretary to exclude sensitive or classified information from the report, and requires the Interior Secretary to consult with the Secretary of the Army in preparing the Asset Management Report.<sup>17</sup>

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<sup>10</sup> <http://www.barrasso.senate.gov/public/index.cfm/2015/2/barrasso-schatz-reintroduce-bill-to-address-aging-federal-water-facilities>

<sup>11</sup> Submitted testimony of Mr. Dionne Thompson, Deputy Director of External and Intergovernmental Affairs for the Bureau of Reclamation, to the Senate Committee on Energy and Mineral Resources, 114<sup>th</sup> Cong., Legislative Hearing on S. 593, June 18, 2015, p.4

<sup>12</sup> *The Bureau of Reclamation Transparency Act*, H.R. 1107, 114<sup>th</sup> Cong. §§ 4, 5 (2015).

<sup>13</sup> *The Bureau of Reclamation Transparency Act*, H.R. 1107, 114<sup>th</sup> Cong. § 2 (2015).

<sup>14</sup> *The Bureau of Reclamation Transparency Act*, H.R. 1107, 114<sup>th</sup> Cong. § 3 (2015).

<sup>15</sup> *The Bureau of Reclamation Transparency Act*, H.R. 1107, 114<sup>th</sup> Cong. § 4 (2015).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

*Section 5* directs the Interior Secretary to coordinate with non-federal entities responsible for the operation and maintenance of transferred works in developing reporting requirements for Asset Management Reports, and requires the Secretary to develop and implement a rating system for transferred works that incorporated the same rating system for reserved works.<sup>18</sup>

**Cost**

The Congressional Budget Office has not completed a cost estimate of this bill at this time.

**Administration Position**

The Administration testified in support of an identical Senate companion bill.<sup>19</sup>

**Witnesses**

*The Honorable Estevan Lopez*, Commissioner  
U.S. Bureau of Reclamation  
U.S. Department of the Interior  
Washington, DC

*Mr. Tom Davis*, Manager  
Yuma County Water Users Association  
Yuma, Arizona

**Ramseyer:**

Reclamation Safety of Dams Act (P.L. 95-578)  
\*\*\*as amended by H.R. 2749  
Changes to law in Red

An Act

To authorize the Secretary of the Interior to construct, restore, operate, and maintain new or modified features at existing Federal reclamation dams for safety of dams purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, that this Act shall be cited as the "Reclamation Safety of Dams Act of 1978."

Sec. 2. (a) In order to preserve the structural safety of Bureau of Reclamation dams and related facilities, the Secretary of the Interior is authorized to perform such modifications as he

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<sup>18</sup> *The Bureau of Reclamation Transparency Act*, H.R. 1107, 114<sup>th</sup> Cong. § 5 (2015).

<sup>19</sup> Submitted testimony of Mr. Dionne Thompson, Deputy Director of External and Intergovernmental Affairs for the Bureau of Reclamation, to the Senate Committee on Energy and Mineral Resources, 114<sup>th</sup> Cong., Legislative Hearing on S. 593, June 18, 2015, p.1

determines to be reasonably required. Said performance of work shall be in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory or supplementary thereto).

Sec. 3. ~~Construction~~ Except as provided in Section 5B, construction authorized by this Act shall be for purposes of dam safety and not for the specific purposes of providing additional conservation storage capacity or of developing benefits over and above those provided by the original dams and reservoirs. Nothing in this Act shall be construed to reduce the amount of project costs allocated to reimbursable purposes heretofore authorized.

Sec. 4. (a) Costs heretofore or hereafter incurred in the modification of structures under this Act, the cause of which results from age and normal deterioration of the structure or from nonperformance of reasonable and normal maintenance of the structure by the operating entity shall be considered as project costs and will be allocated to the purposes for which the structure was authorized initially to be constructed and will be reimbursable as provided by existing law.

(b) With respect to the \$100,000,000 authorized to be appropriated the Reclamation Safety of Dams Act of 1978, costs heretofore, or hereafter incurred in the modification of structures under this Act, the cause of which results from new hydrologic or seismic data or changes in the state-of-the-art criteria deemed necessary for safety purposes shall be nonreimbursable and nonreturnable under the Federal Reclamation law.

(c) REIMBURSEMENT OF CERTAIN MODIFICATION COSTS. - With respect to the additional amounts authorized to be appropriated by section 5, costs incurred in the modification of structures under this Act, the cause of which results from new hydrologic or seismic data or changes in state-of-the-art criteria deemed necessary for safety purposes, shall be reimbursed to the extent provided in this subsection.

(1) Fifteen percent of such costs shall be allocated to the authorized purposes of the structure, except that in the case of Jackson Lake Dam, Minidoka Project, Idaho-Wyoming, such costs shall be allocated in accordance with the allocation of operation and maintenance charges.

(2) Costs allocated to irrigation water service and capable of being repaid by the irrigation water users shall be reimbursed within 50 years of the year in which the work undertaken pursuant to this Act is substantially complete. Costs allocated to irrigation water service which are beyond the water users' ability to pay shall be reimbursed in accordance with existing law.

(3) Costs allocated to recreation or fish and wildlife enhancement be reimbursed in accordance with the Federal Water Project Recreation Act (79 Stat. 213), as amended.

(4) Costs allocated to the purpose of municipal, industrial, and miscellaneous water service, commercial power, and the portion of recreation and fish and wildlife enhancement costs reimbursable under the Federal Water Project Recreation Act, shall be repaid within 50 years with interest. The interest rate used shall be determined by the Secretary of the Treasury, taking into consideration average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the applicable reimbursement period during the month preceding the fiscal year in which the costs are incurred. To the extent that more than one interest rate is determined pursuant to the preceding sentence, the Secretary of the Treasury shall establish an interest rate at the weighted average of the rates so determined.

(d) The Secretary is authorized to negotiate appropriate contracts with project beneficiaries providing for the return of reimbursable costs under this Act: Provided, however, That no contract entered into pursuant to this Act shall be deemed to be a new or amended contract for the purposes of section 203(a) of Public Law 97-293.

(e) (1) During the construction of the modification, the Secretary shall consider cost containment measures recommended by a project beneficiary that has elected to consult with the Bureau of Reclamation on a modification.

(2) The Secretary shall provide to project beneficiaries on a periodic basis notice regarding the costs and status of the modification.

Sec. 5. There are hereby authorized to be appropriated for fiscal year 1979 and ensuing fiscal years such sums as may be necessary, but not to exceed \$100,000,000 and, effective October 1, 1983, not to exceed an additional \$650,000,000 (October 1, 1983, price levels), and, effective October 1, 2000, not to exceed an additional \$95,000,000 (October 1, 2000, price levels), and, effective October 1, 2001, not to exceed an additional \$32,000,000 (October 1, 2001, price levels), and, effective October 1, 2003, not to exceed an additional \$540,000,000 (October 1, 2003, price levels), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein, to carry out the provisions of this Act to remain available until expended if so provided by the appropriations Act: Provided, That no funds exceeding \$1,250,000 (October 1, 2003, price levels), as adjusted to reflect any ordinary fluctuations in construction costs indicated by applicable engineering cost indexes, shall be obligated for carrying out actual construction to modify an existing dam under authority of this Act prior to 30 calendar days from that date that the Secretary has transmitted a report on such existing dam to the Congress. The report required to be submitted by this section will consist of a finding by the Secretary of the Interior to the effect that modifications are required to be made to insure the safety of an existing dam. Such finding shall be accompanied by a technical report containing information on the need for structural modification, the corrective action deemed to be required,

alternative solutions to structural modification that were considered, the estimated cost of needed modifications, and environmental impacts if any resulting from the implementation of the recommended plan of modification.

Sec. 5A. (a) On identifying a Bureau of Reclamation facility for modification, the Secretary shall provide to the project beneficiaries written notice—

(1) describing the need for the modification and the process for identifying and implementing the modification; and

(2) summarizing the administrative and legal requirements relating to the modification.

(b) The Secretary shall-

(1) provide project beneficiaries an opportunity to consult with the Bureau of Reclamation on the planning, design, and construction of the proposed modification; and

(2) in consultation with project beneficiaries, develop and provide timeframes for the consultation described in paragraph (1).

(c) (1) Prior to submitting the reports required under section 5, the Secretary shall consider any alternative submitted in writing, in accordance with the time-frames established under subsection (b), by a project beneficiary that has elected to consult with the Bureau of Reclamation on a modification.

(2) The Secretary shall provide to the project beneficiary a timely written response describing proposed actions, if any, to address the recommendation.

(3) The response of the Secretary shall be included in the reports required by section 5.

(d) The Secretary may waive 1 or more of the requirements of subsections (a), (b), and (c), if the Secretary determines that implementation of the requirement could have an adverse impact on dam safety or security.

Sec. 5B. ADDITIONAL PROJECT BENEFITS.

Notwithstanding section 3, if the Secretary determines that additional project benefits, including additional conservation storage capacity, are feasible and not inconsistent with the purposes of this Act, the Secretary is authorized to develop additional project benefits through the construction of new or supplementary works on a project in conjunction with the Secretary's activities under section 2 and subject to the conditions described in the feasibility study, provided that--

(1) the Secretary determines that developing additional project benefits through the construction of new or supplementary works on a project will promote more efficient management of water and water-related facilities;

(2) the feasibility study pertaining to additional project benefits has been authorized pursuant to section 8 of the Federal Water Project Recreation Act of 1965 (16 U.S.C. 4601-18); and

(3) the costs associated with developing the additional project benefits are allocated to the authorized purposes of the structure and repaid consistent with all provisions of Federal Reclamation law (the Act of June 17, 1902, 43 U.S.C. 371 et seq.) and Acts supplemental to and amendatory of that Act.'

Sec. 6. Notwithstanding any other provision of law, the Secretary of the Interior is authorized and directed to reimburse the Salt River Project for expenses incurred to modify the Bartlett Dam spillway and outfall channel, undertaken for safety of dam purposes pursuant to the provisions of this Act.

Sec. 7. Notwithstanding any other provision of law, the Secretary of the Interior is authorized and directed to pay and discharge that portion of the costs associated with the replacement of the American Falls Dam which the irrigation spaceholder contracting entities are obligated to pay pursuant to the implementation of the act of December 28, 1973 (87 Stat. 904), to treat such costs as costs incurred under this act, and to enter into contracts with the irrigation spaceholder contracting entities to accomplish the payment and discharge of such costs.

Sec. 8. The Congress hereby finds that the oversight provided for in section 3 of Public Law 95-46 has been accomplished with respect to the three temporary water service contracts between the United States and the Westlands Water District, as forwarded to Congress on October 4, 1978.

Sec. 9. (a) The Secretary of the Interior, after October 1, 1979, shall make a full investigation and study to determine the feasibility of carrying out a project to rehabilitate and improve the existing Santa Cruz Dam and Reservoir, Santa Cruz Irrigation District, New Mexico, including—



- (1) repairing and stabilizing the face of the dam;
- (2) enlarging spillway capacity to insure the safety of the dam; and
- (3) raising the dam to increase the storage capacity of Santa Cruz Reservoir.

(b) In carrying out the investigation and study authorized by subsection (a) the Secretary shall give full consideration to the potential for developing the Santa Cruz Dam and Reservoir as a unit or part of the San Juan-Chama project.

(c) The Secretary shall submit to the President and the Congress as soon as practicable the results of such investigation together with his recommendations.

(d) There are authorized to be appointed such sums as may be necessary to carry out the provisions of this bill.

Sec. 10. The fourth sentence of section 201 of the Act of September 30, 1968 (Public Law 90-537) is amended by striking out "from the date of this Act" and by inserting in lieu thereof the following: "from the date of the enactment of the Reclamation Safety of Dams Act of 1978."

Sec. 11. The Secretary of the Interior is hereby directed, notwithstanding terms of the Contract Numbers 14-06-100-7174, to make necessary repairs on the Scoggins Valley Road around Henry Hagg Lake, Oregon, at Federal expense pursuant to the authority of Public Law 89-596 which authorized the construction, operation, and maintenance of the Tualatin Reclamation Project in Oregon.

Sec. 12. Included within the scope of this Act are Fish Lake, Four Mile, Ochoco, Savage Rapids Diversion and Warm Springs Dams, Oregon; Como Dam, Montana; Little Wood River, Idaho; and related facilities which have been made a part of a Federal reclamation project by previous Acts of Congress. Coolidge Dam, San Carlos Irrigation Project, Arizona, shall also be included within the scope of this Act.

Sec. 13. The cost of foundation treatment, drainage and instrumentation work planned or underway at Twin Buttes, Texas, and Foss Dam, Oklahoma, shall be nonreimbursable and nonreturnable under Federal reclamation law.