HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: Committee on Natural Resources Republican Members
From: Water, Wildlife and Fisheries Subcommittee staff: Annick Miller, (annick.miller@mail.house.gov), Doug Levine (doug.levine@mail.house.gov), Kirby Struhar (kirby.struhar@mail.house.gov), and Thomas Shipman (thomas.shipman@mail.house.gov) x58331
Date: April 28, 2025
Subject: Oversight Hearing titled *"Advancing Federal Water and Hydropower Development: A Stakeholder's Perspective"*

The Subcommittee on Water, Wildlife and Fisheries will hold an oversight hearing titled *"Advancing Federal Water and Hydropower Development: A Stakeholder's Perspective"* on **Wednesday, April 30, 2025, at 10:00 a.m. (EDT) in 1324 Longworth House Office Building.**

Member offices are requested to notify Jackson Renfro (jackson.renfro@mail.house.gov) by 4:30 p.m. on Tuesday, April 29, 2025, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- Congressional Republicans have made modernizing federal water infrastructure a priority of the 118th and 119th Congresses.
- America's first renewable electricity source, hydropower, has been providing flexible, low-cost, and emission-free, baseload, renewable energy for more than 100 years.
- For generations, water resources projects have delivered multiple benefits to humans, fish, and wildlife.
- Examining the regulatory challenges that this infrastructure faces due to laws like the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the National Environmental Policy Act (NEPA) will help to inform solutions to safeguard this infrastructure, and ensure it delivers to communities for years to come.

II. WITNESSES

- **Mr. Jim Webb,** President and CEO, Lower Valley Energy, Afton, Wyoming
- **Mr. Jonathan Haswell,** Chief Business Officer, OceanWell LLC, Woodside, California
- **Mr. Patrick Sigl,** Director of Water and Natural Resources Law, Salt River Project, Phoenix, Arizona
- **Ms. Michelle Bushman**, Deputy Director and General Counsel, Western States Water Council, Murray, Utah *(Minority witness)*

III. BACKGROUND

Established in 1902, the U.S. Bureau of Reclamation (Reclamation) manages federal water projects for agricultural activities, municipal and industrial use, hydropower production, environmental purposes, and flood control and recreation for millions of people in the 17 western states.[1] Through its 294 reservoirs, 490 dams, 53 hydroelectric power plants, and approximately 10,000 miles of canals, Reclamation delivers 10 trillion gallons of water to millions of people across the 17 western states and provides irrigation to 10 million acres of farmland.[2] Reclamation is the largest wholesale supplier of water in the United States, and the second largest producer of renewable, baseload, hydroelectric power, providing 14 percent of the nation's hydroelectric capacity and generation.[3]

Status of Water Infrastructure

Reclamation operates more than 180 projects, varying in size, scale, and scope.[4] Most Reclamation projects were authorized before 1970, and several critical components throughout the Reclamation network are over 100 years old.

Aging Infrastructure

To address the challenges posed by Reclamation's aging infrastructure, the Omnibus Public Land Management Act of 2009 (P.L. 111-11) authorized Reclamation to establish a process to inspect project facilities,[5] fund extraordinary maintenance (XM) work, and execute contracts for extended repayment of the reimbursable costs.[6] Public Law 111-11 directed the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop guidelines for the inspection of facilities "which could pose a risk to public safety or property damage if such project facilities were to fail,"[7] and directed Reclamation to use the data and information gained from those inspections to provide recommendations to the operators of transferred works, determine inspection frequency, and provide additional information on potential risks to the areas surrounding project facilities.[8] The statute also gave Reclamation the authority to provide technical assistance to the operating entity of transferred works or projects whose control Reclamation has transferred to a different entity.[9]

The statute also authorized Reclamation to receive congressional appropriations for maintenance activities "that the Secretary determines to be reasonably required to preserve the structural

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[1] Bureau of Reclamation, Mission. https://www.usbr.gov/main/about/mission.html.
[2] Bureau of Reclamation. About Us – Fact Sheet. Last Updated January 19, 2024. https://www.usbr.gov/main/about/fact.html
[3] *Id*.
[4] Bureau of Reclamation. A Very Brief History. Last Updated August 15, 2018. https://www.usbr.gov/history/borhist.html
[5] Omnibus Public Lands Management Act of 2009 (P.L. 111-11). Section 9602. https://www.congress.gov/111/plaws/publ11/PLAW-111publ11.pdf
[6] Omnibus Public Lands Management Act of 2009 (P.L. 111-11). Section 9603. https://www.congress.gov/111/plaws/publ11/PLAW-111publ11.pdf
[7] Omnibus Public Lands Management Act of 2009 (P.L. 111-11). Section 9602. https://www.congress.gov/111/plaws/publ11/PLAW-111publ11.pdf
[8] *Id*.
[9] *Id*.

safety of the project facility."[10] Water users repay these funds over a period up to 50 years.[11] The Secretary, or the operating entity in the case of transferred works, may "carry out any emergency extraordinary operation and maintenance work on a project facility that the Secretary determines to be necessary to minimize the risk of imminent harm to public health or safety, or property."[12] For projects owned and operated by Reclamation, funding to conduct this maintenance activity is allocated for the authorized project purposes and is repaid within 50 years of when the maintenance activity is complete.

This program was amended in 2020 when Congress established a special account within the Department of the Treasury known as the Aging Infrastructure Account to provide funds and the repayment of funds to conduct this maintenance activity. Public Law 116-260[13] stated that projects eligible to receive funds under this account are those that qualify as extraordinary operation and maintenance, are classified as "major, non-recurring maintenance of a mission-critical asset,"[14] or are projects that are ineligible to be funded under the Reclamation Safety of Dams Act of 1978.[15]

P.L. 116-260 also established funding application guidelines, including a description of the project, the funding level, non-federal funding source, and the repayment period requested, among other criteria.[16]

Dam Safety Program

In addition to Reclamation's aging infrastructure authorities, the Reclamation Safety of Dams Act of 1978 (P.L. 95-578), which was later amended through the Reclamation Safety of Dams Act Amendments of 1984 (P.L. 98-404), provided Reclamation with the authority to modify its dams to ensure safety.[17] This created Reclamation's Dam Safety Program, which is comprised of two key components: the Safety of Dams Evaluation and Modification Program and the Department of the Interior (DOI) Dam Safety Program.[18]

Under these authorities, Reclamation takes several actions to protect its dams. First, Reclamation conducts a Safety Evaluation of Existing Dams (SEED).[19] If an evaluation is conducted and identifies a risk at a facility, Reclamation can begin a study of potential corrective actions and

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[10] *Id*.
[11] Congressional Research Service. Bureau of Reclamation Provisions in the Infrastructure Investment and Jobs Act (P.L. 117-58). March 21, 2024. https://www.congress.gov/crs-product/R47032
[12] Omnibus Public Lands Management Act of 2009 (P.L. 111-11). Section 9603. https://www.congress.gov/111/plaws/publ11/PLAW-111publ11.pdf
[13] P.L. 116-260. Consolidated Appropriations Act, 2021. Enacted December 27, 2020. https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf
[14] *Id.*
[15] *Id*.
[16] *Id*.
[17] Congressional Research Service. The Bureau of Reclamation's Aging Infrastructure. March 30, 2011. https://www.everycrsreport.com/files/20110330_RL34466_0b669078d5e963a2ab09f5b411612a11f56e8731.pdf
[18] *Id*.
[19] Hydro Leader. An Insider's Look at the Bureau of Reclamation's Dam Safety Program. https://hydroleadermagazine.com/an-insiders-look-at-the-bureau-of-reclamations-dam-safety-program/

alternatives.[20] Once a corrective action is identified, Reclamation submits a modification report to the Office of Management and Budget (OMB), and Congress for approval.[21]
By providing authorities and guidelines to Reclamation to examine potential vulnerabilities and safety concerns with its infrastructure, along with funding to make the necessary improvements and upgrades to respond to these concerns, protecting the communities and interests that rely on this infrastructure for water, power, and agriculture across the western United States.

The Infrastructure Investment and Jobs Act (IIJA) provided $500 million for the Dam Safety Program and $3.2 billion for aging infrastructure projects.[22]

Title Transfer

Title transfer plays an important role within Reclamation by promoting local control and reducing the federal government's role in local water management and decision-making. Many of the dams, canals, and hydropower plants constructed by Reclamation since its establishment in 1902 have had all or part of their responsibility for operation, maintenance, and replacement transferred to local project beneficiaries.[23]

In order for local management to be eligible for a title transfer, the transferee must: demonstrate the technical and financial capability to meet obligations; affirm that it has no plans to alter the maintenance or operation of the facility; affirm that there are no competing demands for the use of the facility; ensure that the transfer would not impact other contractors, stakeholders, and tribes; commit to abiding by existing contracts and agreements; assume all responsibility to commitments and agreements; and submit to a public comment period to address any ongoing issues within the facility.[24]

These transfers traditionally require Congressional approval. However, the John D. Dingell Jr. Conservation, Management and Recreation Act (P.L. 116-9) enacted on March 12, 2019, provided Reclamation the authority to transfer titles of certain facilities without separate and individual acts of Congress.[25] 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. This Act enabled Reclamation to transfer certain federal facilities provided that the transferee has completed payment of all capital costs.[26]

Flexibility for transfers of Reclamation facilities allows for efficient operation of federal water infrastructure. Since Reclamation's first title transfer took place at the Rio Grande Project in 1996, Reclamation has transferred or partially transferred a total of 46 projects and facilities to

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[20] *Id.*
[21] *Id.*
[22] P.L. 117-58. Infrastructure Investment and Jobs Act. November 15, 2021. https://www.congress.gov/bill/117th-congress/house-bill/3684/text
[23] Bureau of Reclamation. Title Transfer. Last Updated September 26, 2023. https://www.usbr.gov/title/
[24] Bureau of Reclamation. Title Transfer Categorical Exclusion. Last updated September 26, 2023. https://www.usbr.gov/title/ce.html
[25] P.L. 116-9. John D. Dingell, Jr. Conservation, Management, and Recreation Act. Enacted March 12, 2019. https://www.congress.gov/bill/116th-congress/senate-bill/47/all-actions
[26] Bureau of Reclamation. Title Transfer for Reclamation Project Facilities. March 4, 2022. https://www.usbr.gov/recman/cmp/cmp11-01.pdf

local ownership.[27] Promoting title transfer of Reclamation facilities to local ownership was a priority of House Republicans in the 118th Congress. The Swanson and Hugh Butler Reservoirs Land Conveyances Act (P.L. 118-185) was signed into law on December 23, 2024,[28] and provided for the conveyance of Reclamation lands to Hitchcock and Frontier Counties in Nebraska. This resolved a dispute between local vendors, the counties, and Reclamation and ensured that local small businesses may continue to operate on the transferred lands without impacting local water management.[29]

Construction Authorities

Traditionally, Reclamation's role in water project development has been limited to federally authorized water storage projects. For most of these, Reclamation has initially funded 100% of the costs for construction and has been repaid by project beneficiaries over a 40- to 50-year term.

Prior to 2016, Congress had not authorized significant new Reclamation water storage and conveyance projects since the late 1970s. In Section 4007 of the Water Infrastructure Improvements for the Nation (WIIN) Act, Congress enacted a new construction authority for Reclamation to build surface and groundwater storage and conveyance projects.[30]

These provisions made significant changes to Reclamation's role in developing water infrastructure projects. The WIIN Act authorized maximum federal support of 50% of total costs for certain approved federal water storage projects, as well as a maximum of 25% federal support for approved non-federal surface and groundwater storage projects. The WIIN Act authorities have expired, but funding is available for qualifying projects approved before January 1, 2021.

Instead of reauthorizing the WIIN Act authorities, the Democrat-controlled 117th Congress enacted the Infrastructure Investment and Jobs Act (IIJA), which created a new authority for surface storage, groundwater storage, and conveyance projects. While this authority is not subject to any sunset, the language did not include the ability for future projects to be eligible for feasibility studies or construction. In effect, these authorities are unusable once the currently authorized projects are completed. Additionally, IIJA created a new small storage and groundwater storage authority that allows for grant funding for projects with a maximum storage capacity of 30,000 acre-feet. These authorities expire on November 15, 2026.

Currently, Reclamation lacks authorities to build water infrastructure projects not already approved.

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[27] Bureau of Reclamation. Projects and Facilities Previously Transferred and Authorized. Last Updated April 8, 2025. https://www.usbr.gov/title/transferred.html

[28] P.L. 118-185. Swanson and Hugh Butler Reservoirs Land Conveyances Act. Enacted December 23, 2024. https://www.congress.gov/bill/118th-congress/house-bill/8413/all-info

[29] *Id*.

[30] P.L. 114-322. Water Infrastructure Improvements for the Nation (WIIN) Act. Enacted December 16, 2016. https://www.congress.gov/114/plaws/publ322/PLAW-114publ322.pdf

Hydropower Development

During the 20th century, the federal government invested significantly in water infrastructure throughout the western United States to reduce flood risks to communities, provide reliable water supplies, and generate dependable, renewable hydropower. Reclamation is the second largest hydropower producer in the United States, and this renewable, baseload resource has played a critical role in achieving Reclamation's mission to provide reliable, low-cost water and power to the arid west.[31]

The 53 hydroelectric power plants that Reclamation directly operates are critical to the electric grid across the 17 Reclamation states. Those plants generate roughly 40 million megawatt-hours (MWh) of electricity, or enough to power 3.8 million homes in the United States.[32] According to the Energy Information Administration (EIA), hydropower accounts for nearly 27% of renewable electricity generation and about 6% of total U.S. electricity generation.[33] As a reliable, emissions-free, baseload power source, hydropower will play a critical role in meeting the United States's future energy demand in the years and decades to come.

To carry out their energy production functions, Reclamation partners with the four Power Marketing Administrations (PMAs) operated by the Department of Energy. While Reclamation's facilities generate electricity, the four PMAs—Bonneville Power Administration (BPA), Western Area Power Administration (WAPA), Southeastern Power Administration (SEPA), and Southwestern Power Administration (SWPA)—operate the transmission and distribution infrastructure that bring the power to homes, businesses, and communities across the west. While Reclamation operates in the 17 western states, the PMAs transmit electricity to 34 states.[34]

The permitting process for non-federal hydropower development located within a Reclamation project falls under Reclamation's Lease of Power Privilege (LOPP) contract, the Federal Energy Regulatory Commission (FERC) license, or, in some instances, both.[35] Unless specified in the law, Reclamation projects authorized for federal hydropower development are within the jurisdiction of Reclamation, requiring a LOPP for non-federal development. A LOPP is a contractual authorization issued by Reclamation to a non-federal entity to use a Reclamation facility for electric power generation consistent with Reclamation project purposes. However, if a Reclamation project is not authorized for federal hydropower development, under current law, that development is within the jurisdiction of FERC, requiring a FERC license for non-federal development. As of January 2025, 16 projects operate under the LOPP process for a total of nearly 58,000 kilowatts.[36]

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[31] Bureau of Reclamation. Hydropower Strategic Plan, Fiscal Year 2021 – 2026. December 11, 2020. https://www.usbr.gov/power/Reclamation_Hydropower_Strategic_Plan_Fiscal_Year_2021-2026.pdf.
[32] Bureau of Reclamation. Hydropower Program. https://www.usbr.gov/power/who/who.html
[33] U.S. Energy Information Administration. Frequently Asked Questions (FAQs). What is U.S. electricity generation by energy source? Last updated: February 29, 2024. https://www.eia.gov/tools/faqs/faq.php?id=427&t=3
[34] U.S. Department of Energy. Power Marketing Administrations. https://www.energy.gov/ea/power-marketing-administrations
[35] Bureau of Reclamation, Lease of Power Privilege – Permitting Process Overview, May 2023. https://republicans-naturalresources.house.gov/UploadedFiles/LOPP_USBR_SEI_5-2023.pdf.
[36] Bureau of Reclamation. Lease of Power Privilege (LOPP) Projects. Revised January 2025. https://www.usbr.gov/power/LOPP/LOPP_Development_1_2025.pdf

In December 2020, the Trump administration released the Hydropower Strategic Plan for Fiscal Year 2021-2026,[37] which had three key goals: ensuring that Reclamation-produced hydropower continues to be part of the United States energy portfolio; obtaining customer satisfaction in hydropower deliveries; and cultivating a skilled and strategic workforce.[38] In embracing the value of hydropower, one of the Plan's goals was to "investigate new marketing strategies with Power Marketing Administration partners."[39]

Types of Hydropower Development

- Impoundment is the conventional and most common type of hydroelectric power plant, using dams to contain water in a reservoir. The contained water is released as needed, flowing through a turbine to generate electricity.

- A diversion, sometimes called a "run-of-river" facility, channels a portion of a river through a canal or a penstock to utilize the natural decline of the riverbed elevation to produce energy.[40]

- Pumped storage hydropower facilities use water and gravity to create and store energy. Pumped storage acts like a battery, storing energy to 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.[41]

- Conduit hydropower involves retrofitting existing water-carrying structures (like canals, pipelines, and aqueducts) with electricity-generating equipment. There are opportunities to use more than double conduit hydropower in the United States, which has the largest resource potential in the western states.[42] In 2013, the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act was signed into law, helping to boost the development of small U.S. hydropower projects.

Harnessing New Technologies

Snowpack Measurements

Snowpack plays a vital role in keeping reservoirs full. Winter and spring snowpack typically melt gradually throughout the year, flowing into and refilling reservoirs. During most years, the maximum snow-water equivalent[43] (SWE) denotes the annual peak of surface water resources. SWE is a key index for forecasting stream and river flow timing and amount, and for a wide

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[37] Bureau of Reclamation. Hydropower Strategic Plan Fiscal Year 2021-2026. December 11, 2020. https://www.usbr.gov/power/Reclamation_Hydropower_Strategic_Plan_Fiscal_Year_2021-2026.pdf
[38] *Id*.
[39] *Id*.
[40] Department of Energy. Water Power Technologies Office. Types of Hydropower Plants. https://www.energy.gov/eere/water/types-hydropower-plants.
[41] Department of Energy. Pumped Storage Hydropower. https://www.energy.gov/eere/water/pumped-storage-hydropower
[42] Department of Energy. Water Power Technologies Office. March 1, 2023. "New Assessment Finds Opportunities for Conduit Hydropower Development Across the United States". https://www.energy.gov/eere/water/articles/new-assessment-finds-opportunities-conduit-hydropower-development-across-united.
[43] Snow Water Equivalent is the amount of liquid water equivalent of a volume of snow

variety of water management decisions. Typically, these measurements are done manually by inserting a tube through the entire depth of the overlaying snow cover. However, new technologies have been developed to provide more accurate measurements.

For example, in 2012, the Turlock Irrigation District (TID) partnered with NASA to fly an airplane with light detection and ranging (LiDAR) technology over its entire watershed, taking millions of points of measurement to give a complete picture of the snowpack. This technology has allowed TID to manage its reservoirs better, saving water from being unnecessarily released due to poor models.[44]

In December 2020, Congress authorized the Snow Water Supply Forecast Program (P.L. 116-260, Sec. 1111) to enhance snow monitoring and subsequent water supply forecasts. Under this program, Reclamation provides cost-share on a competitive basis for a broad range of participants to conduct snow monitoring and water supply forecasting projects.

Deep-sea Water Farms

As the need for water supply throughout the country increases, some are turning to the process of desalination to supplement existing infrastructure and traditional techniques of water management and conservation. Desalination is already a popular option in the Middle East in countries like Israel, the United Arab Emirates and Saudi Arabia.[45] This technology is not without its challenges. Desalinated water is typically significantly more expensive than stored water, building desalination plants is a costly barrier to entry, the desalination process is very energy intensive, and even the largest desalination plants can only replace a portion of consumption.[46]

Recently, new water technologies have emerged aimed at developing deep-sea water farms that harness natural hydrostatic pressure at depths in excess of 400 meters (1,300 feet) to drive a high-pressure water purification method called reverse osmosis. In California, the Las Virgenes Municipal Water District has partnered with OceanWell, a water technology company, on a public/private partnership to research an approach that addresses water reliability through harvesting fresh water from the deep ocean.[47]

Challenges for Infrastructure and Permitting Issues

Federal agencies play an important role in our ability to access and develop water and hydropower resources due to the various environmental laws passed by Congress. Laws such as the National Environmental Policy Act (NEPA) and Endangered Species Act (ESA) impact the construction and maintenance of water infrastructure and day-to-day operations. For example, species listings and administrative rulemakings under the ESA, and subsequent litigation,

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[44] House Committee on Natural Resources. Testimony of Josh Weimer, Turlock Irrigation District. September 6, 2024. https://docs.house.gov/meetings/II/II13/20240906/117574/HMTG-118-II13-TTF-WeimerJ-20240906.pdf.
[45] E&E News. What's stopping desalination from going mainstream? E.A. Crunden. October 26, 2023. https://www.eenews.net/articles/whats-stopping-desalination-from-going-mainstream/
[46] *Id*.
[47] OceanWell. "Las Virgenes Municipal Water District and OceanWell Pilot Innovative Subsea Water Farm Technology" March 25, 2025. https://www.oceanwellwater.com/news/las-virgenes-municipal-water-district-and-oceanwell-pilot-innovative-subsea-water-farm-technology.

continue to profoundly impact federal activities such as federal dam operations, water deliveries, and access to water resources.

ESA challenges facing water and hydropower infrastructure include contentious and, in some cases, conflicting biological opinions (BiOps) for listed species, the cost of adhering to the BiOps, and issues surrounding the environmental baseline of existing projects.
The intent of a BiOp is to ensure the project does not reduce the likelihood of survival and recovery of an ESA-listed species. However, radical environmental organizations have utilized the citizen suit provisions and the vague nature of the ESA to litigate against water and hydropower projects.

Another regulatory challenge for many of these projects, particularly in the Pacific Northwest, is provisions that govern the "take" of marine mammals under the Marine Mammal Protection Act (MMPA, P.L. 92-522). The MMPA, like the ESA, is administered by both the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS). One challenge that the Pacific Northwest and its hydropower facilities have faced is salmon predation by sea lions and other pinnipeds. These pinnipeds have long been a major threat to the salmon population in the Columbia River basin. In 2018, Congress passed, and President Trump signed into law, the Endangered Salmon Predation Prevention Act (P.L. 115-329), allowing the Secretary of Commerce to authorize the take of sea lions in the Columbia River.[48] Examining additional ways to make the MMPA work more effectively to combat these challenges is critical to safeguarding hydropower infrastructure going forward.

Over the course of the 118th and 119th Congresses, the Committee on Natural Resources has prioritized reform to the ESA, MMPA, and NEPA. In February of 2025, the Subcommittee on Water, Wildlife and Fisheries held an oversight hearing, "Evaluating the Implementation of the Marine Mammal Protection Act and the Endangered Species Act." Information from that hearing can be found here, and the hearing memo can be found here. More recently, in March 2025, Chairman Westerman introduced H.R. 1897, the "ESA Amendments Act of 2025", which makes definitional changes to the ESA, focuses on species recovery, and seeks to streamline the permitting process, among other provisions. On March 25, 2025, the Committee held a legislative hearing on the bill; the hearing memo can be found here, and a title-by-title analysis of Chairman Westerman's legislation can be found here.

Finally, NEPA reform continues to be a significant priority for the Committee beginning with the work initiated in the 118th Congress through H.R. 1, the "Lower Energy Costs Act," which included several key reforms to the NEPA process, including the One Federal Decision framework, establishing timeframes for NEPA reviews, and litigation reform.[49] Another successful legislative initiative during the 118th Congress was the Fiscal Responsibility Act of 2023, which was signed into law under President Biden in June 2023 and represented the first significant reform to NEPA in over forty years. It narrowed the scope of impacts considered

[48] P.L. 115-329. Endangered Salmon Predation Prevention Act. Enacted December 18, 2018. https://www.congress.gov/115/statute/STATUTE-132/STATUTE-132-Pg4475.pdf
[49] House Natural Resources Committee Republicans. The Transparency, Accountability, Permitting and Production of (TAPP) American Resources Act. https://www.majorityleader.gov/uploadedfiles/natural_resources_overview.pdf

under NEPA, encouraged the adoption of categorical exclusions, set completion timelines, and provided page limits for both environmental impact statements and environmental assessments.[50]

Improving the implementation of these statutes, a key priority for Republicans this Congress, will provide certainty to many of the stakeholders involved in western water infrastructure, from hydropower developers to end water users.

Hydropower Relicensing

Under the Federal Power Act (FPA), the Federal Energy Regulatory Commission (FERC) has the authority to license non-federal hydropower facilities. FERC currently issues approximately 1,030 active, non-federal hydropower licenses.[51] While FERC itself is under the authorizing jurisdiction of the House Energy and Commerce Committee, the resource agencies under the jurisdiction of the House Committee on Natural Resources have imposed significant mandates on licenses and the process of granting them in the Federal Power Act and federal environmental statutes like the ESA.

Most licenses are valid for 30 to 50 years; however, the process to relicense facilities can be complex, expensive, lengthy, and uncertain.[52] According to the National Hydropower Association, relicensing a hydropower facility takes seven to ten years and nearly half of non-federal facilities are up for relicensing by 2035.[53] During licensing or re-licensing, FERC must consider the project's power aspect but must also give equal consideration to energy conservation, fish and wildlife, recreational opportunities, and other federally mandated needs.[54] Consultations under the ESA also play a key role during the relicensing process. The so-called "environmental baseline" utilized during the ESA Section 7 consultation process is particularly important during the relicensing process. The FWS and NMFS (the Services) have often used the environmental baseline to create a hypothetical environment that ignores existing infrastructure. This complicates relicensing because the Services may utilize this flawed interpretation to justify a BiOp that the existing infrastructure in question jeopardizes the continued existence of a listed species. Any jeopardy BiOp could put the future operations of any facility at risk due to increased costs, time delays, and mitigation measures.

Conclusion

These dynamics taken together—the challenges facing western water infrastructure, the importance of hydropower as part of the United States' electric grid, and the various permitting and regulatory requirements that these projects face from several different environmental statutes—require a robust examination of how to safeguard this critical infrastructure for the 21st century. Accomplishing this goal will achieve several objectives: enhancing American energy security by ensuring an all-of-the-above energy mix includes clean, renewable, baseload hydropower energy, and improving access to water resources for end users across the West.

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[50] House Committee on Natural Resources. Westerman Applauds Permitting Provisions in Fiscal Responsibility Act. May 30, 2023. https://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=413361
[51] Federal Energy Regulatory Commission. Licensing. https://www.ferc.gov/licensing
[52] Federal Energy Regulatory Commission. Hydropower Licensing—Get Involved: A Guide for the Public. https://www.ferc.gov/sites/default/files/2020-04/hydro-guide.pdf
[53] National Hydropower Association. The Importance of Streamlining Hydropower Licensing. June 5, 2023. https://www.hydro.org/powerhouse/article/the-importance-of-streamlining-hydropower-licensing-reform/
[54] *Id*.