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Reclamation Water Storage Projects: Section 4007 of the Water Infrastructure Improvements for the Nation Act

Section 4007 of the Water Infrastructure Improvements for the Nation Act (WIIN Act; P.L. 114-322), enacted in December 2016, created a new authority for the Bureau of Reclamation (Reclamation, part of the Department of the Interior) to build water storage projects in the western United States. Reclamation has since used this authority to further progress on a number of water storage projects and, as of late 2018, Congress had appropriated the full \$335 million in available budget authority. Some federal and state decisionmakers, local stakeholders, and advocacy groups are interested in extending the authority to make additional headway on water storage projects in the west. Others oppose federal funding for new water storage projects, in particular those in environmentally sensitive areas. Additionally, some have expressed concern that the new approach may result in nonfederal interests (especially those with access to capital) driving the portfolio of projects receiving federal investment.

Background

In the early and mid-20th century, Reclamation built hundreds of large dams and water diversion structures throughout the west. Traditionally, Reclamation's role in these project's development has been limited to geographically specific projects authorized in federal statute. Typically, the federal government, through discretionary appropriations to Reclamation, has provided full, up-front funding for the construction costs of these facilities. Project beneficiaries, which are irrigation water, municipal water, and hydropower contractors, repay their portion of project construction or development costs over a 40-50 year term. The amount recouped by the federal government typically depends on several factors, including contractors' ability to pay and the portion of project benefits that are nonreimbursable because they are considered federal in nature (e.g., fish and wildlife enhancements, flood control, recreation). Additionally, some beneficiaries, such as irrigators, are not charged interest on their repayment obligations. Coupled with the aforementioned nonreimbursable costs, the total amount repaid to the federal government for these projects is typically less than the full cost of construction.

Section 4007 of the WIIN Act

Section 4007 of the WIIN Act authorized a new structure for Reclamation to support water storage infrastructure projects. The bill authorized \$335 million in discretionary appropriations for new and improved federal and nonfederal water storage projects. Any appropriated funds are to be made available for qualifying water storage projects approved for construction prior to January 1, 2021 (see below discussion).

Funding for water storage project construction under Section 4007 is available for two primary project types:

1. "Federally-owned storage projects," defined to be any project to which the United States holds title and which was authorized to be constructed pursuant to Reclamation's laws and regulations. The federal cost share for these projects is limited to no more than 50%.
2. "State-led" storage projects, defined to be groundwater or surface water storage projects constructed, operated, and maintained by states or political subdivisions that are found to have a federal benefit in accordance with reclamation laws. The federal cost share for these projects is limited to no more than 25%.

For federal participation in a project under either designation, the Secretary of the Interior must find that the project is feasible and provides federal benefits proportionate to the federal government's cost share (i.e., a project providing 50% federal support appears to require that 50% of its benefits be federal in nature, whereas a project providing 25% must have 25% federal benefits). After the Secretary's recommended projects have been transmitted to Congress, the project must be designated by name in appropriations acts. Project sponsors also must agree to pay their portion of project costs up front (i.e., at the time of construction).

Differences from Traditional Reclamation Water Storage Construction Process

The Section 4007 water storage authority does not eliminate the traditional Reclamation project approval and finance process as a path to new project construction. However, it does contrast with that process. Instead of full, up-front federal financing for new projects (to be repaid over time), Section 4007 authorizes partial up-front federal funding for new federal and state-led projects in the amounts of 50% and 25%, respectively. Proponents of these changes argue they will stretch scarce federal funds and provide increased incentive for local involvement in storage projects. At the same time, in requiring a large initial cost share from nonfederal users, those who cannot afford the up-front, lump-sum payments required in the legislation may be deterred from pursuing projects that otherwise might have moved forward under the traditional project-finance model. Thus, the Section 4007 authority appears to be most attractive to those with access to the requisite capital.

The new authority also altered the role of authorizing and appropriations committees. Some in Congress have expressed concerns that Section 4007 gives tacit approval for Reclamation to move forward with construction *without* a high level of input from its congressional authorizing committees—the House Natural Resources Committee and the Senate Energy and Natural Resources Committee. Notably, in the traditional Reclamation project-development process, there is no statutory requirement for explicit approval of Reclamation construction projects by the authorizing committees; such a requirement exists only for studies (16 U.S.C. §460l-19). However, in practice, most projects have received an explicit statutory authorization for construction before obtaining construction appropriations from Congress. Section 4007 allows for a final decision approving construction of projects to be made as part of the appropriations process, so long as the section’s other eligibility requirements (e.g., secretarial recommendation, federal project costs are commensurate with federal benefits) are met. Thus, although Section 4007 may bypass the authorizing committees for some decisions related to new project construction (theoretically removing one hurdle of project development), it also adds additional requirements that must be met before a project can receive federal appropriations.

Only projects approved prior to the beginning of 2021 are eligible for federal funding under Section 4007. Thus, although the section technically represents a new authority for construction projects, the projects most likely to benefit are those that already had been under study.

Implementation

Reclamation received funding for Section 4007 projects in enacted Energy and Water Development appropriations acts for FY2017 (\$67 million), FY2018 (\$134 million), and FY2019 (\$134 million). This means that as of FY2019, the full \$335 million ceiling authorized for Section 4007 has been appropriated. Reclamation has allocated only \$33.3 million of FY2017 funding for specific projects, with no other funding allocations announced as of late 2018. In a January 2018 report to the House and Senate appropriations committees, Reclamation expressed its intent to use the FY2017 funding on the following seven projects (**Table 1**). Congress subsequently approved these projects in enacted appropriations for FY2018.

Table 1. Reclamation Section 4007 Water Storage Projects

Projects funded as of November 2018

Project (State)	Phase	FY2017 Funding
Shasta Dam and Reservoir Enlargement Project (CA)	Design, Pre-construction	\$20 million
North-of-Delta Offstream Storage Investigation/Sites Reservoir Storage Project (CA)	Study	\$4.35 million
Upper San Joaquin River Basin Storage Investigation (CA)	Study	\$1.5 million
Friant-Kern Canal Subsidence Challenges Project (CA)	Study	\$2.2 million
Boise River Basin Feasibility Study (ID)	Study	\$750,000
Yakima River Basin Water Enhancement Project—Cle Elum Pool Raise (WA)	Construction	\$2 million
Upper Yakima System Storage Feasibility Study (WA)	Study	\$2.5 million

Source: Bureau of Reclamation, *Report to House and Senate Committees on Appropriations*, January 2018.

Most of the projects under study have yet to be formally recommended for construction and would require additional funds to proceed in that phase. Thus, while authority has been used to move forward several projects, an increase in the appropriations ceiling likely would be required to complete these projects. Some projects, such as the Shasta Dam and Reservoir Enlargement Project, are controversial and have been opposed by some interests at the local and/or state level; others are less controversial. It is expected that in the future, Reclamation will detail the allocation of remaining Section 4007 appropriations, as well as what “type” of 4007 project (i.e., federal or state-led) might be expected at specific locations. Similar to the FY2017 funding, Congress must approve those recommendations through appropriations acts.

Section 4007 has yet to be implemented to complete construction of any projects, and it is unclear which of the current ongoing projects will be federal or state-led. If the state-led option eventually became prominent, the result might be a full or partial recasting of the federal role in water storage project construction, perhaps to something similar to a grant-making agency or an investor.

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