

Updated April 3, 2019

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 used this authority to further progress on a number of water storage projects. From FY2017 to FY2019, Congress appropriated the full \$335 million in available budget authority for these projects. A portion of these funds has been allocated at the project level by Reclamation.

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 to be located in environmentally sensitive areas. This In Focus discusses the Section 4007 authority and its status.

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 water project 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 irrigators, municipal water suppliers, 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 the portion of project benefits that are nonreimbursable because they are considered federal in nature (e.g., fish and wildlife enhancements, flood control, recreation), as well as adjustments for irrigation contractors' ability to pay. Additionally, irrigation beneficiaries are not charged interest on their repayment obligations. As a result, the total amount repaid to the federal government for these projects is typically less than the full cost of construction.

Process Under 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 act 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.

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 (e.g., 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). Project sponsors also must agree to pay their portion of project costs up front (i.e., at the time of construction). After the Secretary's recommended projects have been transmitted to Congress, the project must be designated by name in an enacted appropriations act.

Differences from Traditional Reclamation Water Storage Construction Process

Instead of full, up-front federal financing to be repaid over time, Section 4007 authorizes partial, up-front federal funding. 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 up-front, lump-sum payments may be deterred from pursuing new projects. Thus, the Section 4007 authority appears to be most attractive to those with access to the requisite capital.

The Section 4007 authority does not eliminate the "traditional" Reclamation project approval and finance process as a path to new project construction. However, any appropriations for the new authority could theoretically detract from appropriations that might otherwise be made for projects under the traditional approval and finance model.

Section 4007 significantly alters the role of congressional authorizing and appropriations committees in project development. It provides authority for Reclamation to move forward with construction *without* direct legislative approval from congressional authorizing committees—the House Natural Resources Committee and the Senate Energy and Natural Resources Committee. Instead, in requiring designation of Administration recommendations by name in appropriations acts, Section 4007 requires the final decision on federal funding to be made in the appropriations process. Thus, although Section 4007 bypasses the authorizing committees on some decisions related to new project construction (theoretically removing one hurdle of project development), it also adds a new requirement that must be met before a project can receive federal appropriations.

Only projects approved prior to 2021 are eligible for federal funding under Section 4007. Although it has been characterized as new authority for construction projects, as a practical matter most of the projects likely to receive Section 4007 funds were already under study as of 2016.

Recent Funding Allocations and Proposals

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). Thus, as of the enactment of the FY2019 Energy and Water appropriations bill, the full \$335 million in authorized funding for Section 4007 had been appropriated. In January 2018, Reclamation proposed project-level allocations for \$33 million of FY2017 appropriated funding for Section 4007 projects (**Table 1**). Congress subsequently approved these projects in the enacted Energy and Water Development appropriations bill for FY2018 (P.L. 115-141).

As of the enactment of FY2019 Energy and Water appropriations, the full \$335 million in authorized funding for Section 4007 had been appropriated: \$33 million of these funds had been allocated at the project level and approved by Congress.

In February 2019, Reclamation proposed \$75 million in allocations for a second round of Section 4007 projects (**Table 1**); some of these projects were previously approved for funding by Congress in 2018. Similar to 2018, these projects must be mentioned by name in enacted appropriations acts in order for Reclamation to expend the proposed funds.

Table 1. Proposed and Approved Section 4007 Water Storage Projects and Funding Allocations

Project (State)	2018 Allocated	2019 Proposed
Shasta Dam and Reservoir Enlargement Project (CA)	\$20 million	\$57 million
Sites Reservoir Storage Project (CA)	\$4.35 million	\$4 million
Upper San Joaquin River Basin Storage Investigation (CA)	\$1.5 million	-
Friant-Kern Canal Subsidence Challenges Project (CA)	\$2.2 million	\$2.35 million
Boise River Basin Feasibility Study (ID)	\$0.75 million	\$1.75 million
Yakima River Basin Water Enhancement Project—Cle Elum Pool Raise (WA)	\$2 million	\$4 million
Upper Yakima System Storage Feasibility Study (WA)	\$2.5 million	-
Del Puerto Water District Feasibility Study	-	\$1.5 million
Los Vaqueros Reservoir Phase 2 Expansion	-	\$2.16 million

Source: Bureau of Reclamation, Reports to House and Senate Committees on Appropriations, January 2018 and February 2019.

The project which has been recommended for the most funding, the Shasta Dam and Reservoir Enlargement Project, is controversial and has been opposed by the State of California. The Shasta project would raise Shasta Dam and expand capacity of the largest storage reservoir in California— Lake Shasta—a linchpin for the federal Central Valley Project (CVP). The project would create an additional 634,000 acre-feet of storage (51,000 acre-feet of yield, or additional water supplies) for CVP contractors. California state law prohibits any expansion of storage at Lake Shasta that would inundate state-protected portions of the McCloud River, a tributary of the reservoir.

Issues for Congress

In the future, Congress will be asked to approve or disapprove Administration recommendations for Section 4007 projects. These decisions will have important implications for future water storage priorities throughout the West.

The demand for Section 4007 funds is likely to significantly exceed remaining available funds. In any case, projects that benefit from the \$335 million available under the Section 4007 authority are unlikely to be completed absent the authorization and appropriation of additional federal funds. Thus, Congress may also be asked to consider increase and extension of this authority.

Charles V. Stern, Specialist in Natural Resources Policy

IFI0626

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