

**Statement for the Record**  
**U.S. Department of the Interior**  
**for the**  
**House Natural Resources Committee Legislative Field Hearing on**  
**HR 6247: the “Saving our Dams and New Hydropower Development and Jobs Act of 2012”**

On August 1, HR 6247 was introduced in the House of Representatives and referred to the Committee on Natural Resources. The Department of the Interior (Department) did not provide testimony on the bill at the August 15 legislative field hearing in Pasco, Washington. However, the legislation contains provisions which affect various aspects of federal water and power operations, planning and environmental compliance, and the Department offers the following summary of agency views on the bill.

There are several provisions in HR 6247 that the Department can support as being consistent with existing Reclamation activities. For instance, language in Section 3 of the bill defines hydropower and Bureau of Reclamation (Reclamation) dams as sources of “renewable energy.” The Administration agrees and has characterized hydropower as a renewable energy source.

The title and findings section of HR 6247 emphasize new hydropower development. The Department shares the sponsor’s interest in this objective, and since 2009, Reclamation has added approximately 80 megawatts of new power capacity to its portfolio through turbine replacements, generator rewinds, and other projects that improve efficiency at Reclamation power plants. Over the last three years another 36 megawatts of power capacity have been added to Reclamation facilities through lease or license with non-federal entities. In addition, since entering into a Memorandum of Understanding in 2010<sup>1</sup> with the Department of Energy and U.S. Army Corps of Engineers, the Department has documented opportunities to develop nearly two million megawatt hours of new hydropower generation, either through additions to existing Reclamation facilities or through construction of new conduit hydropower systems.

Some elements in HR 6247 are consistent with this shared emphasis on incentivizing new hydropower development. Section 4 amends the Reclamation Projects Act of 1939 to explicitly direct that, for leases to develop non-federal conduit hydropower at federal facilities, the Department “shall first offer the lease of power privilege to an irrigation district or water users association operating the applicable transferred work, or to the irrigation district or water users association receiving water from the applicable reserved work.” Reclamation already provides preference to existing irrigation districts and water user associations pursuant to Section 9(c) of the Reclamation Projects Act of 1939. The Department also notes this idea is consistent with

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<sup>1</sup> <http://www.usbr.gov/power/hydropower-mou/HydropowerMOU.pdf>

explicit wording in draft Reclamation Manual requirements for the offering of a Lease of Power Privilege (LOPP), circulated for public comment last fall in Section 7(D)(1) of Reclamation's draft Directive & Standard FAC TRMR-52.

Overall, while some of the provisions of HR 6247 increase incentives for new hydropower development, most of the bill's language contains legislative prohibitions or directives that the Department believes are harmful to the long-term flexibility needed in modern water management. The Department believes that clean energy development and environmental compliance can co-exist and that one should not exclude the other. For this reason, the Department offers the following views in opposition to HR 6247.

For example, Section 4 of HR 6247 proposes language to allow that LOPP revenue be applied "to construct any new storage at the project from which such power is derived." This unique allowance in HR 6247 that these revenues be earmarked "to construct any new storage at the project from which such power is derived" has unclear implications for the cost allocation process specific to each facility, and does not define the relationship between the leaseholder and any prospective beneficiaries of new surface storage. For this reason, the Department does not support this provision.

In addition, Section 4 of HR 6247 states that the National Environmental Policy Act (NEPA) "shall not apply to small conduit hydropower development[.]" The Department does not support language providing blanket waivers of environmental law or requirements, a view we have expressed to this Committee previously during the 112<sup>th</sup> Congress<sup>2</sup>. The Department believes that environmental protections should continue to apply in the context of new construction undertaken on federal lands, and will continue to apply NEPA through the use of categorical exclusions, environmental assessments, and environmental impact statements as appropriate.

Section 5 of the bill, which requires the reporting of information on the costs of compliance with environmental laws, would impose a significant workload and cost for agencies, particularly given difficulties attributing compliance costs to the specific provisions selected by a given Power Marketing Administration.

Other provisions in HR 6247 potentially confuse the expectations of agencies in modern natural resources management. For instance, Section 7 provides redundant authority that already exists for Reclamation to partner with non-federal entities to complete studies of water storage facilities. Section 4 of the bill prohibits the use of hydropower revenues for studying water storage, which is another redundancy since this is not something that Reclamation does under current law. Section 7 also goes on to authorize water storage projects for construction only if

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<sup>2</sup> Reclamation testimony on HR 2842, September 14, 2011; and Reclamation testimony on HR 795, June 23, 2011. <http://www.usbr.gov/newsroom/testimony/index.cfm?year=2011>

they use no federal funds for financing, constructing, or operating the projects and if, when constructed, they produce hydropower. The Department believes that the authorization process for new projects should hinge on consideration of all relevant factors, consistent with the issues raised during the feasibility study process.

Section 8 of HR 6247 directs that “agencies shall not bypass hydroelectric turbines if a State in which the affected facilities has declared a drought emergency or if any federal agency finds that such bypass could result in harming endangered fish by any means unless such bypasses are necessary for flood control purposes.” In every instance, running water through hydroelectric turbines generates revenue, provides renewable electricity and fosters good relationships among an agencies’ customer base. Consequently, agencies work diligently to minimize the amount of time spent bypassing hydroelectric turbines unless there are compelling safety, maintenance, environmental or other similarly compelling reasons. The Department strongly opposes HR 6247’s legislative proscription on how and when the hundreds of hydropower turbines in the federal portfolio are operated.

Section 9 of HR 6247 provides for a categorical exclusion for tree removal by a right-of-way holder within 500 feet of a right-of-way. This categorical exclusion is overly broad as defined in HR 6247, potentially allowing for the removal of trees unintended by the bill. Tree removal near rights-of-way may also impact other resources or land uses nearby and may require environmental analysis.

Sections 11, 12 and 13 of the bill mandate other legislative prohibitions on federal agencies, prohibiting hydropower dam removal, hydropower dam removal mitigation, and prohibiting any federal grants to entities involved in dam removal litigation, respectively. The Department is aware of opposition to dam removal as contemplated in the Klamath Basin Restoration Agreement and Klamath Hydroelectric Settlement Agreement. However, a construction or dam removal proposal requires a balanced consideration of all the facts and all of the objectives associated with the proposal. Do the long-term costs and environmental impacts of operating a hydropower dam outweigh the benefits for the watershed in question? What is the position of the state(s) where the facility is located? What would compliance with current federal and state environmental laws, or Indian trust obligations, require of the facility in question? HR 6247 would preserve hydropower dams at all costs, disallowing consideration of any of the facts that may come from asking questions of this nature. The Department does not believe that a blanket prohibition on considering dam removal makes those facts any less relevant. Nor does it serve the public interest to seal off areas of investigation by federal agencies responsible for upholding the wide variety of natural resource laws in the wide variety of settings where hydropower dams exist.

In addition, Sections 11 and 12 would significantly impact the Department’s ability to manage fish and wildlife resources and to work with partner organizations to carry out mitigation

activities related to dam removal. Section 14 of the bill would eliminate agencies' authorities under section 4(e) of the Federal Power Act, impacting the ability to fulfill mandates under other laws. For the Bureau of Land Management, this provision would impair compliance with certain mandates under the Federal Land Policy Management Act (FLPMA, Title 1, Sec. 201(8)), such as the protection of environmental and archaeological values.

The language in Section 13 would single out any non-governmental organization that "is involved in or was previously involved in certain litigation" that would result in any loss in hydropower generation. This provision is silent on the fact that many instances of litigation against the Department that effect water or power operations are initiated by traditional public water or power user organizations themselves. The Department questions the public policy behind legislation written to single out one set of organizations seeking redress through litigation.

Section 14 of HR 6247 proposes requirements for agencies consulting with FERC in the licensing process for hydropower projects. The requirements are limited to agencies with authorities under Sections 4(e) and 18 of the Federal Power Act (conditioning authority on federal reservations and fishways, respectively). Section 14(b) requires consulting agencies to file with FERC, within 30 days, any recommendations made directly to a proposed license applicant before the applicant has filed its application with FERC. The bureaus of the Department already file recommendations with FERC in response to various notices issued during the licensing process. This proposed new requirement will create an unnecessary administrative burden and increased costs for consulting agencies by duplicating FERC's requirements on license applicants of providing documentation of consultation in its filings; therefore, the Department objects to this provision.

Section 14(c) requires consulting agencies to consider project costs, electric generation capacity, system reliability, air quality, etc., and to provide documentation of such consideration in its filings with FERC. The Department's bureaus are mindful of the potential impacts of those conditions and file documentation of that consideration in the administrative record maintained by FERC. However, the land and fisheries managers do not have the expertise or resources to provide a complete evaluation of all the factors listed in Section 14(c). Further, if conditions or prescriptions have an undue impact on project economics or other factors, recourse is already available through the trial-type hearing and alternative conditions processes included in the Energy Policy Act of 2005 amendments to the Federal Power Act. In the alternative conditions process, consulting agencies are required to address the various factors listed in Section 14(c) if the alternative proposed would accomplish the same objectives with less cost or impact on other resources. Therefore, the Department objects to this provision as a duplicative and unnecessary burden on consulting agencies.

In summary, the Department supports some of the goals embodied in HR 6247 and we are pleased to document ongoing activities consistent with some of those goals. However, the bill does more to constrain operations and prohibit flexible planning than it does to advance those goals. As a result, the Department opposes HR 6247.