Arguments re: Sec. 80203 (Shasta Dam Raise) Byrd Rule Violations

Sec. 80203 of the House-passed budget reconciliation bill appropriates $2 billion to "increase the capacity of existing Bureau of Reclamation water storage facilities" and makes several provisions for the use of those funds. Even though it is not named specifically in the legislation, the provision is designed to enable a long-sought after project by some proponents to raise Shasta Dam and expand its reservoir in Northern California. **This section violates Sec. 313(b)(1)(D) of the Congressional Budget Act (also known as the "Byrd rule") and should be removed from the bill.**

Shasta Dam is a federally-owned, 602-foot dam that creates the largest reservoir in Northern California as part of the federally owned and operated Central Valley Project (CVP) by the Bureau of Reclamation (Reclamation). While the dam stores water for non-federal agricultural, municipal, and industrial users, its construction flooded the surrounding watershed, blocking spawning grounds previously used by Chinook salmon and decimating the traditional lands of the Winnemem Wintu Tribe. For years, agricultural water users have controversially sought to secure federal authorizations and funding to raise the dam to increase the reservoir's capacity by inundating additional parts of the McCloud River basin. Those efforts have been repeatedly opposed by the Winnemem Wintu Tribe, environmental groups, and even the state of California. Sec. 80203 of the House-passed reconciliation bill is their latest attempt.

Sec. 80203 violates the Byrd rule because the budgetary impacts of this section are merely incidental to its non-budgetary components. This section includes two provisions that would represent a significant departure from more than a century of Reclamation law, specifically the beneficiaries pay principle, wherein beneficiaries of Reclamation projects are required to pay the federal government back for at least a portion of the costs of Reclamation projects they benefit from (see e.g. CRS Report R46303.2, Bureau of Reclamation: History, Authorities, and Issues for Congress). Shasta Dam is a Reclamation project, one of hundreds since Reclamation was first formed under the Reclamation Act of 1902. Therefore, if it becomes law, Sec. 80203 will be a stark departure from existing Reclamation policy and set a dangerous new precedent for how public funding is allocated for Reclamation projects that benefit non-federal partners. That constitutes a major policy change that directly conflicts with the intent of the Byrd rule to keep matters that are "extraneous" to the budget out of the reconciliation process.

First, Sec. 80203 removes any cost-sharing requirement for the project. This would allow for the Shasta Dam raise project to qualify for funding under the Water Infrastructure Improvements for the Nation Act (WIIN), Reclamation's first significant new authority in decades for water storage project construction, which requires that eligible projects have non-federal cost-sharing partners in order to receive funding. The WIIN Act also requires conformance with environmental law and state and federal law (see e.g. WIIN §4007(b)(4), WIIN §4007(j)). The potential governmental cost-sharing partners for the Shasta Dam raise are prohibited by the California Wild & Scenic Rivers Act from assisting and cooperating with federal agencies in reservoir expansion projects that could adversely affect free-flowing reaches of the McCloud River or wild trout fishery. Sec. 80203 changes existing policy by exempting this funding from the WIIN Act's cost sharing requirement. This is therefore little more than an attempt to get around state law, undermine environmental law, and remove the guardrails provided in the WIIN Act for priority Reclamation projects.

Second, Sec. 80203 removes any requirement that the $2 billion in federal funding be reimbursable to taxpayers after benefiting irrigation districts over time through rates charged by Reclamation. This would overturn a longstanding precedent that requires reimbursement for publicly funded Reclamation projects. One recent example where that policy was upheld, and then further strengthened, was the 2021 Infrastructure Investments and Jobs Act (IIJA), which created a WIIN-like storage subsidy program authorizing $1.150 billion for water storage, groundwater storage and conveyance. The IIJA requires that reimbursable and non-reimbursable federal funding to federal projects comply with Reclamation law (*see* IIJA §40902(b)). The IIJA specifically does not allow for Shasta Dam raise construction funding (*see* IIJA §40902(2)(C)(i)), because the project does not produce much yield of additional water and would only benefit certain irrigations districts as part of the Central Valley Project, namely Westlands Water District. It is important to note that the IIJA Title IX appropriations expires at the end of the 2026 federal fiscal year (*See* IIJA §40901). By specifically eliminating the requirement for reimbursable costs, Sec. 80203 is undermining the intent of the IIJA and long-standing Reclamation law.

Sec. 80203 also violates the Byrd rule under the doctrine of targeting (*see* e.g., beginning on page 697). According to the Senate Parliamentarian, this precedent recognizes that "the policy of singling out one person/company/organization for a benefit or penalty outweighs the small budgetary change that it makes." Examples of provisions that the Parliamentarian has advised would violate the Byrd rule because they unduly targeted a narrow set of entities include provisions that sought to defund Planned Parenthood, mandate the approval of the Mountain Valley Pipeline, and award a grant to a specific transit project. Even provisions that do not directly name a targeted entity, but are nevertheless designed to impact that entity or a narrow set of similarly situated entities, have been found to violate the Byrd rule, as was the case in the Planned Parenthood and transit project examples mentioned above.

While Sec. 80203 does not specifically name the Shasta Dam project, it is clear that this project is the target of this provision. First, the estimated cost of the project closely aligns with the $2 billion figure allocated by the bill. The Bureau of Reclamation has previously estimated that the total cost of the project would be $1.4 billion in 2014 dollars, or approximately $1.9 billion in 2025 dollars. Second, the CBO score of the House Natural Resources Committee's provisions of the reconciliation bill states that "CBO expects that the funds would allow BOR to move forward with the Shasta Dam and Reservoir Enlargement Project by removing the requirement to engage a nonfederal partner." Finally, several local outlets (*see* e.g., The Sacramento Bee and Cal Matters) have reported that the provision was crafted to target the Shasta dam project. Because this section is specifically designed to target a specific project, Sec. 80203 violates the Byrd rule.