

Statement for the Record
Bureau of Land Management
U.S. Department of the Interior
Senate Committee on Energy and Natural Resources
Subcommittee on Water and Power
S. 4999, to Amend the Aquifer Recharge Flexibility Act
September 11, 2024

Thank you for the opportunity to provide this Statement for the Record on S. 4999, to amend the Aquifer Recharge Flexibility Act (Public Law 116-260; signed into law in 2020) to clarify a provision relating to conveyances for aquifer recharge purposes. While the Bureau of Land Management (BLM) supports managed aquifer recharge, and the goal of the bill to simplify authorizations for aquifer recharge, we have concerns with the bill as drafted and would like to work with the Sponsors on various modifications.

Background

Water resources on public lands managed by the BLM are diverse and among the most important and productive in the Nation. They produce sustained value to the American public; provide habitat for myriad species of plants, fish, and wildlife; offer ecosystem services such as drinking water, pollination, and nutrient cycling; attenuate effects of wildfires, floods, and drought; and are key to the vitality of local economies and communities. Water resources also support permitted activities on public lands, such as livestock grazing, energy and mineral development, timber production, and countless recreational opportunities. The BLM manages authorized uses on the public lands to ensure that water of sufficient quality and quantity is physically and legally available in a manner consistent with the Federal Land Policy and Management Act of 1976 (FLPMA), as well as the Clean Water Act (CWA) and other Federal, State, Tribal, and local laws and regulations.

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S. 4999 amends the Aquifer Recharge Flexibility Act to allow the holder of a right-of-way (ROW) grant approved by the BLM, acting on behalf of themselves or a third party, to use the existing ROW for the purposes of aquifer recharge without further authorization from the Secretary. The bill further clarifies that this use shall not be considered an expansion or modification.

Under the current provisions of the Aquifer Recharge Flexibility Act, the BLM reviews water permit applications issued under state law to determine whether a ROW grant holder can engage in aquifer recharge activities without additional authorization to expand or modify the operation of the ROW. As currently written, S. 4999 would allow a third party to “use” an existing ROW across BLM-managed lands for purposes of aquifer recharge without additional authorization. The BLM notes that the bill would effectively amend the terms of an existing FLPMA ROW grant to permit use by a third party that the BLM has not had an opportunity to assess for qualification to conduct aquifer recharge activities, such as their technical and financial capability, or to appropriately define the liability and management responsibilities among multiple users to ensure that the public does not incur liabilities and that public land resources are protected. The BLM recommends the bill be amended to require that any use of an existing

ROW grant by a third party must first include notification and authorization from the BLM, including adjudicating compliance with the statute, and providing notification to adjacent land users that may be impacted by the new use.

The BLM is further concerned that, as currently written, the bill conflicts with FLPMA's requirement to include terms and conditions on public land use authorizations to minimize damage to natural, scenic, and cultural resources. The BLM's participation in authorizing aquifer recharge on public lands allows the Bureau to manage aquatic habitat vital to a variety of multiple uses and cooperatively mitigate impacts to sensitive water resources. The BLM would like to work with the Sponsor to address these issues, as well as circumstances warranting additional analysis to ensure compliance with State and Tribal water quality standards consistent with the CWA and the Wild and Scenic Rivers Act. Lastly, the BLM would like to work with the sponsor on additional technical modifications, including those concerning the appropriate aquifer recharge infrastructure, the conveyance of new water rights for recharge purposes, and potential liability of the ROW grant holder and third parties.

Conclusion

Thank you again for the opportunity to provide this statement for the record on S. 4999.