



Wes Moore, Governor
Aruna Miller, Lt. Governor
Josh Kurtz, Secretary
David Goshorn, Deputy Secretary

February 20, 2024

BILL NUMBER: Senate Bill 837 – First Reader

SHORT TITLE: Deep Creek Lake-Lower Lake Levels -Requirement and Impact Study

DEPARTMENT’S POSITION: LETTER OF INFORMATION

EXPLANATION OF DEPARTMENT’S POSITION

The Department of Natural Resources, through COMAR Title 8, subtitle 08, is charged with maintaining a balance of ecological and recreational value in Deep Creek Lake. This balance is difficult to maintain fully where one use may impact another use. Furthermore, recreational value includes many different types of recreation from boating to fishing to water-skiing to hunting to nature photography, and balancing these types of recreation must also be considered.

DNR is committed to balancing these many different recreational uses and the high-quality ecological ecosystem in Deep Creek Lake.

BACKGROUND INFORMATION

Brookefield Power manages Deep Creek Lake levels per their MDE-issued Water Appropriation permit to constrain the level of the Lake between 2461 feet (above Sea Level; full pool level; peak height during the summer) and 2455.0 feet (above Sea Level) at the lowest level in the winter period. During the winter months addressed in this bill, the lake is to be maintained between 2455 feet and 2458 feet. Recent history has demonstrated that Brookefield Power prefers to maintain the lake level at the higher levels of the permitted levels, and above this requested lake level. This legislation forces Brookefield power to keep the lake level in the bottom half of the approved lake level rule band.

The legislation intends to lower the lake level for a 4-week period in order to freeze or kill the roots and seeds of nearshore sub-aquatic vegetation; hopefully, resulting in less dense SAV in the nearshore to assist in boating activities. If successful, this will also kill or limit the vegetation in the shallow regions of the Lake where SAV is used for juvenile fish habitat.

Deep Creek Lake is a highly utilized recreational asset to the State of Maryland. People enjoy boating via kayaks, jet skis, pontoon boats, sport boats, and fishing boats. People enjoy both the cold water and warm water fisheries managed within the lake and enjoy fishing year-round. Nature lovers also enjoy the serene nature presented in the Lake through photography, picnicking, swimming, and being in the outdoors peacefully. In the MDE Water Appropriation permit, Brookfield is also challenged to meet minimal flow releases and temperature enhancement releases, both of which support the high-quality trout stream downstream of the dam. While not a recreational activity on the Lake, the

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whitewater rafting community is supported by water releases from the Lake. The balance of all of these uses is difficult to support at all times.

Deep Creek Lake, through the use of the State Lakes Protection and Restoration Fund (sunsetting on June 30, 2025; current SB1094 / HB1347 request a two-year extension) has recently funded over \$500K per year for items such as shoreline erosion protection installation, invasive species removal, dredging of the Arrowhead cove, SAV restoration, and mercury mobilization studies, to help manage the Lake. This bill asks for the State Lakes Protection and Restoration Fund to fund two studies, which can only happen if the fund is extended and DNR chooses to remove funding from other projects. If the State Lakes Protection and Restoration fund is not extended, the costs would revert to the Deep Creek Lake Recreation and Management Fund which would not be able to support the current needs, the additional needs currently being funded by the State Lakes Protection and Restoration Fund, and these additional studies.

The two studies requested in this legislation are for SAV density and species identification; and, sediment studies in the areas of the lake that would get exposed in the lake drawdown. The intent is to demonstrate if lake level drawdowns reduce the amount of near shore SAV. These studies would need to be adapted from what the legislation states in order to meet the goals stated as they request SAV studies during the draw down period where SAV would not be able to be observed and identified.

BILL EXPLANATION

This bill would require MDE to modify the current “Water Appropriation and Use Permit” to constrain the level of the lake to a level currently within the use permit, but at the lower half of the use permit for a period of 4 weeks between November and February beginning in 2024 and ending at the end of 2028.

DNR is required annually to conduct a study during these lowered water times on SAV and sediment in the exposed portions of the Lake, and then publish these results in a report due annually in the month of June for 2025 through 2029.

Any entities publishing permits, regulations, etc. regarding Deep Creek Lake should consider the results of the DNR-generated reports in their decisions.

The funding for the studies and reports is to be provided by the State Lakes Restoration and Protection Fund or the Deep Creek Lake Recreation and Management fund, or any other funding source.