

Calendar No. 516

113TH CONGRESS
2D SESSION

S. 2010

[Report No. 113–229]

To amend the Water Conservation and Utilization Act to authorize the development of non-Federal hydropower and issuance of leases of power privileges at projects constructed pursuant to the authority of the Water Conservation and Utilization Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2014

Mr. BARRASSO introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

JULY 31, 2014

Reported by Ms. LANDRIEU, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend the Water Conservation and Utilization Act to authorize the development of non-Federal hydropower and issuance of leases of power privileges at projects constructed pursuant to the authority of the Water Conservation and Utilization Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Bureau of Reclamation
3 Conduit Hydropower Development Equity and Jobs Act”.

4 **SEC. 2. AMENDMENT.**

5 Section 9 of the Act entitled “An Act authorizing
6 construction of water conservation and utilization projects
7 in the Great Plains and arid semiarid areas of the United
8 States”, approved August 11, 1939 (16 U.S.C. 590z-7;
9 commonly known as the “Water Conservation and Utiliza-
10 tion Act”), is amended—

11 (1) by striking “In connection with” and insert-
12 ing “(a) In connection with”; and

13 (2) by adding at the end the following:

14 “(b) Notwithstanding subsection (a), the Secretary is
15 authorized to enter into leases of power privileges for elec-
16 tric power generation in connection with any project con-
17 structed under this Act, and shall have authority in addi-
18 tion to and alternative to any authority in existing laws
19 relating to particular projects, including small conduit hy-
20 dropower development.

21 “(c) When entering into leases of power privileges
22 under subsection (b), the Secretary shall use the processes
23 applicable to such leases under section 9(c) of the Ree-
24 lamation Project Act of 1939 (43 U.S.C. 485h(c)).

25 “(d) Lease of power privilege contracts shall be at
26 such rates as, in the Secretary’s judgment, will produce

1 revenues at least sufficient to cover the appropriate share
 2 of the annual operation and maintenance cost of the
 3 project and such fixed charges, including interest, as the
 4 Secretary deems proper. Lease of power privilege con-
 5 tracts shall be for periods not to exceed 40 years.

6 “(e) No findings under section 3 shall be required
 7 for a lease under subsection (b).

8 “(f) All right, title, and interest to installed power
 9 facilities constructed by non-Federal entities pursuant to
 10 a lease of power privilege, and direct revenues derived
 11 therefrom, shall remain with the lessee unless otherwise
 12 required under subsection (g).

13 “(g) Notwithstanding section 8, lease revenues and
 14 fixed charges, if any, shall be covered into the Reclamation
 15 Fund to be credited to the project from which those reve-
 16 nues or charges were derived.

17 “(h) When carrying out this section, the Secretary
 18 shall first offer the lease of power privilege to an irrigation
 19 district or water users’ association operating the applica-
 20 ble transferred conduit, or to the irrigation district or
 21 water users’ association receiving water from the applica-
 22 ble reserved conduit. The Secretary shall determine a rea-
 23 sonable timeframe for the irrigation district or water
 24 users’ association to accept or reject a lease of power privi-
 25 lege offer. If the irrigation district or water users’ associa-

tion elects not to accept a lease of power privilege offer under subsection (b), the Secretary shall offer the lease of power privilege to other parties using the processes applicable to such leases under section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)).

“(i) The Bureau of Reclamation shall apply its categorical exclusion process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to small conduit hydropower development under this section, excluding siting of associated transmission facilities on Federal lands.

“(j) Nothing in this section shall obligate the Western Area Power Administration or the Bonneville Power Administration to purchase or market any of the power produced by the facilities covered under this section and none of the costs associated with production or delivery of such power shall be assigned to project purposes for inclusion in project rates.

“(k) Nothing in this section shall alter or impede the delivery and management of water by Bureau of Reclamation facilities, as water used for conduit hydropower generation shall be deemed incidental to use of water for the original project purposes. Lease of power privilege shall be made only when, in the judgment of the Secretary, the exercise of the lease will not be incompatible with the pur-

1 poses of the project or division involved and shall not cre-
 2 ate any unmitigated financial or physical impacts to the
 3 project or division involved. The Secretary shall notify and
 4 consult with the irrigation district or legally organized
 5 water users' association operating the transferred conduit
 6 in advance of offering the lease of power privilege and
 7 shall prescribe such terms and conditions necessary to
 8 adequately protect the planning, design, construction, op-
 9 eration, maintenance, and other interests of the United
 10 States and the project or division involved.

11 “(l) Nothing in this section shall alter or affect any
 12 agreements in effect on the date of the enactment of the
 13 Bureau of Reclamation Conduit Hydropower Development
 14 Equity and Jobs Act for the development of conduit hy-
 15 dropower projects or disposition of revenues.

16 “(m) In this section:

17 “(1) The term ‘conduit’ means any Bureau of
 18 Reclamation tunnel, canal, pipeline, aqueduct, flume,
 19 ditch, or similar manmade water conveyance that is
 20 operated for the distribution of water for agricul-
 21 tural, municipal, or industrial consumption and not
 22 primarily for the generation of electricity.

23 “(2) The term ‘irrigation district’ means any ir-
 24 rigation, water conservation or conservancy, multi-
 25 county water conservation or conservancy district, or

1 any separate public entity composed of two or more
 2 such districts and jointly exercising powers of its
 3 member districts.

4 “(3) The term ‘reserved conduit’ means any
 5 conduit that is included in project works the care,
 6 operation, and maintenance of which has been re-
 7 served by the Secretary, through the Commissioner
 8 of the Bureau of Reclamation.

9 “(4) The term ‘transferred conduit’ means any
 10 conduit that is included in project works the care,
 11 operation, and maintenance of which has been trans-
 12 ferred to a legally organized water users’ association
 13 or irrigation district.

14 “(5) The term ‘small conduit hydropower’
 15 means a facility capable of producing 5 megawatts
 16 or less of electric capacity.”.

17 **SECTION 1. SHORT TITLE.**

18 *This Act may be cited as the “Bureau of Reclamation*
 19 *Hydropower Development Equity and Jobs Act”.*

20 **SEC. 2. AMENDMENT.**

21 *Section 9 of the Act of August 11, 1939 (commonly*
 22 *known as the “Water Conservation and Utilization Act”)*
 23 *(16 U.S.C. 590z–7) is amended—*

24 *(1) by striking “In connection with” and insert-*
 25 *ing “(a) IN GENERAL.—In connection with”; and*

1 (2) *by adding at the end the following:*

2 “(b) *CERTAIN LEASES AUTHORIZED.—*

3 “(1) *IN GENERAL.—Notwithstanding subsection*
4 *(a), the Secretary—*

5 “(A) *may enter into leases of power privi-*
6 *leges for electric power generation in connection*
7 *with any project constructed pursuant to this*
8 *Act; and*

9 “(B) *shall have authority over any project*
10 *constructed pursuant to this Act in addition to*
11 *and alternative to any existing authority relat-*
12 *ing to a particular project.*

13 “(2) *PROCESS.—In entering into a lease of*
14 *power privileges under paragraph (1), the Secretary*
15 *shall use the processes, terms, and conditions applica-*
16 *ble to the lease under section 9(c) of the Reclamation*
17 *Project Act of 1939 (43 U.S.C. 485h(c)).*

18 “(3) *FINDINGS NOT REQUIRED.—No findings*
19 *under section 3 shall be required for a lease under*
20 *paragraph (1).*

21 “(4) *RIGHTS RETAINED BY LESSEE.—Except as*
22 *otherwise provided under paragraph (5), all right,*
23 *title, and interest in and to installed power facilities*
24 *constructed by non-Federal entities pursuant to a*

1 *lease under paragraph (1), and any direct revenues*
2 *derived from that lease, shall remain with the lessee.*

3 *“(5) LEASE CHARGES.—Notwithstanding section*
4 *8, lease charges shall be credited to the project from*
5 *which the power is derived.*

6 *“(6) EFFECT.—Nothing in this section alters or*
7 *affects any agreement in effect on the date of enact-*
8 *ment of the Bureau of Reclamation Hydropower De-*
9 *velopment Equity and Jobs Act for the development*
10 *of hydropower projects or disposition of revenues.”.*

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