

113TH CONGRESS
2D SESSION

S. 2034

To authorize the Secretary of the Interior to establish a program to facilitate the transfer to non-Federal ownership of appropriate reclamation projects or facilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2014

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

A BILL

To authorize the Secretary of the Interior to establish a program to facilitate the transfer to non-Federal ownership of appropriate reclamation projects or facilities, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reclamation Title
5 Transfer Act of 2014”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) CONVEYED PROPERTY.—The term “con-
2 veyed property” means an eligible facility that has
3 been conveyed to a qualifying entity under section
4 3(b)(1).

5 (2) ELIGIBLE FACILITY.—

6 (A) IN GENERAL.—The term “eligible fa-
7 cility” means a reclamation project or facility,
8 or a portion of a reclamation project or facility,
9 for which the United States holds title and that
10 meets the criteria for potential transfer estab-
11 lished under section 5(a).

12 (B) INCLUSIONS.—The term “eligible facil-
13 ity” includes dams and appurtenant works, in-
14 frastructure, recreational facilities, buildings,
15 distribution and drainage works, and associated
16 land or interests in land or water.

17 (3) QUALIFYING ENTITY.—The term “quali-
18 fying entity” means a State, unit of local govern-
19 ment, Indian tribe, municipal corporation, quasi-mu-
20 nicipal corporation, or other entity (such as a water
21 district) that, as determined by the Secretary, has
22 the capacity to continue to manage the conveyed
23 property for the same purposes that the conveyed
24 property has been managed for under the reclama-
25 tion laws.

1 (4) SECRETARY.—The term “Secretary” means
 2 the Secretary of the Interior, acting through the
 3 Commissioner of the Bureau of Reclamation.

4 **SEC. 3. AUTHORIZATION OF TITLE TRANSFER PROGRAM.**

5 (a) ESTABLISHMENT OF TITLE TRANSFER PRO-
 6 GRAM.—The Secretary may establish a program that—

7 (1) identifies and analyzes the potential for
 8 public benefits from the transfer out of Federal own-
 9 ership of eligible facilities, including analyses of the
 10 financial, operational, and environmental character-
 11 istics of the eligible facilities proposed for transfer;
 12 and

13 (2) facilitates the transfer to qualifying entities
 14 of the title to eligible facilities to promote more effi-
 15 cient management of water and water-related facili-
 16 ties.

17 (b) AUTHORIZATION TO TRANSFER TITLE TO ELIGI-
 18 BLE FACILITIES.—

19 (1) IN GENERAL.—The Secretary, without fur-
 20 ther authorization from Congress, may convey to a
 21 qualifying entity all right, title, and interest of the
 22 United States in and to any eligible facility, subject
 23 to paragraphs (2) through (6).

24 (2) RIGHT OF FIRST REFUSAL.—If the entity
 25 that operates an eligible facility at the time that the

1 Secretary attempts to facilitate the transfer of title
2 under subsection (a)(2) is a qualifying entity, that
3 entity shall have the right of first refusal to receive
4 the conveyance under paragraph (1).

5 (3) RESERVATION OF EASEMENT.—The Sec-
6 retary may reserve an easement over a conveyed
7 property if the Secretary determines that the ease-
8 ment is necessary for the management of any inter-
9 ests retained by the Federal Government under this
10 Act.

11 (4) MINERAL INTERESTS.—

12 (A) RETENTION.—The Secretary shall re-
13 tain any mineral interests associated with a
14 conveyed property.

15 (B) MANAGEMENT.—The mineral interests
16 retained under subparagraph (A) shall be man-
17 aged—

18 (i) consistent with Federal law; and

19 (ii) in a manner that would not inter-
20 fere with the purposes for which the rec-
21 lamation project was authorized.

22 (5) INTERESTS IN WATER.—No interests in
23 water shall be conveyed under this Act unless the
24 conveyance is provided for in writing in an agree-

1 ment between the Secretary and the qualifying enti-
2 ty.

3 (6) ADDITIONAL CRITERIA.—Title transfers
4 under this section shall be carried out consistent
5 with—

6 (A) this Act; and

7 (B) any additional criteria or procedures
8 that the Secretary determines to be in the pub-
9 lic interest.

10 (c) RESTRICTIONS ON USE.—As a condition of ob-
11 taining title to an eligible facility, the qualifying entity
12 shall agree to use the eligible facility for substantially the
13 same purposes the eligible facility is being used for during
14 the period in which the eligible facility was under reclama-
15 tion ownership.

16 **SEC. 4. COMPLIANCE WITH ENVIRONMENTAL AND HIS-**
17 **TORIC PRESERVATION LAWS.**

18 Before conveying eligible facilities under this Act, the
19 Secretary shall complete all actions required under all ap-
20 plicable laws, including—

21 (1) the National Environmental Policy Act of
22 1969 (42 U.S.C. 4321 et seq.);

23 (2) the Endangered Species Act of 1973 (16
24 U.S.C. 1531 et seq.); and

1 (3) the National Historic Preservation Act (16
2 U.S.C. 470 et seq.).

3 **SEC. 5. ELIGIBILITY CRITERIA.**

4 (a) ESTABLISHMENT.—The Secretary shall establish
5 criteria for determining whether facilities are eligible for
6 conveyance under this Act.

7 (b) MINIMUM REQUIREMENTS.—

8 (1) AGREEMENT OF QUALIFYING ENTITY.—The
9 criteria established under subsection (a) shall in-
10 clude a requirement that a qualifying entity agree—

11 (A) to accept title to the eligible facility;

12 (B) to accept all liability for the eligible fa-
13 cility, except as otherwise provided in section 6;

14 (C) to use the eligible facility for substan-
15 tially the same purposes the eligible facility is
16 being used for at the time the Secretary evalu-
17 ates the potential transfer; and

18 (D) to provide, as consideration for the as-
19 sets to be conveyed, compensation to the United
20 States in an amount that is the equivalent of
21 the net present value of any repayment obliga-
22 tion to the United States or other income
23 stream the United States derives from the eligi-
24 ble facility to be transferred as of the date of
25 the transfer.

1 (2) DETERMINATIONS OF SECRETARY.—

2 (A) IN GENERAL.—The criteria established
3 under subsection (a) shall include a require-
4 ment that the Secretary, in consultation with
5 the Governor of any State in which the project
6 is located, determine that the proposed trans-
7 fer—

8 (i) would not have an unmitigated sig-
9 nificant effect on the environment;

10 (ii) is uncomplicated, based on, as de-
11 termined by the Secretary—

12 (I) there being no significant op-
13 position to the proposed transfer;

14 (II) the eligible facility not being
15 hydrologically integrated with other
16 Federal or non-Federal water proj-
17 ects;

18 (III) the eligible facility not gen-
19 erating significant quantities of elec-
20 tric power sold to, or eligible to be
21 sold to, power customers (other than
22 the project itself); and

23 (IV) the parties to the transfer
24 being able to reach agreement on
25 legal, institutional, and financial ar-

1 rangements relating to the convey-
 2 ance;

3 (iii) is consistent with the responsi-
 4 bility of the Secretary—

5 (I) to protect land and water re-
 6 sources held in trust for federally rec-
 7 ognized Indian tribes; and

8 (II) to ensure compliance with
 9 any applicable international treaties
 10 and interstate compacts; and

11 (iv) is in the financial interest of the
 12 United States.

13 (B) PUBLICATION.—The Secretary shall
 14 make publically available information on how
 15 the Secretary made the determinations under
 16 subparagraph (A).

17 (3) STATUS OF RECLAMATION LAND.—The cri-
 18 teria established under subsection (a) shall require
 19 that any land to be conveyed out of Federal owner-
 20 ship under this Act is—

21 (A) land acquired by the Secretary; or

22 (B) land withdrawn by the Secretary, only
 23 if—

24 (i) the Secretary determines in writing
 25 that the withdrawn land is encumbered by

1 reclamation project facilities to the extent
2 that the withdrawn land is unsuitable for
3 return to the public domain; and
4 (ii) the qualifying entity agrees to pay
5 fair market value for the withdrawn land
6 to be conveyed.

7 **SEC. 6. LIABILITY.**

8 (a) IN GENERAL.—Except as provided in subsection
9 (b), effective beginning on the date of conveyance of any
10 eligible facility under this Act, the United States shall not
11 be liable under any law for damages of any kind arising
12 out of any act, omission, or occurrence based on the prior
13 ownership or operation of the conveyed property.

14 (b) LIMITATION.—Notwithstanding subsection (a),
15 the United States shall retain the responsibilities and au-
16 thorities of the United States for a conveyed property
17 based on the prior ownership or operation of the conveyed
18 property by the United States under Federal environ-
19 mental laws, including the Comprehensive Environmental
20 Response, Compensation, and Liability Act of 1980 (42
21 U.S.C. 9601 et seq.).

22 **SEC. 7. BENEFITS.**

23 After a conveyance of an eligible facility under this
24 Act—

1 (1) the conveyed property shall no longer be
2 considered to be a part of a reclamation project; and

3 (2) the entity to which the conveyed property is
4 conveyed shall not be eligible to receive any benefits
5 with respect to the conveyed property (including
6 project power), except for benefits that would be
7 available to a similarly situated entity with respect
8 to property that is not part of a reclamation project.

9 **SEC. 8. COMPLIANCE WITH OTHER LAWS.**

10 (a) IN GENERAL.—After a conveyance of title under
11 this Act, the qualifying entity to which the property is con-
12 veyed shall comply with all applicable Federal, State, and
13 local laws (including regulations) in the operation of the
14 conveyed property.

15 (b) EFFECT.—

16 (1) IN GENERAL.—Nothing in this Act shall af-
17 fect or interfere with—

18 (A) the laws of any State relating to the
19 control, appropriation, use, or distribution of
20 water used in irrigation or for any other pur-
21 pose;

22 (B) any vested right acquired under State
23 law; or

24 (C) any interstate compact, decree, or ne-
25 gotiated water rights agreement.

1 (2) CONFORMITY WITH STATE LAW.—In car-
2 rying out this Act, the Secretary shall proceed in
3 conformity with the State laws and rights acquired
4 under State law described in paragraph (1).

5 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

6 (a) IN GENERAL.—There are authorized to be appro-
7 priated to carry out this Act such sums as are necessary.

8 (b) USE OF AMOUNTS.—Amounts made available
9 under subsection (a) may be used—

10 (1) to carry out the investigations to carry out
11 this Act; and

12 (2) to pay any other costs associated with con-
13 veyances under this Act, including an appropriate
14 Federal share of the costs of compliance with the
15 National Environmental Policy Act of 1969 (42
16 U.S.C. 4321 et seq.) and other applicable law.

17 (c) NOT TREATED AS PROJECT COSTS.—Expendi-
18 tures made by the Secretary under this Act—

19 (1) shall not be a project cost assignable to a
20 reclamation project; and

21 (2) shall be nonreimbursable.

1 **SEC. 10. TERMINATION OF AUTHORITY.**

2 The authority of the Secretary to carry out convey-
3 ances under this Act shall terminate 15 years after the
4 date of enactment of this Act.

○