

Calendar No. 68

113TH CONGRESS
1ST SESSION

S. 306

To authorize all Bureau of Reclamation conduit facilities for hydropower development under Federal Reclamation law, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2013

Mr. BARRASSO (for himself, Mr. RISCH, Mr. ENZI, Mr. CRAPO, and Mr. FLAKE) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

MAY 13, 2013

Reported by Mr. WYDEN, with an amendment

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

A BILL

To authorize all Bureau of Reclamation conduit facilities for hydropower development under Federal Reclamation law, 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 “~~Bureau of Reclamation~~
5 ~~Small Conduit Hydropower Development and Rural Jobs~~
6 ~~Act~~”.

1 **SEC. 2. AUTHORIZATION.**

2 Section 9(e) of the Reclamation Project Act of 1939
3 (~~43~~ U.S.C. 485h(e)) is amended—

4 (1) by striking “The Secretary is authorized to
5 enter into contracts to furnish water” and inserting
6 the following:

7 “(1) The Secretary is authorized to enter into
8 contracts to furnish water”;

9 (2) by striking “(1) shall” and inserting “(A)
10 shall”;

11 (3) by striking “(2) shall” and inserting “(B)
12 shall”;

13 (4) by striking “respecting the terms of sales of
14 electric power and leases of power privileges shall be
15 in addition and alternative to any authority in exist-
16 ing laws relating to particular projects” and insert-
17 ing “respecting the sales of electric power and leases
18 of power privileges shall be an authorization in addi-
19 tion to and alternative to any authority in existing
20 laws related to particular projects, including small
21 conduit hydropower development”;

22 (5) by adding at the end the following:

23 “(2) When carrying out this subsection,
24 the Secretary shall first offer the lease of power
25 privilege to an irrigation district or water users
26 association operating the applicable transferred

1 work, or to the irrigation district or water users
2 association receiving water from the applicable
3 reserved work. The Secretary shall determine a
4 reasonable time frame for the irrigation district
5 or water users association to accept or reject a
6 lease of power privilege offer.

7 “(3) The National Environmental Policy
8 Act of 1969 (42 U.S.C. 4321 et seq.) shall not
9 apply to small conduit hydropower development,
10 excluding siting of associated transmission on
11 Federal lands, under this subsection.

12 “(4) The Power Resources Office of the
13 Bureau of Reclamation shall be the lead office
14 of small conduit hydropower activities con-
15 ducted under this subsection.

16 “(5) Nothing in this subsection shall obli-
17 gate the Western Area Power Administration,
18 the Bonneville Power Administration, or the
19 Southwestern Power Administration to pur-
20 chase or market any of the power produced by
21 the facilities covered under this subsection and
22 none of the costs associated with production or
23 delivery of such power shall be assigned to
24 project purposes for inclusion in project rates.

1 “(6) Nothing in this subsection shall alter
2 or impede the delivery and management of
3 water by Bureau of Reclamation facilities, as
4 water used for conduit hydropower generation
5 shall be deemed incidental to use of water for
6 the original project purposes. Lease of power
7 privilege shall be made only when, in the judg-
8 ment of the Secretary, the exercise of the lease
9 will not be incompatible with the purposes of
10 the project or division involved, nor shall it cre-
11 ate any unmitigated financial or physical im-
12 pacts to the project or division involved, and
13 shall be on such terms and conditions as in the
14 judgment of the Secretary in consultation with
15 the appropriate irrigation district or water
16 users association, will adequately protect the
17 planning, design, construction, operation, main-
18 tenance, and other interests of the United
19 States and the project or division involved.

20 “(7) Nothing in this subsection shall alter
21 or affect any existing agreements for the devel-
22 opment of conduit hydropower projects or dis-
23 position of revenues.

24 “(8) In this subsection:

1 “(A) CONDUIT.—The term ‘conduit’
2 means any Bureau of Reclamation tunnel,
3 canal, pipeline, aqueduct, flume, ditch, or
4 similar manmade water conveyance that is
5 operated for the distribution of water for
6 agricultural, municipal, or industrial con-
7 sumption and not primarily for the genera-
8 tion of electricity.

9 “(B) IRRIGATION DISTRICT.—The
10 term ‘irrigation district’ means any irriga-
11 tion, water conservation, multicounty water
12 conservation district, or any separate pub-
13 lic entity composed of two or more such
14 districts and jointly exercising powers of
15 its member districts.

16 “(C) RESERVED WORK.—The term
17 ‘reserved work’ means any conduit that is
18 included in project works the care, oper-
19 ation, and maintenance of which has been
20 reserved by the Secretary, through the
21 Commissioner of the Bureau of Reclama-
22 tion.

23 “(D) TRANSFERRED WORK.—The
24 term ‘transferred work’ means any conduit
25 that is included in project works the care,

1 operation, and maintenance of which has
 2 been transferred to a legally organized
 3 water users association or irrigation dis-
 4 trict.

5 ~~“(E) SMALL CONDUIT HYDRO-~~
 6 ~~POWER.—The term ‘small conduit hydro-~~
 7 ~~power’ means a facility capable of pro-~~
 8 ~~ducing 5 megawatts or less of electric ca-~~
 9 ~~capacity.”.~~

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the “Bureau of Reclamation*
 12 *Small Conduit Hydropower Development and Rural Jobs*
 13 *Act”.*

14 **SEC. 2. AUTHORIZATION.**

15 *Section 9(c) of the Reclamation Project Act of 1939*
 16 *(43 U.S.C. 485h(c)) is amended—*

17 *(1) by striking “The Secretary is authorized to*
 18 *enter into contracts to furnish water” and inserting*
 19 *the following:*

20 *“(1) The Secretary is authorized to enter into*
 21 *contracts to furnish water”;*

22 *(2) by striking “(1) shall” and inserting “(A)*
 23 *shall”;*

24 *(3) by striking “(2) shall” and inserting “(B)*
 25 *shall”;*

1 (4) by striking “respecting the terms of sales of
2 *electric power and leases of power privileges shall be*
3 *in addition and alternative to any authority in exist-*
4 *ing laws relating to particular projects” and insert-*
5 *ing “respecting the sales of electric power and leases*
6 *of power privileges shall be an authorization in addi-*
7 *tion to and alternative to any authority in existing*
8 *laws related to particular projects, including small*
9 *conduit hydropower development”; and*

10 (5) by adding at the end the following:

11 “(2)(A) *When carrying out this subsection, the*
12 *Secretary shall first offer the lease of power privilege*
13 *to an irrigation district or water users association*
14 *operating the applicable transferred conduit, or to the*
15 *irrigation district or water users association receiving*
16 *water from the applicable reserved conduit. The Sec-*
17 *retary shall determine a reasonable time frame for the*
18 *irrigation district or water users association to accept*
19 *or reject a lease of power privilege offer for a small*
20 *conduit hydropower project.*

21 “(B) *If the irrigation district or water users as-*
22 *sociation elects not accept a lease of power privilege*
23 *offer under subparagraph (A), the Secretary shall*
24 *offer the lease of power privilege to other parties in*
25 *accordance with this subsection.*

1 “(3) *The Bureau of Reclamation shall apply its*
2 *categorical exclusion process under the National En-*
3 *vironmental Policy Act of 1969 (42 U.S.C. 4321 et*
4 *seq.) to small conduit hydropower development under*
5 *this subsection, excluding siting of associated trans-*
6 *mission facilities on Federal lands.*

7 “(4) *The Power Resources Office of the Bureau*
8 *of Reclamation shall be the lead office of small con-*
9 *duit hydropower policy and procedure-setting activi-*
10 *ties conducted under this subsection.*

11 “(5) *Nothing in this subsection shall obligate the*
12 *Western Area Power Administration, the Bonneville*
13 *Power Administration, or the Southwestern Power*
14 *Administration to purchase or market any of the*
15 *power produced by the facilities covered under this*
16 *subsection and none of the costs associated with pro-*
17 *duction or delivery of such power shall be assigned to*
18 *project purposes for inclusion in project rates.*

19 “(6) *Nothing in this subsection shall alter or im-*
20 *pede the delivery and management of water by Bu-*
21 *reau of Reclamation facilities, as water used for con-*
22 *duit hydropower generation shall be deemed inci-*
23 *dental to use of water for the original project pur-*
24 *poses. Lease of power privilege shall be made only*
25 *when, in the judgment of the Secretary, the exercise*

1 *of the lease will not be incompatible with the purposes*
2 *of the project or division involved, nor shall it create*
3 *any unmitigated financial or physical impacts to the*
4 *project or division involved. The Secretary shall no-*
5 *tify and consult with the irrigation district or water*
6 *users association operating the transferred conduit be-*
7 *fore offering the lease of power privilege and shall*
8 *prescribe terms and conditions that will adequately*
9 *protect the planning, design, construction, operation,*
10 *maintenance, and other interests of the United States*
11 *and the project or division involved.*

12 *“(7) Nothing in this subsection shall alter or af-*
13 *fect any existing agreements for the development of*
14 *conduit hydropower projects or disposition of reve-*
15 *nuues.*

16 *“(8) Nothing in this subsection shall alter or af-*
17 *fect any existing preliminary permit, license, or ex-*
18 *emption issued by the Federal Energy Regulatory*
19 *Commission under Part I of the Federal Power Act*
20 *(16 U.S.C. 792 et seq.) or any project for which an*
21 *application has been filed with the Federal Energy*
22 *Regulatory Commission as of the date of the enact-*
23 *ment of the Bureau of Reclamation Small Conduit*
24 *Hydropower Development and Rural Jobs Act.*

25 *“(9) In this subsection:*

1 “(A) *CONDUIT*.—The term ‘conduit’ means
2 any Bureau of Reclamation tunnel, canal, pipe-
3 line, aqueduct, flume, ditch, or similar manmade
4 water conveyance that is operated for the dis-
5 tribution of water for agricultural, municipal, or
6 industrial consumption and not primarily for
7 the generation of electricity.

8 “(B) *IRRIGATION DISTRICT*.—The term ‘ir-
9 rigation district’ means any irrigation, water
10 conservation or conservancy, multicounty water
11 conservation or conservancy district, or any sep-
12 arate public entity composed of two or more such
13 districts and jointly exercising powers of its
14 member districts.

15 “(C) *RESERVED CONDUIT*.—The term ‘re-
16 served conduit’ means any conduit that is in-
17 cluded in project works the care, operation, and
18 maintenance of which has been reserved by the
19 Secretary, through the Commissioner of the Bu-
20 reau of Reclamation.

21 “(D) *TRANSFERRED CONDUIT*.—The term
22 ‘transferred conduit’ means any conduit that is
23 included in project works the care, operation,
24 and maintenance of which has been transferred

1 to a legally organized water users association or
2 irrigation district.

3 “(E) *SMALL CONDUIT HYDROPOWER.*—The
4 term ‘small conduit hydropower’ means a facil-
5 ity capable of producing 5 megawatts or less of
6 electric capacity.”

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