

115TH CONGRESS
1ST SESSION

S. 1230

To prohibit the conditioning of any permit, lease, or other use agreement on the transfer of any water right to the United States by the Secretaries of the Interior and Agriculture, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 25, 2017

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

A BILL

To prohibit the conditioning of any permit, lease, or other use agreement on the transfer of any water right to the United States by the Secretaries of the Interior and Agriculture, 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 “Water Rights Protec-
5 tion Act of 2017”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) SECRETARY.—The term “Secretary”
2 means, as applicable—

3 (A) the Secretary of Agriculture; or

4 (B) the Secretary of the Interior.

5 (2) WATER RIGHT.—The term “water right”
6 means any surface water, groundwater, or water
7 storage right filed, permitted, certificated, con-
8 firmed, decreed, adjudicated, or otherwise recognized
9 by a judicial proceeding or by the State, in which
10 the user acquires the right to put the water to bene-
11 ficial use, including water rights for federally recog-
12 nized Indian tribes.

13 **SEC. 3. TREATMENT OF WATER RIGHTS.**

14 The Secretary shall not—

15 (1) condition the issuance, renewal, amendment,
16 or extension of any permit, approval, license, lease,
17 allotment, easement, right-of-way, or other land use
18 or occupancy agreement on the transfer of any water
19 right (including joint and sole ownership) directly to
20 the United States, or on any impairment of title, in
21 whole or in part, granted or otherwise recognized
22 under State law, by Federal or State adjudication,
23 decree, or other judgment, or pursuant to any inter-
24 state water compact;

(2) require any water user (including any federally recognized Indian tribe) to apply for or acquire a water right in the name of the United States under State law as a condition of the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement; or

(3) condition or withhold the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement, in whole or in part, on—

(A) limiting the date, time, quantity, location of diversion or pumping, or place of use of a State water right beyond any applicable limitations under State water law; or

(B) the modification of the terms and conditions of groundwater withdrawal, guidance and reporting procedures, or conservation and source protection measures established by a State.

SEC. 4. POLICY DEVELOPMENT.

In developing any rule, policy, directive, management plan, or similar Federal action relating to the issuance, renewal, amendment, or extension of any permit, approval,

1 license, lease, allotment, easement, right-of-way, or other
2 land use or occupancy agreement, the Secretary—

3 (1) shall—

4 (A) recognize the longstanding authority of
5 the States relating to evaluating, protecting, al-
6 locating, regulating, permitting, and adjudi-
7 cating water use; and

8 (B) coordinate with the States to ensure
9 that any rule, policy, directive, management
10 plan, or similar Federal action is consistent
11 with, and imposes no greater restriction or reg-
12 ulatory requirement, than applicable State
13 water law; and

14 (2) shall not—

15 (A) adversely affect—

16 (i) the authority of a State in—

17 (I) permitting the beneficial use
18 of water; or

19 (II) adjudicating water rights;

20 (ii) any definition established by a
21 State with respect to the term “beneficial
22 use”, “priority of water rights”, or “terms
23 of use”; or

24 (iii) any other right or obligation of a
25 State established under State law; or

1 (B) assert any connection between surface
2 and groundwater that is inconsistent with such
3 a connection recognized by State water laws.

4 **SEC. 5. EFFECT.**

5 (a) EXISTING AUTHORITY.—Except as provided in
6 section 3, nothing in this Act limits or expands any exist-
7 ing legally recognized authority of the Secretary to issue,
8 grant, or condition any permit, approval, license, lease, al-
9 lotment, easement, right-of-way, or other land use or occu-
10 pancy agreement on Federal land that is subject to the
11 jurisdiction of the Secretary.

12 (b) RECLAMATION CONTRACTS.—Nothing in this Act
13 in any way interferes with any existing or future Bureau
14 of Reclamation contract entered into pursuant to Federal
15 reclamation law (the Act of June 17, 1902 (32 Stat. 388,
16 chapter 1093), and Acts supplemental to and amendatory
17 of that Act).

18 (c) ENDANGERED SPECIES ACT.—Nothing in this
19 Act affects the implementation of the Endangered Species
20 Act of 1973 (16 U.S.C. 1531 et seq.).

21 (d) FEDERAL RESERVED WATER RIGHTS.—Nothing
22 in this Act limits or expands any existing reserved water
23 rights of the Federal Government on land administered
24 by the Secretary.

1 (e) FEDERAL POWER ACT.—Nothing in this Act lim-
2 its or expands authorities pursuant to sections 4(e), 10(j),
3 or 18 of the Federal Power Act (16 U.S.C. 797(e), 803(j),
4 811).

5 (f) INDIAN WATER RIGHTS.—Nothing in this Act
6 limits or expands any existing reserved water right or trea-
7 ty right of any federally recognized Indian tribe.

8 (g) FEDERALLY HELD STATE WATER RIGHTS.—
9 Nothing in this Act limits the ability of the Secretary,
10 through applicable State procedures, to acquire, use, en-
11 force, or protect a State water right owned by the United
12 States.

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