

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

S. 4347

To provide for the conveyance of certain Federal land at Swanson Reservoir and Hugh Butler Reservoir in the State of Nebraska, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Swanson and Hugh

5 Butler Reservoirs Land Conveyances Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **FAIR MARKET VALUE.**—The term “fair

9 market value”, with respect to a specified property

10 right, means the most probable price, as of a speci-

11 fied date, in cash, terms equivalent to cash, or other

1 precisely revealed terms, for which the specified
2 property right should sell after reasonable exposure
3 in a competitive market under all conditions req-
4 uisite for a fair sale, with the buyer and seller each
5 acting prudently, knowledgeably, and in the self-in-
6 terest of the buyer or seller, as applicable, and as-
7 suming that the buyer and seller are not under
8 undue duress.

9 (2) FRONTIER COUNTY.—The term “Frontier
10 County” means Frontier County, Nebraska, acting
11 through the Board of Commissioners of Frontier
12 County.

13 (3) HITCHCOCK COUNTY.—The term “Hitch-
14 cock County” means Hitchcock County, Nebraska,
15 acting through the Board of Commissioners of
16 Hitchcock County.

17 (4) HUGH BUTLER RESERVOIR.—The term
18 “Hugh Butler Reservoir” means the Hugh Butler
19 Lake and Red Willow Dam constructed as part of
20 the Pick-Sloan Missouri Basin Program, French-
21 man-Cambridge Division, as authorized by section 9
22 of the Act of December 22, 1944 (commonly known
23 as the “Flood Control Act of 1944”) (58 Stat. 891,
24 chapter 665).

1 (5) LAKEVIEW LODGE MANAGEMENT AGREE-
2 MENT.—The term “Lakeview Lodge Management
3 Agreement” means the management agreement enti-
4 tled “Management Agreement between the Bureau
5 of Reclamation, et al., for the Development, Oper-
6 ation, and Maintenance of a Concession Operation
7 at Swanson Reservoir, Nebraska”, numbered 23-
8 LM-60-4160, and dated November 1, 2023.

9 (6) LAKEVIEW LODGE PERMITTED CONCESSION
10 LAND.—The term “Lakeview Lodge Permitted Con-
11 cession Land” means the approximately 21.5 acres
12 of land and water for the operation of a public con-
13 cession at Swanson Reservoir, as generally depicted
14 on the map prepared by the Bureau of Reclamation
15 entitled “Lakeview Lodge Concession Boundary”
16 and dated August 2023.

17 (7) RED WILLOW MANAGEMENT AGREEMENT.—
18 The term “Red Willow Management Agreement”
19 means the management agreement entitled “Man-
20 agement Agreement between the Bureau of Rec-
21 lamation, et al., for the Development, Management,
22 Operation, and Maintenance of a Concession Oper-
23 ation at Hugh Butler Reservoir, Nebraska”, num-
24 bered 24-LM-60-5155, and dated March 7, 2024.

1 (8) RED WILLOW PERMITTED CABIN LAND.—
2 The term “Red Willow Permitted Cabin Land”
3 means the approximately 6.5 acres of land encom-
4 passing the 8 permitted cabin lots at the Hugh But-
5 ler Reservoir, as generally depicted on the map pre-
6 pared by the Bureau of Reclamation entitled “Red
7 Willow Cabin Map” and dated March 2024.

8 (9) RED WILLOW PERMITTED CONCESSION
9 LAND.—The term “Red Willow Permitted Conces-
10 sion Land” means the approximately 23 acres of
11 land and water for the operation of a public service
12 concession at the Hugh Butler Reservoir, as gen-
13 erally depicted on the map prepared by the Bureau
14 of Reclamation entitled “Red Willow Concession
15 Boundary” and dated August 2023.

16 (10) REQUESTED FEDERAL LAND.—The term
17 “requested Federal land” means each of the fol-
18 lowing parcels of land, or any subset of those par-
19 cels, with respect to which a title transfer agreement
20 is executed:

21 (A) The Lakeview Lodge Permitted Con-
22 cession Land.

23 (B) The Red Willow Permitted Cabin
24 Land.

1 (C) The Red Willow Permitted Concession
2 Land.

3 (D) The Swanson Permitted Cabin Land.

4 (E) The Swanson Permitted Concession
5 Land.

6 (11) SECRETARY.—The term “Secretary”
7 means the Secretary of the Interior, acting through
8 the Commissioner of Reclamation.

9 (12) STATE.—The term “State” means the
10 State of Nebraska.

11 (13) SWANSON MANAGEMENT AGREEMENT.—
12 The term “Swanson Management Agreement”
13 means the management agreement entitled “Man-
14 agement Agreement between the Bureau of Rec-
15 lamation, et al., for the Development, Management,
16 Operation, and Maintenance of a Concession Oper-
17 ation at Swanson Reservoir, Nebraska”, numbered
18 24–LM–60–5154, and dated April 19, 2024.

19 (14) SWANSON PERMITTED CABIN LAND.—The
20 term “Swanson Permitted Cabin Land” means the
21 approximately 6.2 acres of land encompassing the 11
22 permitted cabin lots at the Swanson Reservoir, as
23 generally depicted on the map prepared by the Bu-
24 reau of Reclamation entitled “Swanson Cabin Map”
25 and dated March 2024.

1 (15) SWANSON PERMITTED CONCESSION
2 LAND.—The term “Swanson Permitted Concession
3 Land” means the approximately 20 acres of land
4 and water for the operation of a public service con-
5 cession at the Swanson Reservoir, as generally de-
6 picted on the map prepared by the Bureau of Rec-
7 lamation entitled “Swanson Concession Boundary”
8 and dated August 2023.

9 (16) SWANSON RESERVOIR.—The term “Swan-
10 son Reservoir” means the Swanson Reservoir and
11 Trenton Dam constructed as part of the Pick-Sloan
12 Missouri Basin Program, Frenchman-Cambridge Di-
13 vision, as authorized by section 9 of the Act of De-
14 cember 22, 1944 (commonly known as the “Flood
15 Control Act of 1944”) (58 Stat. 891, chapter 665).

16 (17) TITLE TRANSFER AGREEMENT.—The term
17 “title transfer agreement” means a title transfer
18 agreement entered into under section 3(a)(1) be-
19 tween the Secretary and Frontier County or Hitch-
20 cock County, as applicable, that establishes the legal,
21 institutional, and financial terms for the conveyance
22 of the applicable requested Federal land.

1 **SEC. 3. CONVEYANCES OF FEDERAL LAND TO HITCHCOCK**
2 **COUNTY AND FRONTIER COUNTY, NEBRASKA.**

3 (a) CONVEYANCES TO HITCHCOCK COUNTY AND
4 FRONTIER COUNTY.—

5 (1) TITLE TRANSFER AGREEMENT.—Subject to
6 paragraphs (2) and (5) and sections 4 and 5, not
7 later than 3 years after the date of enactment of
8 this Act, the Secretary shall make good faith efforts
9 to enter into negotiations for, and enter into, title
10 transfer agreements with each of Hitchcock County
11 and Frontier County—

12 (A) under which the Secretary shall convey
13 to Hitchcock County or Frontier County, as ap-
14 plicable, all requested right, title, and interest
15 of the United States in and to the applicable re-
16 quested Federal land;

17 (B) that provides that, as a condition of
18 the conveyance, the applicable requested Fed-
19 eral land—

20 (i) shall be conveyed in whole; and

21 (ii) shall not be subdivided; and

22 (C) that provides a plan for—

23 (i) a demonstration of—

24 (I) the technical capability of
25 Hitchcock County or Frontier County,
26 as applicable, to operate and maintain

1 the applicable requested Federal land
2 permanently; and

3 (II) the ability of Hitchcock
4 County or Frontier County, as appli-
5 cable, to satisfy financial obligations
6 relating to the applicable requested
7 Federal land; and

8 (ii) the management by Hitchcock
9 County or Frontier County, as applicable,
10 of the applicable requested Federal land to
11 be conveyed in accordance with the appli-
12 cable title transfer agreement, including
13 addressing any issues to ensure compliance
14 with applicable State fire, safety, and
15 health codes and standards not later than
16 2 years after the date of the applicable
17 conveyance.

18 (2) REQUIREMENT.—Notwithstanding section
19 8002(3)(B) of the John D. Dingell, Jr. Conserva-
20 tion, Management, and Recreation Act (43 U.S.C.
21 2902(3)(B)), the Secretary shall negotiate the title
22 transfer agreement under paragraph (1) in accord-
23 ance with the criteria, terms, and conditions de-
24 scribed in subtitle A of title VIII of that Act (43
25 U.S.C. 2901 et seq.).

1 (3) OFFER TO CONVEY.—As soon as practicable
2 after the date on which a title transfer agreement is
3 entered into pursuant to paragraph (1), the Sec-
4 retary shall offer to convey to Hitchcock County or
5 Frontier County, as applicable, all right, title, and
6 interest of the United States in and to the applicable
7 requested Federal land, in accordance with the
8 terms and conditions described in the applicable title
9 transfer agreement.

10 (4) COSTS.—

11 (A) CONSIDERATION.—

12 (i) IN GENERAL.—As consideration
13 for the conveyance of the applicable re-
14 quested Federal land under paragraph (3),
15 Hitchcock County or Frontier County, as
16 applicable, shall pay to the Secretary, for
17 use in accordance with clause (iii), an
18 amount equal to the fair market value of
19 the applicable requested Federal land, as
20 determined by an appraisal conducted—

21 (I) in accordance with clause (ii);

22 (II) by a third-party appraiser
23 approved by the Secretary; and

1 (III) subject to the management
2 requirements under paragraph (5)
3 and section 4.

4 (ii) APPRAISAL REQUIREMENTS.—

5 (I) IN GENERAL.—An appraisal
6 under clause (i) shall be conducted in
7 accordance with the Uniform Stand-
8 ards of Professional Appraisal Prac-
9 tice.

10 (II) IMPROVEMENTS.—For pur-
11 poses of clause (i), any improvements
12 to the applicable requested Federal
13 land made by a permit holder shall
14 not be included in the appraised value
15 of the applicable requested Federal
16 land.

17 (III) RESOLUTION OF DIS-
18 PUTE.—Any dispute over the fair
19 market value of the applicable re-
20 quested Federal land under an ap-
21 praisal conducted under clause (i)
22 shall be resolved in accordance with
23 section 2201.4 of title 43, Code of
24 Federal Regulations (or a successor
25 regulation).

1 (IV) CONSIDERATION OF REVE-
2 NUES.—An appraisal under clause (i)
3 shall take into consideration any fu-
4 ture income stream that the United
5 States would have derived from the
6 applicable requested Federal land at
7 the time of the conveyance, including
8 revenues to the United States—

9 (aa) from existing water
10 service and repayment contracts;

11 (bb) from known or reason-
12 ably foreseeable new contracts or
13 renewals;

14 (cc) as aid to irrigation; and

15 (dd) from any other author-
16 ized source.

17 (iii) USE.—Amounts paid under
18 clause (i) shall be available to the Sec-
19 retary, subject to further appropriation, for
20 activities relating to the operation of the
21 Hugh Butler Reservoir and Swanson Res-
22 ervoir.

23 (B) CONVEYANCE COSTS.—As a condition
24 of a conveyance under paragraph (3), Hitchcock
25 County or Frontier County, as applicable, shall

1 (iv) the preservation of the natural
2 character of the applicable requested Fed-
3 eral land.

4 (b) SUBSEQUENT CONVEYANCE OF REQUESTED
5 FEDERAL LAND.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), on completion of a conveyance to Hitch-
8 cock County or Frontier County, as applicable, of
9 the applicable requested Federal land under sub-
10 section (a), Hitchcock County or Frontier County,
11 as applicable, may not subsequently reconvey the ap-
12 plicable requested Federal land.

13 (2) EXCEPTIONS.—Notwithstanding paragraph
14 (1), Hitchcock County or Frontier County, as appli-
15 cable, may subsequently convey the applicable re-
16 quested Federal land if—

17 (A) the applicable requested Federal land
18 is reconveyed, at no cost, to an entity located
19 in the State that is recognized by the State as
20 a publicly owned or governmental organization,
21 including—

22 (i) a State agency;

23 (ii) a county, city, village, or township
24 in, or political subdivision of, the State;

25 (iii) a natural resource district; and

1 (iv) an irrigation or reclamation dis-
2 trict;

3 (B) Hitchcock County or Frontier County,
4 as applicable, has demonstrated an impending
5 adverse impact if the applicable requested Fed-
6 eral land is not reconveyed;

7 (C) the entity to which the applicable re-
8 quested Federal land would be reconveyed has
9 the capacity to continue to manage the applica-
10 ble requested Federal land for the same pur-
11 poses for which the applicable requested Fed-
12 eral land has been managed as of the date of
13 enactment of this Act; and

14 (D) the applicable requested Federal land
15 to be reconveyed would continue to be available
16 for public access.

17 (3) FUTURE CONVEYANCES.—A subsequent
18 conveyance of requested Federal land shall be sub-
19 ject to the requirements of this subsection and sub-
20 section (a)(5).

21 **SEC. 4. EFFECT ON RESERVATIONS, EASEMENTS, AND**
22 **OTHER RIGHTS.**

23 (a) IN GENERAL.—A conveyance under section 3(a)
24 shall be subject to—

25 (1) valid existing rights;

1 (2) operational requirements of the Pick-Sloan
2 Missouri River Basin Program authorized by section
3 9 of the Act of December 22, 1944 (commonly
4 known as the “Flood Control Act of 1944”) (58
5 Stat. 891, chapter 665), including Swanson Res-
6 ervoir and Hugh Butler Reservoir;

7 (3) any flowage easement reserved by the
8 United States to allow full operation of the Swanson
9 Reservoir and Hugh Butler Reservoir, as applicable,
10 for authorized purposes;

11 (4) any applicable reservations described in the
12 Lakeview Lodge Management Agreement, Red Wil-
13 low Management Agreement, or Swanson Manage-
14 ment Agreement, as applicable;

15 (5) oil, gas, and other mineral rights reserved
16 of record, as of the date of enactment of this Act,
17 by, or in favor of, the United States or a third
18 party;

19 (6) any permit, license, lease, right-of-use, flow-
20 age easement, or right-of-way of record in, on, over,
21 or across the applicable requested Federal land,
22 whether owned by the United States or a third
23 party, as of the date of enactment of this Act;

24 (7) as applicable, a deed restriction that pro-
25 hibits building any new permanent structure on the

1 applicable requested Federal land below an elevation
2 of—

3 (A) 2,785 feet at Swanson Reservoir; or

4 (B) 2,628 feet at Hugh Butler Reservoir;

5 and

6 (8) the granting of applicable easements for—

7 (A) vehicular access to the applicable re-
8 quested Federal land; and

9 (B) access to, and use of, all docks, boat-
10 houses, ramps, retaining walls, and other im-
11 provements for which access is provided in a
12 permit for the use of the applicable requested
13 Federal land as of the date of enactment of this
14 Act.

15 (b) LIABILITY; TAKING.—

16 (1) LIABILITY.—The United States shall not be
17 liable for flood damage to a property, Hitchcock
18 County, or Frontier County, or for damages arising
19 out of any act, omission, or occurrence relating to a
20 permit holder, Hitchcock County, or Frontier Coun-
21 ty, other than for damages caused by an act or
22 omission of the United States or an employee, agent,
23 or contractor of the United States before the date of
24 enactment of this Act.

1 (2) HOLD HARMLESS.—Hitchcock County,
2 Frontier County, and any entity to which requested
3 Federal land is subsequently conveyed pursuant to
4 section 3(b)(2) shall agree to indemnify and hold
5 harmless the United States for all claims by Hitch-
6 cock County, Frontier County, or others arising
7 from—

8 (A) the design, construction, operation,
9 maintenance, or replacement of Red Willow
10 Dam, Hugh Butler Reservoir, Trenton Dam, or
11 Swanson Reservoir;

12 (B) the survey of claims, description of
13 claims, delineation of boundaries, conveyance
14 documents, conveyance process, and recording
15 of deeds associated with a conveyance under
16 this Act; or

17 (C) any damages associated with a struc-
18 ture or land that may be displaced in a flood
19 event.

20 (3) NO ADDITIONAL LIABILITY.—Nothing in
21 this Act increases the liability of the United States
22 beyond the liability provided under chapter 171 of
23 title 28, United States Code (commonly known as
24 the “Federal Tort Claims Act”).

1 (4) TAKING.—Any temporary flooding or flood
2 damage to a property, Hitchcock County, or Fron-
3 tier County, shall not be considered to be a taking
4 by the United States.

5 **SEC. 5. INTERIM REQUIREMENTS.**

6 (a) IN GENERAL.—During the period beginning on
7 the date of enactment of this Act and ending on the date
8 that is the later of the date that is 3 years after the date
9 of enactment of this Act or the date of conveyance of the
10 applicable requested Federal land under section 3(a), the
11 provisions of the Lakeview Lodge Management Agree-
12 ment, Red Willow Management Agreement, and Swanson
13 Management Agreement, as applicable, and any applicable
14 permits, shall remain in force and effect.

15 (b) EFFECT OF FAILURE TO ENTER INTO TITLE
16 TRANSFER AGREEMENT.—If, by the date that is 3 years
17 after the date of enactment of this Act, Hitchcock County
18 or Frontier County, as applicable, have not entered into
19 a title transfer agreement with the Secretary under section
20 3(a)(1), the Secretary shall manage any of the Lakeview
21 Lodge Permitted Concession Land, the Red Willow Per-
22 mitted Cabin Land, the Red Willow Permitted Concession
23 Land, the Swanson Permitted Cabin Land, and the Swan-
24 son Permitted Concession Land, as applicable, that is not

- 1 subject to a title transfer agreement in accordance with
- 2 applicable law.