

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

S. 2560

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.

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 “Reclamation Title
5 Transfer Act of 2018”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to facilitate the transfer
8 of title to Reclamation project facilities to qualifying enti-
9 ties on the completion of repayment of capital costs.

10 **SEC. 3. DEFINITIONS.**

11 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.

4 (2) ELIGIBLE FACILITY.—The term “eligible fa-
5 cility” means a facility that meets the criteria for
6 potential transfer established under section 5(a).

7 (3) FACILITY.—

8 (A) IN GENERAL.—The term “facility” in-
9 cludes a dam or appurtenant works, canal, lat-
10 eral, ditch, gate, control structure, pumping
11 station, other infrastructure, recreational facil-
12 ity, building, distribution and drainage works,
13 and associated land or interest in land or water.

14 (B) EXCLUSIONS.—The term “facility”
15 does not include a Reclamation project facility,
16 or a portion of a Reclamation project facility—

17 (i) that is a reserved works as of the
18 date of enactment of this Act;

19 (ii) that generates hydropower mar-
20 keted by a Federal power marketing ad-
21 ministration; or

22 (iii) that is managed for recreation
23 under a lease, permit, license, or other
24 management agreement that does con-
25 tribute to capital repayment.

1 (4) PROJECT USE POWER.—The term “project
2 use power” means the electrical capacity, energy,
3 and associated ancillary service components required
4 to provide the minimum electrical service needed to
5 operate or maintain Reclamation project facilities in
6 accordance with the authorization for the Reclama-
7 tion project.

8 (5) QUALIFYING ENTITY.—The term “quali-
9 fying entity” means an agency of a State or political
10 subdivision of a State, a joint action or powers agen-
11 cy, a water users association, or an Indian Tribe or
12 Tribal utility authority that—

13 (A) as of the date of conveyance under this
14 Act, is the current operator of the eligible facil-
15 ity pursuant to a contract with Reclamation;
16 and

17 (B) as determined by the Secretary, has
18 the capacity to continue to manage the eligible
19 facility for the same purposes for which the
20 property has been managed under the reclama-
21 tion laws.

22 (6) RECLAMATION.—The term “Reclamation”
23 means the Bureau of Reclamation.

24 (7) RECLAMATION PROJECT.—The term “Rec-
25 lamation project” means—

1 (A) any reclamation or irrigation project,
2 including incidental features of the project—

3 (i) that is authorized by the reclama-
4 tion laws;

5 (ii) that is constructed by the United
6 States pursuant to the reclamation laws; or

7 (iii) in connection with which there is
8 a repayment or water service contract exe-
9 cuted by the United States pursuant to the
10 reclamation laws; or

11 (B) any project constructed by the Sec-
12 retary for the reclamation of land.

13 (8) RESERVED WORKS.—The term “reserved
14 works” means any building, structure, facility, or
15 equipment—

16 (A) that is owned by the Bureau; and

17 (B) for which operations and maintenance
18 are performed, regardless of the source of fund-
19 ing—

20 (i) by an employee of the Bureau; or

21 (ii) through a contract entered into by
22 the Commissioner.

23 (9) SECRETARY.—The term “Secretary” means
24 the Secretary of the Interior, acting through the
25 Commissioner of Reclamation.

1 **SEC. 4. AUTHORIZATION OF TRANSFERS OF TITLE TO ELI-**
2 **GIBLE FACILITIES.**

3 (a) AUTHORIZATION.—

4 (1) IN GENERAL.—Subject to the requirements
5 of this Act, the Secretary, without further authoriza-
6 tion from Congress, may, on application of a quali-
7 fying entity, convey to a qualifying entity all right,
8 title, and interest of the United States in and to any
9 eligible facility, if—

10 (A) not later than 90 days before the date
11 on which the Secretary makes the conveyance,
12 the Secretary submits to Congress—

13 (i) a written notice of the proposed
14 conveyance; and

15 (ii) a description of the reasons for
16 the conveyance; and

17 (B) a joint resolution disapproving the con-
18 veyance is not enacted before the date on which
19 the Secretary makes the conveyance.

20 (2) CONSULTATION.—A conveyance under para-
21 graph (1) shall be made by written agreement be-
22 tween the Secretary and the qualifying entity, devel-
23 oped in consultation with any existing water and
24 power customers affected by the conveyance of the
25 eligible facility.

1 (b) RESERVATION OF EASEMENT.—The Secretary
2 may reserve an easement over a conveyed property if—

3 (1) the Secretary determines that the easement
4 is necessary for the management of any interests re-
5 tained by the Federal Government under this Act;

6 (2) the Reclamation project or a portion of the
7 Reclamation project remains under Federal owner-
8 ship; and

9 (3) the Secretary enters into an agreement re-
10 garding the easement with the applicable qualifying
11 entity.

12 (c) INTERESTS IN WATER.—If a Federal interest in
13 water rights and uses relating to a conveyed property is
14 to be conveyed under this section with the conveyed prop-
15 erty, the Federal interest in water rights and uses shall
16 be quantified and conveyed by an independent written
17 agreement, subject to applicable public participation re-
18 quirements.

19 **SEC. 5. ELIGIBILITY CRITERIA.**

20 (a) ESTABLISHMENT.—The Secretary shall establish
21 criteria for determining whether a facility is eligible for
22 conveyance under this Act.

23 (b) MINIMUM REQUIREMENTS.—

24 (1) AGREEMENT OF QUALIFYING ENTITY.—The
25 criteria established under subsection (a) shall in-

1 clude a requirement that a qualifying entity shall
2 agree—

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

4 (B) to use the eligible facility for substan-
5 tially the same purposes for which the eligible
6 facility is being used at the time the Secretary
7 evaluates the potential transfer; and

8 (C) to provide, as consideration for the as-
9 sets to be conveyed, compensation to the rec-
10 lamation fund established by the first section of
11 the Act of June 17, 1902 (32 Stat. 388, chap-
12 ter 1093), in an amount that is the equivalent
13 of the net present value of any repayment obli-
14 gation to the United States or other income
15 stream that the United States derives from the
16 eligible facility to be transferred, as of the date
17 of the transfer.

18 (2) DETERMINATIONS OF SECRETARY.—The
19 criteria established under subsection (a) shall in-
20 clude a requirement that the Secretary shall—

21 (A) be able to enter into an agreement
22 with the qualifying entity with respect to the
23 legal, institutional, and financial arrangements
24 relating to the conveyance;

1 (B) determine that the proposed trans-
2 fer—

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

5 (ii) is consistent with the responsibil-
6 ities of the Secretary—

7 (I) in the role as trustee for fed-
8 erally recognized Indian Tribes; and

9 (II) to ensure compliance with
10 any applicable international and Trib-
11 al treaties and agreements and inter-
12 state compacts and agreements;

13 (iii) is in the financial interest of the
14 United States;

15 (iv) protects the public aspects of the
16 eligible facility, including water rights
17 managed for public purposes, such as flood
18 control or fish and wildlife;

19 (v) complies with all applicable Fed-
20 eral and State law; and

21 (vi) will not result in an adverse im-
22 pact on fulfillment of existing water deliv-
23 ery obligations consistent with historical
24 operations and applicable contracts; and

1 (C) if the eligible facility proposed to be
2 transferred is a dam or diversion works divert-
3 ing water from a water body containing a spe-
4 cies listed as a threatened species or an endan-
5 gered species or critical habitat under the En-
6 dangered Species Act of 1973 (16 U.S.C. 1531
7 et seq.), determine that—

8 (i)(I) the eligible facility would remain
9 subject to consultation requirements under
10 section 7(a)(2) of that Act (16 U.S.C.
11 1536(a)(2));

12 (II) on completion of a biological as-
13 sessment under section 402.12 of title 50,
14 Code of Federal Regulations (or successor
15 regulations), or an informal consultation
16 under section 402.13 of title 50, Code of
17 Federal Regulations (or successor regula-
18 tions), the Commissioner of Reclamation
19 and the Director of the United States Fish
20 and Wildlife Service or the Director of the
21 National Marine Fisheries Service, as ap-
22 plicable, have concurred in writing, con-
23 sistent with section 402.14(b)(1) of title
24 50, Code of Federal Regulations (or suc-
25 cessor regulations), that no action associ-

1 ated with the eligible facility is likely to ad-
2 versely affect any species listed as a
3 threatened species or an endangered spe-
4 cies or critical habitat under that Act (16
5 U.S.C. 1531 et seq.); or

6 (III) the qualifying entity completed a
7 habitat conservation plan pursuant to sec-
8 tion 10 of that Act (16 U.S.C. 1539) prior
9 to the transfer; and

10 (ii) the eligible facility is not located
11 in the State of California.

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

16 (A) land acquired by the Secretary; or

17 (B) land withdrawn by the Secretary, only
18 if—

19 (i) the Secretary determines in writing
20 that the withdrawn land is encumbered by
21 facilities to the extent that the withdrawn
22 land is unsuitable for return to the public
23 domain; and

24 (ii) the qualifying entity agrees to pay
25 fair market value based on historical or ex-

1 isting uses for the withdrawn land to be
2 conveyed.

3 (c) **HOLD HARMLESS.**—No conveyance under this
4 Act shall adversely impact applicable Federal power rates,
5 repayment obligations, or other project power uses.

6 **SEC. 6. LIABILITY.**

7 (a) **IN GENERAL.**—Effective on the date of convey-
8 ance of any eligible facility under this Act, the United
9 States shall not be held liable by any court for damages
10 of any kind arising out of any act, omission, or occurrence
11 relating to the eligible facility, other than damages caused
12 by acts of negligence committed by the United States or
13 by agents or employees of the United States prior to the
14 date of the conveyance.

15 (b) **EFFECT.**—Nothing in this section increases the
16 liability of the United States beyond that currently pro-
17 vided in chapter 171 of title 28, United States Code (com-
18 monly known as the “Federal Tort Claims Act”).

19 **SEC. 7. BENEFITS.**

20 After a conveyance of an eligible facility under this
21 Act—

22 (1) the conveyed property shall no longer be
23 considered to be part of a Reclamation project;

24 (2) except as provided in paragraph (3), the
25 qualifying entity to which the conveyed property is

1 conveyed shall not be eligible to receive any benefits,
2 including project use power, with respect to the con-
3 veyed property, except for any benefit that would be
4 available to a similarly situated entity with respect
5 to property that is not a part of a Reclamation
6 project; and

7 (3) the qualifying entity to which the conveyed
8 property is conveyed may be eligible to receive
9 project use power if—

10 (A) the Secretary determines that the
11 qualifying entity has historically been respon-
12 sible for a proportionate share of the operation
13 and maintenance expenses for Federal facilities
14 that generate and transmit, if applicable, power
15 used for the delivery of Reclamation project
16 water; and

17 (B) the Secretary and the qualifying entity
18 enter into an agreement under which the quali-
19 fying entity agrees to continue to be responsible
20 for a proportionate share of operation and
21 maintenance and capital costs for the Federal
22 facilities that generate and deliver, if applicable,
23 power used for delivery of Reclamation project
24 water after the date of conveyance, in accord-
25 ance with Reclamation project use power rates.

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

2 (a) IN GENERAL.—Before conveying an eligible facil-
3 ity under this Act, the Secretary shall comply with all ap-
4 plicable Federal environmental laws, including—

5 (1) the National Environmental Policy Act of
6 1969 (42 U.S.C. 4321 et seq.);

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

9 (3) subtitle III of title 54, United States Code.

10 (b) SENSE OF CONGRESS.—It is the sense of Con-
11 gress that any Federal permitting and review processes
12 required with respect to a conveyance of an eligible facility
13 under this Act should be completed with the maximum ef-
14 ficiency and effectiveness.

15 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

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

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

20 (1) to carry out any investigations appropriate
21 to carry out this Act; and

22 (2) to pay any other costs associated with con-
23 veyances under this Act, including an appropriate
24 Federal share, as determined by the Secretary, of
25 the costs of compliance with the National Environ-

1 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
2 and any other applicable law.

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

5 (1) shall not be a project cost assignable to a
6 Reclamation project; and

7 (2) shall be nonreimbursable.

8 (d) EFFECT.—Nothing in this section affects the au-
9 thority of the Secretary to recover non-Federal costs asso-
10 ciated with conveyances under this Act.