

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—113th Cong., 2d Sess.**

**S. 2010**

To amend the Water Conservation and Utilization Act to authorize the development of non-Federal hydropower and issuance of leases of power privileges at projects constructed pursuant to the authority of the Water Conservation and Utilization Act, 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 “Bureau of Reclamation  
5 Hydropower Development Equity and Jobs Act”.

6 **SEC. 2. AMENDMENT.**

7 Section 9 of the Act of August 11, 1939 (commonly  
8 known as the “Water Conservation and Utilization Act”)  
9 (16 U.S.C. 590z-7) is amended—

1 (1) by striking “In connection with” and insert-  
2 ing “(a) IN GENERAL.—In connection with”; and

3 (2) by adding at the end the following:

4 “(b) CERTAIN LEASES AUTHORIZED.—

5 “(1) IN GENERAL.—Notwithstanding subsection  
6 (a), the Secretary—

7 “(A) may enter into leases of power privi-  
8 leges for electric power generation in connection  
9 with any project constructed pursuant to this  
10 Act; and

11 “(B) shall have authority over any project  
12 constructed pursuant to this Act in addition to  
13 and alternative to any existing authority relat-  
14 ing to a particular project.

15 “(2) PROCESS.—In entering into a lease of  
16 power privileges under paragraph (1), the Secretary  
17 shall use the processes, terms, and conditions appli-  
18 cable to the lease under section 9(c) of the Reclama-  
19 tion Project Act of 1939 (43 U.S.C. 485h(c)).

20 “(3) FINDINGS NOT REQUIRED.—No findings  
21 under section 3 shall be required for a lease under  
22 paragraph (1).

23 “(4) RIGHTS RETAINED BY LESSEE.—Except as  
24 otherwise provided under paragraph (5), all right,  
25 title, and interest in and to installed power facilities

1       constructed by non-Federal entities pursuant to a  
2       lease under paragraph (1), and any direct revenues  
3       derived from that lease, shall remain with the lessee.

4               “(5) LEASE CHARGES.—Notwithstanding sec-  
5       tion 8, lease charges shall be credited to the project  
6       from which the power is derived.

7               “(6) EFFECT.—Nothing in this section alters or  
8       affects any agreement in effect on the date of enact-  
9       ment of the Bureau of Reclamation Hydropower De-  
10      velopment Equity and Jobs Act for the development  
11      of hydropower projects or disposition of revenues.”.

113TH CONGRESS  
2D SESSION

# S. 2010

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2014

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

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## A BILL

To amend the Water Conservation and Utilization Act to authorize the development of non-Federal hydropower and issuance of leases of power privileges at projects constructed pursuant to the authority of the Water Conservation and Utilization Act, 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 Conduit Hydropower Development Equity and Jobs Act”.

1 **SEC. 2. AMENDMENT.**

2 Section 9 of the Act entitled “An Act authorizing  
3 construction of water conservation and utilization projects  
4 in the Great Plains and arid semiarid areas of the United  
5 States”, approved August 11, 1939 (16 U.S.C. 590z-7;  
6 commonly known as the “Water Conservation and Utiliza-  
7 tion Act”), is amended—

8 (1) by striking “In connection with” and insert-  
9 ing “(a) In connection with”; and

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

11 “(b) Notwithstanding subsection (a), the Secretary is  
12 authorized to enter into leases of power privileges for elec-  
13 tric power generation in connection with any project con-  
14 structed under this Act, and shall have authority in addi-  
15 tion to and alternative to any authority in existing laws  
16 relating to particular projects, including small conduit hy-  
17 dropower development.

18 “(c) When entering into leases of power privileges  
19 under subsection (b), the Secretary shall use the processes  
20 applicable to such leases under section 9(c) of the Rec-  
21 lamation Project Act of 1939 (43 U.S.C. 485h(c)).

22 “(d) Lease of power privilege contracts shall be at  
23 such rates as, in the Secretary’s judgment, will produce  
24 revenues at least sufficient to cover the appropriate share  
25 of the annual operation and maintenance cost of the  
26 project and such fixed charges, including interest, as the

1 Secretary deems proper. Lease of power privilege con-  
2 tracts shall be for periods not to exceed 40 years.

3       “(e) No findings under section 3 shall be required  
4 for a lease under subsection (b).

5       “(f) All right, title, and interest to installed power  
6 facilities constructed by non-Federal entities pursuant to  
7 a lease of power privilege, and direct revenues derived  
8 therefrom, shall remain with the lessee unless otherwise  
9 required under subsection (g).

10       “(g) Notwithstanding section 8, lease revenues and  
11 fixed charges, if any, shall be covered into the Reclamation  
12 Fund to be credited to the project from which those reve-  
13 nues or charges were derived.

14       “(h) When carrying out this section, the Secretary  
15 shall first offer the lease of power privilege to an irrigation  
16 district or water users’ association operating the applica-  
17 ble transferred conduit, or to the irrigation district or  
18 water users’ association receiving water from the applica-  
19 ble reserved conduit. The Secretary shall determine a rea-  
20 sonable timeframe for the irrigation district or water  
21 users’ association to accept or reject a lease of power privi-  
22 lege offer. If the irrigation district or water users’ associa-  
23 tion elects not to accept a lease of power privilege offer  
24 under subsection (b), the Secretary shall offer the lease  
25 of power privilege to other parties using the processes ap-

1 plicable to such leases under section 9(c) of the Reclama-  
2 tion Project Act of 1939 (43 U.S.C. 485h(c)).

3 “(i) The Bureau of Reclamation shall apply its cat-  
4 egorical exclusion process under the National Environ-  
5 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to  
6 small conduit hydropower development under this section,  
7 excluding siting of associated transmission facilities on  
8 Federal lands.

9 “(j) Nothing in this section shall obligate the Western  
10 Area Power Administration or the Bonneville Power Ad-  
11 ministration to purchase or market any of the power pro-  
12 duced by the facilities covered under this section and none  
13 of the costs associated with production or delivery of such  
14 power shall be assigned to project purposes for inclusion  
15 in project rates.

16 “(k) Nothing in this section shall alter or impede the  
17 delivery and management of water by Bureau of Reclama-  
18 tion facilities, as water used for conduit hydropower gen-  
19 eration shall be deemed incidental to use of water for the  
20 original project purposes. Lease of power privilege shall  
21 be made only when, in the judgment of the Secretary, the  
22 exercise of the lease will not be incompatible with the pur-  
23 poses of the project or division involved and shall not cre-  
24 ate any unmitigated financial or physical impacts to the  
25 project or division involved. The Secretary shall notify and

1 consult with the irrigation district or legally organized  
2 water users' association operating the transferred conduit  
3 in advance of offering the lease of power privilege and  
4 shall prescribe such terms and conditions necessary to  
5 adequately protect the planning, design, construction, op-  
6 eration, maintenance, and other interests of the United  
7 States and the project or division involved.

8       “(l) Nothing in this section shall alter or affect any  
9 agreements in effect on the date of the enactment of the  
10 Bureau of Reclamation Conduit Hydropower Development  
11 Equity and Jobs Act for the development of conduit hy-  
12 dropower projects or disposition of revenues.

13       “(m) In this section:

14               “(1) The term ‘conduit’ means any Bureau of  
15 Reclamation tunnel, canal, pipeline, aqueduct, flume,  
16 ditch, or similar manmade water conveyance that is  
17 operated for the distribution of water for agricul-  
18 tural, municipal, or industrial consumption and not  
19 primarily for the generation of electricity.

20               “(2) The term ‘irrigation district’ means any ir-  
21 rigation, water conservation or conservancy, multi-  
22 county water conservation or conservancy district, or  
23 any separate public entity composed of two or more  
24 such districts and jointly exercising powers of its  
25 member districts.



1           “(3) The term ‘reserved conduit’ means any  
2 conduit that is included in project works the care,  
3 operation, and maintenance of which has been re-  
4 served by the Secretary, through the Commissioner  
5 of the Bureau of Reclamation.

6           “(4) The term ‘transferred conduit’ means any  
7 conduit that is included in project works the care,  
8 operation, and maintenance of which has been trans-  
9 ferred to a legally organized water users’ association  
10 or irrigation district.

11           “(5) The term ‘small conduit hydropower’  
12 means a facility capable of producing 5 megawatts  
13 or less of electric capacity.”.

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1 revenues at least sufficient to cover the appropriate share  
2 of the annual operation and maintenance cost of the  
3 project and such fixed charges, including interest, as the  
4 Secretary deems proper. Lease of power privilege con-  
5 tracts shall be for periods not to exceed 40 years.

6       “(e) No findings under section 3 shall be required  
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10 a lease of power privilege, and direct revenues derived  
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15 Fund to be credited to the project from which those reve-  
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17       “(h) When carrying out this section, the Secretary  
18 shall first offer the lease of power privilege to an irrigation  
19 district or water users association operating the applicable  
20 transferred conduit, or to the irrigation district or water  
21 users association receiving water from the applicable re-  
22 served conduit. The Secretary shall determine a reason-  
23 able timeframe for the irrigation district or water users  
24 association to accept or reject a lease of power privilege  
25 offer. If the irrigation district or water users association

1 elects not to accept a lease of power privilege offer under  
2 subsection (b), the Secretary shall offer the lease of power  
3 privilege to other parties using the processes applicable to  
4 such leases under section 9(c) of the Reclamation Project  
5 Act of 1939 (43 U.S.C. 485h(c)).

6 “(i) The Bureau of Reclamation shall apply its cat-  
7 egorical exclusion process under the National Environ-  
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9 small conduit hydropower development under this section,  
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13 Area Power Administration or the Bonneville Power Ad-  
14 ministration to purchase or market any of the power pro-  
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15 means a facility capable of producing 5 megawatts  
16 or less of electric capacity.”

Passed the House of Representatives December 3,  
2013.

Attest:

KAREN L. HAAS,

*Clerk.*