

BUREAU OF RECLAMATION CONDUIT HYDROPOWER  
DEVELOPMENT EQUITY AND JOBS ACT

OCTOBER 22, 2013.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural  
Resources, submitted the following

R E P O R T

[To accompany H.R. 1963]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1963) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Bureau of Reclamation Conduit Hydropower Development Equity and Jobs Act”.

**SEC. 2. AMENDMENT.**

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

(1) by striking “In connection with” and inserting “(a) In connection with”;

and

(2) by adding at the end the following:

“(b) Except as otherwise provided in this section, the Secretary is authorized to enter into leases of power privileges for electric power generation in connection with any project constructed under this Act, and shall have authority in addition to and alternative to any authority in existing laws relating to particular projects, including small conduit hydropower development, consistent with the terms of this Act, the Reclamation Project Act of 1939 (43 U.S.C. 485h), and other Federal reclamation laws.

“(c) All right, title, and interest to installed power facilities constructed by non-Federal entities pursuant to a lease of power privilege, and direct revenues derived therefrom, shall remain with the lessee unless otherwise required in subsection (d).

“(d) Lease of power privilege charges or fees under this section shall be credited to the facility from which those revenues were derived.

“(e) When carrying out this section, the Secretary shall first offer the lease of power privilege to an irrigation district or water users association operating the applicable transferred conduit, or to the irrigation district or water users association receiving water from the applicable reserved conduit. The Secretary shall determine a reasonable timeframe for the irrigation district or water users association to accept or reject a lease of power privilege offer. If the irrigation district or water users association elects not to accept a lease of power privilege offer under paragraph (1), the Secretary shall offer the lease of power privilege to other parties in accordance with this section.

“(f) The Bureau of Reclamation shall apply its categorical exclusion process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to small conduit hydropower development under this section, excluding siting of associated transmission facilities on Federal lands.

“(g) Nothing in this section shall obligate the Western Area Power Administration or the Bonneville Power Administration to purchase or market any of the power produced by the facilities covered under this section and none of the costs associated with production or delivery of such power shall be assigned to project purposes for inclusion in project rates.

“(h) Nothing in this section shall alter or impede the delivery and management of water by Bureau of Reclamation facilities, as water used for conduit hydropower generation shall be deemed incidental to use of water for the original project purposes. Lease of power privilege shall be made only when, in the judgment of the Secretary, the exercise of the lease will not be incompatible with the purposes of the project or division involved and shall not create any unmitigated financial or physical impacts to the project or division involved. The Secretary shall notify and consult with the irrigation district or legally organized water users association operating the transferred conduit in advance of offering the lease of power privilege and shall prescribe such terms and conditions necessary to adequately protect the planning, design, construction, operation, maintenance, and other interests of the United States and the project or division involved.

“(i) Nothing in this section shall alter or affect any agreements in effect on the date of the enactment of the Bureau of Reclamation Conduit Hydropower Development Equity and Jobs Act for the development of conduit hydropower projects or disposition of revenues.

“(j) In this section:

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

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

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

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

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

## PURPOSE OF THE BILL

The purpose of H.R. 1963 is 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.

## BACKGROUND AND NEED FOR LEGISLATION

Established in 1902, the Bureau of Reclamation's (Reclamation) primary mission is to provide a reliable source of water and power for irrigated agriculture and rural and urban communities. While the larger, multi-purpose projects such as Grand Coulee and Hoover Dams are well known for their significant hydropower contribution, Reclamation has hundreds of much smaller projects which, at the time of their creation, were not considered for hydropower potential due to economics, lack of technology and other factors. Today, with the improved ability to harness the energy of moving water in canals, ditches, and pipelines (collectively known as "conduits"), many are pursuing hydropower development on these smaller projects. The potential is vast, as Reclamation currently owns 47,336 miles of canals, laterals, drains, pipelines and tunnels in the western United States. In March 2012, Reclamation found that at least 373 of its conduit sites had the potential for such development. It is important to note that this list is deemed by many to be conservative in scope, and interest in non-federal hydropower development has been expressed by several operators of facilities not included in the list.

To help spur development at these and other Reclamation sites, Public Law 113-24 authorized non-federal hydropower development through the use of a "lease of power privilege," a contractual arrangement by which a non-federal entity may generate hydropower and pay a rental fee to the federal government for such generation at the specific Reclamation facility on which the entity operates. This law makes clear that hydropower development is explicitly authorized at Reclamation's conduits, while protecting the original and primary Congressionally-authorized purpose of such facilities to provide water supplies. The law requires Reclamation to offer the lease of power privilege first to the entity operating the conduit or the conduit's direct beneficiaries, and if that entity elects not to exercise the right, then to other interested parties. This "right of first refusal" provision was intended to significantly decrease conduit hydropower planning and study time, as well as staffing costs associated with analyzing multiple conduit hydropower development applications.

Public Law 113-24 also attempted to reduce regulatory costs and paperwork while protecting the environment. A substantial regulatory barrier to conduit hydropower development is duplicative environmental analysis. The hydropower units covered by Public Law 113-24 are on previously disturbed ground within existing man-made facilities. As such, Public Law 113-24 directs Reclamation to apply its categorical exclusion process under the National Environmental Policy Act to small conduit hydropower development projects under the bill, excluding transmission associated with this hydropower generation. Public Law 113-24 applies to the vast majority of Reclamation facilities that are covered under the Reclamation Project Act of 1939. However, there are some Reclamation projects or components of such projects that are not administered under the Reclamation Project Act of 1939. H.R. 1963 applies to these remaining 11 Reclamation facilities, all of which are governed under the different and more complex authorities of the Water Conservation and Utilization Act of 1939 (WCUA).

WCUA, unlike the Reclamation Project Act of 1939, prohibits non-federal interests from developing hydropower at these facilities and from collecting any revenues received from selling hydropower at these facilities. While non-federal developers are currently prohibited by federal law to build hydropower units (with the exception of one case mandated by Title 11 of Public Law 103–434 ), the federal government has not developed hydropower at these sites due to lack of funds, bureaucratic inertia, and other reasons. As a result, these 11 facilities have the potential to produce hydropower but remain idle. H.R. 1963 encourages hydropower development by removing these statutory barriers to non-federal investment. The statutory change will also allow non-federal parties to retain revenues derived from sales of the developed hydropower. Many irrigation districts which plan to develop these hydropower units view this revenue as a key source for repairing aging infrastructure, offsetting fossil fuel sources used for pumping water, and a way to keep water rates down. In addition, these developers would pay a lease fee to the federal government since they would be generating hydropower on a federal facility in the same manner as provided by Public Law 113–24.

Taken together, Public Law 113–24 and H.R. 1963 authorize a uniform, non-federal hydropower generation framework on all Reclamation conduits that promotes cost-effective renewable energy production and an environment for economic development and job creation, while generating federal revenue and protecting the environment.

#### COMMITTEE ACTION

H.R. 1963 was introduced on May 14, 2013, by Congressman Steve Daines (R-MT). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power. On May 23, 2013, the Subcommittee held a hearing on the bill. On July 31, 2013, the full Natural Resources Committee met to consider the bill. The Subcommittee on Water and Power was discharged by unanimous consent. Congressman Daines offered an amendment designated \_009 to the bill; the amendment was adopted by unanimous consent. No further amendments were offered, and the bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by unanimous consent.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section provides that the Act may be cited as the “The Bureau of Reclamation Conduit Hydropower Development Equity and Jobs Act.”

##### *Section 2. Authorization*

Section 2 amends Section 590z–7 of the Water Conservation and Utilization Act of 1939 (WCUA) to provide the exclusive authority to the Secretary of the Interior to contract with non-federal entities for the development of small conduit hydropower at facilities governed under WCUA, while leaving intact the other existing authorities under WCUA. In addition, Section 2 allows non-federal

parties to retain revenues derived from sales of the hydropower they develop on WCUA projects in accordance with existing Reclamation law and in parity with non-federal hydropower development authorized by Public Law 113–24.

It is also the intent of this section to authorize a lease of power privilege program within WCUA so that facilities constructed under WCUA are treated identically to those covered by Public Law 113–24 for the purpose of small conduit hydropower development. This authorization covers all potential hydropower-related features of the 11 WCUA facilities to which the legislation applies. This section also requires the Bureau of Reclamation to offer the “lease of power privilege” first to the entity operating the conduit or the conduit’s direct water user beneficiaries. This provision reinforces and strengthens Reclamation’s current arrangement of giving irrigation districts the preference to lease hydropower projects on canals that the districts operate and maintain on behalf of the federal government. The Committee understands that these long-time operators/beneficiaries know the operating intricacies and primary water supply features of the respective Reclamation facilities, and are often the best candidates to take advantage of hydropower development on the facilities they already operate for water supply delivery. As such, the Committee expects Reclamation to work cooperatively and communicate directly with these operators/beneficiaries prior to and during the lease process, particularly because a conduit’s primary purpose is to deliver water.

Identical to Public Law 113–24, this provision does not prohibit the operators/beneficiaries of the conduit facility from participating with any third-party interest in the hydropower development on the respective conduit. The Committee also expects Reclamation to undergo a good faith effort to allow the operators/beneficiaries a reasonable and justifiable time frame to accept or reject a conduit lease of power privilege offer. Such time frames should factor in the complexity of the facility, prior communications, any stated concerns of the operators/beneficiaries, and other matters. If after such a good faith effort to communicate a lease opportunity and a reasonable time frame during which to assess the offer, the operator/beneficiary elects not to exercise its right of first refusal, the Secretary is directed to offer the lease of power privilege to other parties and consider their applications according to existing Reclamation law.

This section also directs Reclamation to apply its categorical exclusion process under the National Environmental Policy Act to small conduit hydropower development projects covered by the bill.

Section 2 also clarifies that the Western Area Power Administration, the Bonneville Power Administration and the Southwestern Power Administration are not obligated to purchase or market the conduit hydropower generated at Reclamation facilities and that none of the costs associated with the generation shall be assigned to these agencies’ power rates. This provision is intended to allow the free market to decide who will purchase the conduit hydropower. This section also provides a number of water supply savings clauses. These provisions specifically ensure conduit hydropower development will not harm or impact existing water supplies and water deliveries and acknowledges that water used for conduit hydropower generation is incidental to water supply purposes. This

incidental purpose specifically means hydropower development is subordinate to the original Congressionally-authorized water supply project purposes.

This section also makes clear that Reclamation shall notify and consult with the applicable water users benefitting from the conduit. The Committee expects Reclamation to communicate in written and verbal form with the operators and beneficiaries of a Reclamation conduit facility prior to issuing any lease of power privilege or when identifying a conduit for potential hydropower development. These operators/beneficiaries are acutely aware of facility operations and can provide valuable knowledge and experience to determine the feasibility of the contemplated small-scale hydropower development.

This section also requires the federal government to completely protect the planning, design, construction, operation, maintenance and other interests of the federally-owned conduit. The Committee expects Reclamation to work with the applicable conduit operator/beneficiary on these terms and conditions prior to issuance. The Committee also expects that such terms and conditions will be written and detailed in nature, mandatory for the conduit hydropower developer, and shall be enforced by Reclamation. The Committee is aware that Reclamation has come under significant and justified criticism for not adequately communicating with operators/beneficiaries on existing conduit hydropower projects. Section 2 also ensures that nothing in the bill shall alter or affect any existing agreements for the development of conduit hydropower projects or disposition of revenues.

Finally, this section provides definitions for terms used in the bill.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

#### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*H.R. 1963—Bureau of Reclamation Conduit Hydropower Development Equity and Jobs Act*

H.R. 1963 would authorize the Bureau of Reclamation to enter into leases with nonfederal entities to develop hydropower at 11

water project facilities owned by the government. Based on information from the bureau, CBO estimates that enacting the bill would have an impact on direct spending; therefore, pay-as-you-go procedures apply. However, we estimate such effects would not be significant. Enacting the legislation would not affect revenues or discretionary spending.

In 2011, the bureau completed an assessment of the 11 facilities and found the potential to develop hydropower at seven of the locations. Under current law, the bureau is authorized to develop federally financed and owned hydropower production at those seven facilities; however, it has no plans to do so. Under the bill, the bureau would also be authorized to work with nonfederal entities to develop hydropower through lease agreements at the 11 facilities. Under such agreements, which we expect the bureau would take advantage of, nonfederal entities would finance the necessary hydropower improvements and own the electricity derived from those improvements in exchange for a lease payment to the federal government. CBO estimates that those lease payments would increase federal receipts. However, because the receipts would be available to the bureau to be spent without further appropriation on rehabilitation work at the facility where they were collected, we expect H.R. 1963 would have a negligible net impact on the budget.

H.R. 1963 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information from the Bureau of Reclamation, CBO estimates that enacting the bill would have an impact on direct spending; therefore, pay-as-you-go procedures apply. CBO estimates that lease payments from the hydropower projects authorized by the bill would increase federal receipts. However, CBO estimates such effects would not be significant.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is 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.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

## COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

## PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

**SECTION 9 OF THE ACT OF AUGUST 11, 1939**

AN ACT Authorizing construction of water conservation and utilization projects in the Great Plains and arid and semiarid areas of the United States.

SEC. 9. (a) In connection with any project undertaken pursuant to this Act, provisions, including contracts of sale, may be made for furnishing municipal or miscellaneous water supplies, or for developing and furnishing power in addition to the power requirements of irrigation: *Provided*, That expenditures from appropriations made directly pursuant to the authority contained in section 12 (1) to meet costs allocated to municipal or miscellaneous water supplies or surplus power shall not exceed \$500,000 for any one project: *Provided further*, That no contract relating to a water supply for municipal or miscellaneous purposes or to electric power shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes. On any project where such provisions are made, the Secretary shall allocate to municipal or miscellaneous water purposes or to surplus power the part of the estimated construction costs of the project which he deems properly so allocable; and such allocations shall not be included in the reimbursable construction costs covered by the repayment contract or contracts required under section 4. All right, title, and interest in the facilities provided for such municipal or miscellaneous water supplies or surplus power and the revenues derived therefrom shall be and remain in the United States. Contracts for such municipal or miscellaneous water supplies or for such surplus power shall be at such rates as, in the Secretary's judgment, will produce revenues at least sufficient to cover the appropriate share of the annual operation and maintenance cost of the project and such fixed charges, including interest, as the Secretary deems proper. Contracts for the sale of surplus power shall



be for periods not to exceed forty years and contracts for water supply for municipal or miscellaneous purposes shall be for such periods as the Secretary may determine and may include such renewal options as the Secretary deems desirable: *And provided further*, That in sales or leases of such power, preference shall be given to municipalities and other public corporations or agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 and any amendments thereof.

*(b) Except as otherwise provided in this section, the Secretary is authorized to enter into leases of power privileges for electric power generation in connection with any project constructed under this Act, and shall have authority in addition to and alternative to any authority in existing laws relating to particular projects, including small conduit hydropower development, consistent with the terms of this Act, the Reclamation Project Act of 1939 (43 U.S.C. 485h), and other Federal reclamation laws.*

*(c) All right, title, and interest to installed power facilities constructed by non-federal entities pursuant to a lease of power privilege, and direct revenues derived therefrom, shall remain with the lessee unless otherwise required in subsection (d).*

*(d) Lease of power privilege charges or fees under this section shall be credited to the facility from which those revenues were derived.*

*(e) When carrying out this section, the Secretary shall first offer the lease of power privilege to an irrigation district or water users association operating the applicable transferred conduit, or to the irrigation district or water users association receiving water from the applicable reserved conduit. The Secretary shall determine a reasonable timeframe for the irrigation district or water users association to accept or reject a lease of power privilege offer. If the irrigation district or water users association elects not to accept a lease of power privilege offer under paragraph (1), the Secretary shall offer the lease of power privilege to other parties in accordance with this section.*

*(f) The Bureau of Reclamation shall apply its categorical exclusion process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to small conduit hydropower development under this section, excluding siting of associated transmission facilities on Federal lands.*

*(g) Nothing in this section shall obligate the Western Area Power Administration or the Bonneville Power Administration to purchase or market any of the power produced by the facilities covered under this section and none of the costs associated with production or delivery of such power shall be assigned to project purposes for inclusion in project rates.*

*(h) Nothing in this section shall alter or impede the delivery and management of water by Bureau of Reclamation facilities, as water used for conduit hydropower generation shall be deemed incidental to use of water for the original project purposes. Lease of power privilege shall be made only when, in the judgment of the Secretary, the exercise of the lease will not be incompatible with the purposes of the project or division involved and shall not create any unmitigated financial or physical impacts to the project or division involved. The Secretary shall notify and consult with the irrigation*

*district or legally organized water users association operating the transferred conduit in advance of offering the lease of power privilege and shall prescribe such terms and conditions necessary to adequately protect the planning, design, construction, operation, maintenance, and other interests of the United States and the project or division involved.*

*(i) Nothing in this section shall alter or affect any agreements in effect on the date of the enactment of the Bureau of Reclamation Conduit Hydropower Development Equity and Jobs Act for the development of conduit hydropower projects or disposition of revenues.*

*(j) In this section:*

*(1) The term "conduit" means any Bureau of Reclamation tunnel, canal, pipeline, aqueduct, flume, ditch, or similar man-made water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.*

*(2) The term "irrigation district" means any irrigation, water conservation or conservancy, multi-county water conservation or conservancy district, or any separate public entity composed of two or more such districts and jointly exercising powers of its member districts.*

*(3) The term "reserved conduit" means any conduit that is included in project works the care, operation, and maintenance of which has been reserved by the Secretary, through the Commissioner of the Bureau of Reclamation.*

*(4) The term "transferred conduit" means any conduit that is included in project works the care, operation, and maintenance of which has been transferred to a legally organized water users association or irrigation district.*

*(5) The term "small conduit hydropower" means a facility capable of producing 5 megawatts or less of electric capacity.*