

118TH CONGRESS  
1ST SESSION

# H. R. 3637

To direct the Federal Trade Commission to promulgate regulations to prohibit an entity from selling, leasing, or offering for sale or lease water rights at an excessive price during certain droughts, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2023

Mr. GALLEGO introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To direct the Federal Trade Commission to promulgate regulations to prohibit an entity from selling, leasing, or offering for sale or lease water rights at an excessive price during certain droughts, 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 “Drought-Related Over-  
5 pricing Prevention Act” or the “DROP Act”.

6 **SEC. 2. PROHIBITION ON WATER RIGHTS PRICE GOUGING.**

7 (a) PROHIBITION.—Not later than 1 year after the  
8 date of the enactment of this Act, the Commission shall

1 promulgate, under section 553 of title 5, United States  
2 Code, regulations to prohibit an entity from selling, leas-  
3 ing, or offering for sale or lease, at an excessive price,  
4 water rights relating to an area subject to a covered  
5 drought.

6 (b) EXEMPTIONS.—

7 (1) IN GENERAL.—In promulgating regulations  
8 under subsection (a), the Commission shall exempt  
9 from such regulations the following:

10 (A) An entity with less than \$100,000,000  
11 in gross revenues in the United States (includ-  
12 ing the revenues of any parent entity of such  
13 entity) during the 1-year period preceding the  
14 date of the relevant sale, lease, or offer.

15 (B) A State government.

16 (C) A local government.

17 (D) A Tribal government.

18 (2) ADJUSTMENTS FOR INFLATION.—On an an-  
19 nual basis, the Commission shall adjust the amount  
20 specified in paragraph (1)(A) to reflect changes in  
21 the Consumer Price Index for All Urban Consumers  
22 published by the Bureau of Labor Statistics.

23 (c) EXCESSIVE PRICE DETERMINATIONS.—

24 (1) STANDARDS REQUIRED.—In promulgating  
25 regulations under subsection (a), the Commission

1 shall establish standards for determining if a price  
2 is excessive.

3 (2) DETERMINATIONS OF EXCESSIVE PRICE.—

4 The standards established under paragraph (1) shall  
5 provide for a price to be determined excessive if the  
6 Commission finds that the relevant entity is selling,  
7 leasing, or offering for sale or lease water rights—

8 (A) using a covered drought as a pretext  
9 to increase prices; and

10 (B) at an inappropriately excessive price  
11 compared to the average price at which similar  
12 water rights were sold, leased, or offered for  
13 sale or lease (as the case may be), during the  
14 120-day period preceding such covered drought,  
15 by—

16 (i) such relevant entity; or

17 (ii) by all sellers in the relevant mar-  
18 ket.

19 (3) COSTS NOT WITHIN CONTROL OF ENTITY.—

20 The standards established under paragraph (1) may  
21 ensure that an entity is not determined to be selling,  
22 leasing, or offering for sale or lease water rights at  
23 an excessive price if the entity demonstrates, by  
24 clear and convincing evidence, that a relevant in-

1       crease in price is directly attributable to costs that  
2       are not within the control of the entity.

3       (d) ENFORCEMENT BY COMMISSION.—

4             (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
5       TICES.—A violation of the regulations promulgated  
6       under subsection (a) shall be treated as a violation  
7       of a regulation under section 18(a)(1)(B) of the  
8       Federal Trade Commission Act (15 U.S.C.  
9       57a(a)(1)(B)) regarding unfair or deceptive acts or  
10      practices.

11            (2) POWERS OF COMMISSION.—The Commis-  
12      sion shall enforce the regulations promulgated under  
13      subsection (a) in the same manner, by the same  
14      means, and with the same jurisdiction, powers, and  
15      duties as though all applicable terms and provisions  
16      of the Federal Trade Commission Act (15 U.S.C. 41  
17      et seq.) were incorporated into and made a part of  
18      this Act. Any person who violates such regulations  
19      shall be subject to the penalties and entitled to the  
20      privileges and immunities provided in the Federal  
21      Trade Commission Act.

22      (e) DEFINITIONS.—In this section:

23            (1) COMMISSION.—The term “Commission”  
24      means the Federal Trade Commission.

1           (2) COVERED DROUGHT.—The term “covered  
2 drought” means any of the following:

3           (A) As determined by the Commission in  
4 coordination with the United States Geological  
5 Survey, a weather pattern and precipitation def-  
6 icit that has continued for a period in excess of  
7 6 months.

8           (B) As determined by the Commission in  
9 coordination with the Bureau of Reclamation, a  
10 Tier 1 or more severe shortage designation with  
11 respect to the Colorado River.

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