

118TH CONGRESS
1ST SESSION

S. 64

To prohibit the conditioning of any permit, lease, or other use agreement on the transfer of any water right to the United States by the Secretary of the Interior and the Secretary of Agriculture, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25, 2023

Mr. BARRASSO (for himself, Mr. RISCH, and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To prohibit the conditioning of any permit, lease, or other use agreement on the transfer of any water right to the United States by the Secretary of the Interior and the Secretary of Agriculture, 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 “Water Rights Protec-
5 tion Act of 2023”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) SECRETARY.—The term “Secretary”
2 means, as applicable—

3 (A) the Secretary of Agriculture; or

4 (B) the Secretary of the Interior.

5 (2) WATER RIGHT.—The term “water right”
6 means any surface water, groundwater, or water
7 storage use filed, permitted, certificated, confirmed,
8 decreed, adjudicated, or otherwise recognized by a
9 judicial proceeding or by the State, in which the user
10 acquires possession of the water or puts the water
11 to beneficial use, including water rights of federally
12 recognized Indian Tribes.

13 **SEC. 3. POLICY DEVELOPMENT.**

14 In developing any rule, policy, directive, management
15 plan, or similar Federal action relating to the issuance,
16 renewal, amendment, or extension of any permit, approval,
17 license, lease, allotment, easement, right-of-way, or other
18 land use or occupancy agreement, the Secretary—

19 (1) shall—

20 (A) recognize the longstanding authority of
21 the States relating to evaluating, protecting, al-
22 locating, regulating, permitting, and adjudi-
23 cating water use; and

24 (B) coordinate with the States to ensure
25 that any rule, policy, directive, management

1 plan, or similar Federal action is consistent
2 with, and imposes no greater restriction or reg-
3 ulatory requirement, than applicable State
4 water law; and

5 (2) shall not—

6 (A) assert any connection between surface
7 water and groundwater that is inconsistent with
8 such a connection recognized by State water
9 law; or

10 (B) take any action that adversely af-
11 fects—

12 (i) the authority of a State in—

13 (I) permitting the beneficial use
14 of water; or

15 (II) adjudicating water rights;

16 (ii) any definition established by a
17 State with respect to the term “beneficial
18 use”, “priority of water rights”, or “terms
19 of use”; or

20 (iii) any other right or obligation of a
21 State established under State law.

22 **SEC. 4. TREATMENT OF WATER RIGHTS.**

23 The Secretary shall not—

24 (1) condition the issuance, renewal, amendment,
25 or extension of any permit, approval, license, lease,

1 allotment, easement, right-of-way, or other land use
2 or occupancy agreement on the transfer of any water
3 right (including joint and sole ownership) directly or
4 indirectly to the United States, or on any impair-
5 ment of title or interest, in whole or in part, granted
6 or otherwise recognized under State law, by Federal
7 or State adjudication, decree, or other judgment, or
8 pursuant to any interstate water compact;

9 (2) require any water user (including any feder-
10 ally recognized Indian Tribe) to apply for or acquire
11 a water right in the name of the United States
12 under State law as a condition of the issuance, re-
13 newal, amendment, or extension of any permit, ap-
14 proval, license, lease, allotment, easement, right-of-
15 way, or other land use or occupancy agreement; or

16 (3) condition or withhold the issuance, renewal,
17 amendment, or extension of any permit, approval, li-
18 cense, lease, allotment, easement, right-of-way, or
19 other land use or occupancy agreement, in whole or
20 in part, on—

21 (A) limiting the date, time, quantity, loca-
22 tion of diversion or pumping, or place of use of
23 a State water right beyond any applicable limi-
24 tations under State water law; or

1 (B) the modification of the terms and con-
2 ditions of groundwater withdrawal, guidance
3 and reporting procedures, or conservation and
4 source protection measures established by a
5 State.

6 **SEC. 5. EFFECT.**

7 (a) RECLAMATION CONTRACTS.—Nothing in this Act
8 in any way interferes with any existing or future Bureau
9 of Reclamation contract entered into pursuant to Federal
10 reclamation law (the Act of June 17, 1902 (32 Stat. 388,
11 chapter 1093), and Acts supplemental to and amendatory
12 of that Act).

13 (b) ENDANGERED SPECIES ACT.—Nothing in this
14 Act affects the implementation of the Endangered Species
15 Act of 1973 (16 U.S.C. 1531 et seq.).

16 (c) FEDERAL RESERVED WATER RIGHTS.—Nothing
17 in this Act limits or expands any existing or future re-
18 served water rights of the Federal Government on land
19 administered by the Secretary.

20 (d) FEDERAL POWER ACT.—Nothing in this Act lim-
21 its or expands authorities pursuant to sections 4(e), 10(j),
22 or 18 of the Federal Power Act (16 U.S.C. 797(e), 803(j),
23 811).

24 (e) INDIAN WATER RIGHTS.—Nothing in this Act
25 limits or expands any existing or future reserved water

1 right or treaty right of any federally recognized Indian
2 Tribe.

3 (f) FEDERALLY HELD STATE WATER RIGHTS.—
4 Nothing in this Act limits the ability of the Secretary,
5 through applicable State procedures, to acquire, use, en-
6 force, or protect a State water right owned by the United
7 States.

8 (g) INTERSTATE COMPACTS.—Nothing in this Act af-
9 fects an allocation contained in, or limitations and require-
10 ments of, any interstate water compact or decree of the
11 Supreme Court of the United States interpreting or en-
12 forcing an interstate water compact.

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