

RECLAMATION TITLE TRANSFER AND NON-FEDERAL
INFRASTRUCTURE INCENTIVIZATION ACT

SEPTEMBER 27, 2017.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3281]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3281) to authorize the Secretary of the Interior to facilitate the transfer to non-Federal ownership of appropriate reclamation projects or facilities, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 3281 is to authorize the Secretary of the Interior to facilitate the transfer to non-Federal ownership of appropriate reclamation projects or facilities.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 3281 seeks to reduce administrative paperwork, eliminate federal taxpayer liability and empower water users by streamlining the process governing the transfer of some Bureau of Reclamation (BOR) projects or facilities to non-federal interests.

BOR is the nation's largest wholesale water supplier. According to the agency, BOR provides 1 out of 5 (or 140,000) Western farmers with irrigation water for 10 million farmland acres that produce 60 percent of the nation's vegetables and one quarter of its

fresh fruit and nut crops. The federal agency also delivers 10 trillion gallons of water to more than 31 million people annually and is the second largest domestic producer of hydropower. BOR's assets include 492 dams, 1,901 buildings and over 8,000 miles of canals in the 17 western states.

BOR holds title to the individual water and power supply and delivery facilities it has constructed over the last century. The federal government provided the initial capital contribution to build the vast majority of these early projects; however, the water and power customers who benefitted from the facilities entered into long-term contracts with the federal government to repay their part of the initial taxpayer investment. Under the Reclamation Act of 1902 (Public Law 57-161), BOR may transfer day-to-day operational and maintenance responsibilities to project beneficiaries; however, the title or ownership of any facility must remain in federal ownership until Congress enacts legislation specifically authorizing such a transfer. Since 1996, more than three dozen BOR projects have been transferred or authorized to be transferred to local entities.

A title transfer can provide several benefits to water users. A transfer can reduce regulatory paperwork and staff time at both the federal and local levels, reduce the federal backlog on repairing and upgrading infrastructure and help improve the environment and public safety. Additionally, a title transfer can reduce federal liability since the local entity assumes a transferred facility's liability. At a June 8, 2017, Water, Power and Oceans Subcommittee hearing, Mr. Dan Keppen, Executive Director for the Family Farm Alliance, stated in his written testimony, "[Title transfers] can help reduce federal costs and liability, and allow for a better allocation of federal resources. Operational decisions are timelier and many times are more cost effective when made at the local level. Further, maintenance and rehabilitation of our aging federally owned facilities is more effectively financed and constructed by the local agencies currently responsible for these activities."¹

Several factors influence whether a title transfer can occur. The local water district or beneficiary needs to assess whether the costs associated with the process are worth the benefits of taking ownership of the facility. According to BOR's "Title Transfer Checklist," entities should consider transaction costs (i.e., costs to comply with the Endangered Species Act of 1973, National Environmental Policy Act of 1969, and National Historic Preservation Act of 1966), the future liability of the facility being transferred, the amount owed to the federal government and the potential impacts on third-parties (such as power interests), among others.

Conversely, the federal government assesses whether the transfer meets certain criteria including: the American taxpayers' financial interest must be protected; there must be compliance with all federal and State laws; the Secretary of the Interior's Native American trust responsibilities must be met; and the public aspects of the project must be protected. If the federal government and the beneficiary agree to a transfer, a Memorandum of Understanding or a Memorandum of Agreement must be signed to implement the transfer. In addition, Congress must codify the transfer in law, regardless of the size or scope of the transfer.

¹ https://naturalresources.house.gov/uploadedfiles/testimony_keppen.pdf

At a time when many of BOR's aging facilities depend on the uncertain federal appropriations process, the transfer of a BOR facility to a local irrigation district could allow that district to upgrade or repair the facility by leveraging private financing through ownership. For example, the Provo River Water Users Association in Utah wanted to pipe an open canal to enhance public safety and reduce evaporation to conserve water for humans and wildlife species, but did not have the financial capabilities to accomplish it. Unlikely to receive funding from the federal government, the Association decided to pursue a title transfer to finance the project itself. Congress eventually enacted legislation to convey the facility, which allowed water users to use their ownership as collateral to acquire a loan to complete the project.

Some view the transfer of BOR projects to local water users as a way to encourage new non-federal investment in water infrastructure, but many entities involved in such title transfers have been daunted by these complex and time-consuming administrative and Congressional processes. For example, at a 2004 Subcommittee on Water and Power hearing, Mr. Tom Knutson, former General Manager of the Loup Basin Reclamation District testified that it took over eight years for a simple title transfer that he characterized as "low hanging fruit" in the Middle Loup Division in western Nebraska to become law. Although BOR has taken steps to streamline the process, many of the agency's water customers believe additional improvements are needed.

H.R. 3281 underscores BOR's commitment to transfer existing federal infrastructure into local ownership by simplifying and expediting the title transfer process. Modernizing this process will afford water users with greater control over and more efficient management of their water and water-related facilities while also reducing liability for the American taxpayer.

SECTION-BY-SECTION ANALYSIS

Section 1 states the short title of the bill as the "Reclamation Title Transfer and Non-Federal Infrastructure Incentivization Act".

Section 2 defines key terms used throughout the Act.

Section 3 authorizes the Secretary of the Interior to convey all right, title, and interest in any eligible facility to a qualifying entity if the following criteria are met: the Secretary notifies Congress in writing of the proposed conveyance, and the reason for the conveyance at least less 90 days before making the conveyance, and Congress does not pass a joint resolution disapproving the conveyance before that date. In addition, there is a written agreement between the Secretary and the qualifying entity for the interests in water being conveyed (if included); and interests in eligible facilities shall be conveyed by a written agreement between the Secretary and the qualifying entity (developed in consultation with existing water and power customers). Entities that operate and maintain an eligible facility at the time that the Secretary attempts to facilitate a conveyance shall have the right of first refusal to receive the conveyance under this Act.

Section 4 requires the Secretary to establish criteria to determine which facilities are eligible for title transfer under this Act. At a minimum, the criteria shall include: the qualifying entity agrees to take title; the proposed transfer will not have an "unmitigated sig-

nificant effect on the environment”; the qualifying entity intends to use the property for substantially the same purposes the property was being used prior to the transfer; the transfer is consistent with the Secretary’s responsibility to protect land and water resources held in trust for federally recognized Indian Tribes; the transfer is consistent with the Secretary’s responsibility to ensure compliance with international treaties and interstate compacts; and the qualifying entity agrees to pay any outstanding repayment obligation to the United States as consideration for the transfer.

Section 5 states that no conveyance under this Act may adversely impact power rates or repayment obligations. This section also directs the Secretary to apply a categorical exclusion process under the National Environmental Policy Act of 1969 on eligible facilities under this Act.

Section 6 establishes that once a conveyance takes place, the United States shall not be held liable for any damages, except for those caused by acts of negligence committed by the United States or its employees prior to any conveyance.

Section 7 affirms that a conveyed property shall no longer be considered part of a federal reclamation project, and that transfers of an entire project shall not be eligible for any benefits other than those available to a non-federal reclamation project.

COMMITTEE ACTION

H.R. 3281 was introduced on July 18, 2017, by Congressman Doug Lamborn (R-CO). The bill was referred to the Committee on Natural Resources. Previously, the Subcommittee on Water, Power and Oceans held a hearing on a discussion draft of the bill on June 8, 2017. On July 25, 2017, the Natural Resources Committee met to consider the bill. Congressman Jared Huffman offered and withdrew an amendment designated 087. No further amendments were offered, and the bill was ordered favorably reported to the House of Representatives by a roll call vote of 17 ayes to 12 nays on July 26, 2017, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 07-26-17

Recorded Vote #: 1

Meeting on / Amendment on: FC Mark Up on 21 bills: **On Favorably Reporting** H.R. 3281 (Rep. Doug Lamborn), "Reclamation Title Transfer and Non-Federal Infrastructure Incentivization Act."

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. Cook, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. Soto, FL</i>		X	
Mr. Young, AK, Chairman Emeritus				Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>				<i>Mr. McEachin, VA</i>		X	
Mr. Gohmert, TX, Vice Chairman				Mr. Graves, LA			
<i>Ms. Bordallo, Guam</i>				<i>Mr. Brown, MD</i>		X	
Mr. Lamborn, CO	X			Mr. Hice, GA			
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>			
Mr. Wittman, VA				Mrs. Radewagen, AS	X		
<i>Mr. Sablan, CNMI</i>		X		<i>Mr. Gomez, CA</i>		X	
Mr. McClintock, CA	X			Mr. LaHood, IL	X		
<i>Ms. Tsongas, MA</i>		X		Mr. Webster, FL	X		
Mr. Pearce, NM	X			Mr. Bergman, MI	X		
<i>Mr. Huffman, CA</i>		X		Ms. Cheney, WY	X		
Mr. Thompson, PA	X			Mr. Johnson, LA			
<i>Mr. Lowenthal, CA</i>		X		Ms. González-Colón, PR			
Mr. Gosar, AZ	X			Mr. Gianforte, MT	X		
<i>Mr. Beyer, VA</i>							
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>		X					
Mr. Tipton, CO	X						
<i>Mr. Gallego, AZ</i>							
Mr. LaMalfa, CA	X						
<i>Ms. Hanabusa, HI</i>		X					
Mr. Denham, CA	X						
<i>Ms. Barragán, CA</i>		X		TOTAL:	17	12	

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 and the Congressional Budget Act of 1974. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 29, 2017.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3281, the Reclamation Title Transfer and Non-Federal Infrastructure Incentivization Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 3281—Reclamation Title Transfer and Non-Federal Infrastructure Incentivization Act

H.R. 3281 would authorize the Bureau of Reclamation (BOR) to convey the title to federal water infrastructure facilities to non-federal entities if the entity has a water service contract with BOR for the facility and if certain criteria are met. Based on an analysis of information from BOR, CBO estimates that implementing H.R. 3281 would cost about \$1 million over the 2017–2022 period for staff to establish criteria for conveying a title under the bill and to carry out the work for completing title transfers, including negotiating agreements and coordinating National Environmental Policy Act (NEPA) reviews and surveys. Such spending would be subject to the availability of appropriated funds.

Enacting H.R. 3281 also would affect direct spending because nonfederal entities seeking title to a facility would pay BOR for a portion of the costs to carry out the title transfer. CBO estimates that the net effect on direct spending would be insignificant because BOR would spend those amounts to perform the work. Because enacting the bill would affect direct spending pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

Over the past two decades the title to 30 facilities were conveyed from BOR to nonfederal entities. In each of those cases, after BOR and the nonfederal entity negotiated the required agreements and completed the reviews and surveys, the Congress enacted legisla-

tion to convey each title to the nonfederal entity because under current law the title transfer cannot occur without an act of the Congress.

H.R. 3281 would authorize BOR to transfer titles administratively in certain cases. BOR would notify the Congress of the proposed conveyance and the rationale for the conveyance. Unless the Congress passed a joint resolution disapproving the conveyance within 90 days of the notification, the transfer would proceed.

CBO expects that removing the need for Congressional action to transfer the title of BOR facilities would increase the number of nonfederal entities seeking title transfers. Across the 17 western states where BOR operates there are hundreds of nonfederal entities and associated facilities that could be eligible for title transfer under the bill. Currently, about 15 nonfederal entities are pursuing title transfers and CBO expects that under the bill another 15 entities would seek title transfer in the year after enactment, as well as a few more each year thereafter.

Based on an analysis of information from BOR, CBO estimates that BOR would need about 5 additional employees to implement the bill—1 for each of BOR’s 5 regions—which would roughly double the number of employees working on title transfers. At an average annual cost of \$90,000 per employee, those additional costs would total \$2 million in the first 5 years after enactment. However, CBO estimates that because about half of those costs would be offset by upfront payments from participating nonfederal entities, implementing the legislation would cost the federal government about \$1 million over the 2017–2022 period.

CBO estimates that enacting the bill would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3281 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would benefit public entities, such as local water districts, by facilitating the conveyance of federal reclamation facilities. Any costs incurred by those entities related to acquiring or operating such facilities would result from voluntary commitments.

The CBO staff contacts for this estimate are Aurora Swanson (for federal costs) and Jon Sperl (for intergovernmental mandates). The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

2. 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 authorize the Secretary of the Interior to facilitate the transfer to non-Federal ownership of appropriate reclamation projects or facilities.

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. This bill does not contain any directed rule makings.

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

If enacted, this bill would make no changes in existing law.

DISSENTING VIEWS

H.R. 3281 would authorize de facto privatization of federal infrastructure across the Western United States. Specifically, it permits the Secretary of Interior to transfer title (i.e. ownership) of many federally-owned Bureau of Reclamation water projects and facilities to non-federal entities without Congressional approval.

The U.S. Bureau of Reclamation owns and operates much of the water-related infrastructure in the American West, including hundreds of dams, canals, and other associated infrastructure. Under existing law, transferring ownership of a Reclamation asset requires specific Congressional authorization. The bill removes this longstanding requirement to reduce Congressional oversight and irresponsibly incentivize the privatization of public infrastructure.

H.R. 3281 also permits federal lands to be given away without compensation. Many federal water projects are built on federal lands. If enacted, H.R. 3281 would allow these federal lands to be given away to non-federal entities without requiring the new owner to compensate taxpayers.

H.R. 3281 also fails to require consultation with all affected stakeholders before a federal asset is transferred. Many of the Bureau of Reclamation's water projects serve numerous stakeholders and often need to be operated in a manner that balances conflicting stakeholder interests. Transferring ownership to a single stakeholder without proper consultation would result in significant harm to the many other stakeholders impacted by the operation of federal water projects, including tribes, fishing groups, and environmental and recreation interests.

H.R. 3281 is opposed by numerous conservation and environmental groups, including the Sierra Club, the Natural Resources Defense Council, the Center for Biological Diversity, Earthjustice, and Defenders of Wildlife.

In sum, H.R. 3281 irresponsibly incentivizes the privatization of public resources, reduces Congressional oversight, limits public input in the federal decision-making process, and fails to protect the interests of numerous stakeholders including American taxpayers, tribes, fishing groups, and environmental and recreation interests. For these reasons, we oppose H.R. 3281 as written.

RAÚL M. GRIJALVA,
*Ranking Member, Committee
on Natural Resources.*

A. DONALD MCEACHIN.
NANETTE DIAZ BARRAGÁN.
GRACE F. NAPOLITANO.
JARED HUFFMAN.
COLLEEN HANABUSA.

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DARREN SOTO.

