

Statement for the Record
U.S. Bureau of Reclamation
Before the
U.S. House Committee on Natural Resources,
Subcommittee on Water, Wildlife, and Fisheries
On H.R. 3415, Pilot Butte Power Plant Conveyance Act and H.R. 4385, Drought
Preparedness Act
September 28, 2023

H.R. 3415, Pilot Butte Power Plant Conveyance Act

The Bureau of Reclamation (Reclamation) has constructed numerous dams, canals, and hydropower plants that provide water and power across the 17 western states. For most of these project facilities, Reclamation has transferred all or part of the responsibility for operation, maintenance, and replacement to a project beneficiary. Title, or ownership, to Reclamation facilities, however, remains with the United States Government unless Congress passes legislation directing otherwise.

The transfer of title divests Reclamation of responsibility for the operation, maintenance, replacement, management, regulation of, and most of the liability for Federal interests in lands and project facilities, while providing non-Federal entities with greater autonomy and flexibility to manage the facilities.

From 1995 through 2019, Reclamation conveyed title of 32 projects or parts of projects across the West pursuant to various acts of Congress. These title transfers generally have provided mutual benefits to both Reclamation and the non-federal entities involved. The title transfer process followed a framework that Reclamation and its partners collaboratively developed, but which required the passage of individual acts of Congress.

In 2019 the John D. Dingell, Jr. Conservation, Management, and Recreation Act (P.L. 116-9) was signed into law. Title VIII of this Act provides Reclamation with new authority to transfer title to certain eligible facilities to qualifying entities without separate and individual acts of Congress. Section 8002(3)(B) of P.L. 116-9 included provisions that excluded title transfer authority for certain facilities, including for any reserved works as of the date of enactment. Since enactment, title to 12 additional projects or parts of projects have been conveyed under this new authority. The term “reserved works” means any building, structure, facility, or equipment that is owned, operated, and maintained by Reclamation.

The Pilot Butte Power Plant is a reserved work and is part of Reclamation’s Riverton Unit, as incorporated into the Riverton Unit of the Pick-Sloan Missouri Basin Program by the Act of September 25, 1970 (Public Law 91-409). The Powerplant receives water through the Wyoming Canal and discharges water directly to the Pilot Butte Reservoir. The Wyoming Canal and Pilot Butte Reservoir are Reclamation facilities for which the operation and maintenance has been transferred to the Midvale Irrigation District (District) via contract with Reclamation.

The Powerplant started generating power in 1925. The Powerplant was taken out of service in 1973 due to high operation and maintenance (O&M) costs as well as a deteriorating penstock. The penstock was replaced and the Powerplant was put back into service in 1990. From 1990 through 2008, the Powerplant operated seasonally from mid-April through late September. In 2007, Reclamation estimated the cost of needed repairs to continue to operate the Powerplant to be approximately \$3.2 Million. In 2008, the Powerplant was placed in a mothballed status (removed from service) because it was no longer economically viable to operate it. In 2016, the Wyoming Water Development Office estimated these repairs to cost between \$4.4 and \$8.3 Million.

As a reserved works, the transfer to the Pilot Butte Power Plant and related facilities is not eligible under the authority granted to Reclamation and requires an act of Congress. H.R. 3415 would provide Reclamation with the authority to convey title of the Power Plant to the district, subject to the necessary leases, permits, rights-of-way, easements, and terms necessary to ensure: the title transfer would not result in an adverse impact on existing water or power delivery obligations, that it complies with all applicable federal and state laws, and that conveyance of these facilities is in the financial interest of the United States. As the facilities have been removed from service, transfer of the facilities would minimally reduce costs associated with ongoing operation and maintenance and would potentially eliminate costs associated with removal and demolition, as necessary.

Section 3 further directs Reclamation to enter into good faith negotiations to enter into an agreement within two years with the District to determine and outline a framework for the terms of conveyance of the Power Plant. It requires a report to Congress, if conveyance is not completed within a year of enactment, outlining the status of the conveyance, any obstacles to completion, and the anticipated date of completion.

Section 6 directs Reclamation to provide an equal share with the District for the administrative costs for the conveyance of the Power Plant to the District. It should be noted, under P.L. 116-9, administrative costs for conveyance are fully the requester's expense.

The Department supports the conveyance of the Power Plant to the District, as outlined in H.R. 3415, and if enacted and subject to appropriations, Reclamation would work to negotiate an agreement that ensures the transfer is mutually beneficial to the United States and the District. The Department supports H.R. 3415 and looks forward to working with the bill sponsor to address any necessary technical edits.

H.R. 4385, Drought Preparedness Act

The West faces severe water reliability challenges due to climate change, persistent drought, and increasing water scarcity. The changing climate in the West highlights the need for thoughtful planning and work to ensure our infrastructure is more resilient and that planning for changes in land use are considered over the long-term. Reclamation's Drought Response Program is an important program by which Reclamation provides assistance for drought planning and mitigation. The Drought Response Program's authority is derived primarily through the

Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2211) as well as Title IX, Subtitle F of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364(a), SECURE Water Act).

The Reclamation States Emergency Drought Relief Act of 1991 (Act) is set to expire at the end of Fiscal Year 2023. If enacted, H.R. 4385 would extend the authorities provided by the Act through 2028. With the Drought Response Program, Reclamation relies on the authorities provided by the Act for drought contingency planning and emergency actions. Reclamation is expected to reach the current cost ceiling \$130 million within the next year. If enacted, in order to implement the program through 2028, Reclamation would need an increase in the cost ceiling.

Through the Act, Reclamation provides financial assistance on a competitive basis for applicants to develop drought contingency plans or to update existing plans. In general, the planning process is structured to help planners answer key questions on recognizing, understanding the impacts of, and determining how to protect themselves from drought. It also encourages an open and inclusive planning effort that employs a proactive approach to build long-term drought resiliency.

The Act also allows for Reclamation to undertake emergency response actions under the Drought Response Program to minimize losses and damages resulting from drought, relying on the authorities in Title I of the Act. Emergency response actions are crisis driven actions in response to unanticipated circumstances. As defined within the Act, eligible emergency response actions are limited to temporary construction activities such as storage and conveyance, and temporary water purchases through contracts not to exceed 2 years. The construction of permanent facilities is not eligible under the Act.

The Reclamation States Emergency Drought Relief Act of 1991 is an important authority for Reclamation to continue to respond to and mitigate the impacts of drought. Assuming the cost ceiling is increased in line with the extension, the Department fully supports the extension of the authorities provided in the Act through 2028 as outlined in H.R. 4385 for drought contingency planning and emergency actions.