117TH CONGRESS
1ST SESSION

S.

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

Mr. BARRASSO introduced the following bill; which was read twice and referred to the Committee on ______________________

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Water Rights Protection Act of 2021”.

SEC. 2. DEFINITIONS.

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, allo-
22 cating, regulating, permitting, and adjudicating water use; and
23 (B) coordinate with the States to ensure
24 that any rule, policy, directive, management
plan, or similar Federal action is consistent with, and imposes no greater restriction or regulatory requirement, than applicable State water law; and

(2) shall not—

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

(B) take any action that adversely affects—

(i) the authority of a State in—

(I) permitting the beneficial use of water; or

(II) adjudicating water rights;

(ii) any definition established by a State with respect to the term "beneficial use", "priority of water rights", or "terms of use"; or

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

SEC. 4. TREATMENT OF WATER RIGHTS.

The Secretary shall not—

(1) condition the issuance, renewal, amendment, or extension of any permit, approval, license, lease,
allotment, easement, right-of-way, or other land use
or occupancy agreement on the transfer of any water
right (including joint and sole ownership) directly or
indirectly to the United States, or on any impair-
ment of title or interest, in whole or in part, granted
or otherwise recognized under State law, by Federal
or State adjudication, decree, or other judgment, or
pursuant to any interstate water compact;

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

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

(A) limiting the date, time, quantity, loca-
tion of diversion or pumping, or place of use of
a State water right beyond any applicable limi-
tations under State water law; or
(B) the modification of the terms and conditions of groundwater withdrawal, guidance and reporting procedures, or conservation and source protection measures established by a State.

SEC. 5. EFFECT.

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

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

(c) FEDERAL RESERVED WATER RIGHTS.—Nothing in this Act limits or expands any existing or future reserved water rights of the Federal Government on land administered by the Secretary.

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

(e) INDIAN WATER RIGHTS.—Nothing in this Act limits or expands any existing or future reserved water
(f) **FEDERALLY HELD STATE WATER RIGHTS.**—Nothing in this Act limits the ability of the Secretary, through applicable State procedures, to acquire, use, enforce, or protect a State water right owned by the United States.

(g) **INTERSTATE COMPACTS.**—Nothing in this Act affects an allocation contained in, or limitations and requirements of, any interstate water compact or decree of the Supreme Court of the United States interpreting or enforcing an interstate water compact.