

111TH CONGRESS  
1ST SESSION

# S. 2891

To further allocate and expand the availability of hydroelectric power generated at Hoover Dam, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 16, 2009

Mr. REID (for himself, Mr. ENSIGN, Mrs. FEINSTEIN, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To further allocate and expand the availability of hydroelectric power generated at Hoover Dam, 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 “Hoover Power Alloca-  
5 tion Act of 2009”.

6 **SEC. 2. ALLOCATION OF CONTRACTS FOR POWER.**

7 (a) SCHEDULE A POWER.—Section 105(a)(1)(A) of  
8 the Hoover Power Plant Act of 1984 (43 U.S.C.  
9 619a(a)(1)(A)) is amended—

- 1 (1) by striking “renewal”;
- 2 (2) by striking “June 1, 1987” and inserting
- 3 “October 1, 2017”; and
- 4 (3) by striking Schedule A and inserting the
- 5 following:

## “Schedule A

Long-term Schedule A contingent capacity and associated firm energy for offers of contracts to  
Boulder Canyon project contractors

Contractor	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
Metropolitan Water District of Southern California .....	249,948	859,163	368,212	1,227,375
City of Los Angeles Southern California Edison Company ..	495,732	464,108	199,175	663,283
City of Glendale .....	280,245	166,712	71,448	238,160
City of Pasadena .....	18,178	45,028	19,297	64,325
City of Burbank .....	11,108	38,622	16,553	55,175
Arizona Power Authority .....	5,176	14,070	6,030	20,100
Colorado River Commission of Nevada .....	190,869	429,582	184,107	613,689
United States, for Boulder City .....	190,869	429,582	184,107	613,689
Totals .....	20,198	53,200	22,800	76,000
	1,462,323	2,500,067	1,071,729	3,571,796”.

- 6 (b) SCHEDULE B POWER.—Section 105(a)(1)(B) of
- 7 the Hoover Power Plant Act of 1984 (43 U.S.C.
- 8 619a(a)(1)(B)) is amended to read as follows:
- 9 “(B) To each existing contractor for power generated
- 10 at Hoover Dam, a contract, for delivery commencing Octo-
- 11 ber 1, 2017, of the amount of contingent capacity and
- 12 firm energy specified for that contractor in the following
- 13 table:

## “Schedule B

Long-term Schedule B contingent capacity and associated firm energy for offers of contracts to  
Boulder Canyon project contractors

Contractor	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
City of Glendale .....	2,020	2,749	1,194	3,943
City of Pasadena .....	9,089	2,399	1,041	3,440
City of Burbank .....	15,149	3,604	1,566	5,170
City of Anaheim .....	40,396	34,442	14,958	49,400
City of Azusa .....	4,039	3,312	1,438	4,750
City of Banning .....	2,020	1,324	576	1,900
City of Colton .....	3,030	2,650	1,150	3,800
City of Riverside .....	30,296	25,831	11,219	37,050
City of Vernon .....	22,218	18,546	8,054	26,600
Arizona .....	189,860	140,600	60,800	201,400
Nevada .....	189,860	273,600	117,800	391,400
Totals .....	507,977	509,057	219,796	728,853”.

1 (c) SCHEDULE C POWER.—Section 105(a)(1)(C) of  
2 the Hoover Power Plant Act of 1984 (43 U.S.C.  
3 619a(a)(1)(C)) is amended—

4 (1) by striking “June 1, 1987” and inserting  
5 “October 1, 2017”; and

6 (2) by striking Schedule C and inserting the  
7 following:

“Schedule C  
Excess Energy

Priority of entitlement to excess energy	State
First: Meeting Arizona’s first priority right to delivery of excess energy which is equal in each year of operation to 200 million kilowatthours: Provided, That in the event excess energy in the amount of 200 million kilowatthours is not generated during any year of operation, Arizona shall accumulate a first right to delivery of excess energy subsequently generated in an amount not to exceed 600 million kilowatthours, inclusive of the current year’s 200 million kilowatthours. Said first right of delivery shall accrue at a rate of 200 million kilowatthours per year for each year excess energy in an amount of 200 million kilowatthours is not generated, less amounts of excess energy delivered. ....	Arizona
Second: Meeting Hoover Dam contractual obligations under Schedule A of subsection (a)(1)(A), under Schedule B of subsection (a)(1)(B), and under Schedule D of subsection (a)(2), not exceeding 26 million kilowatthours in each year of operation. ....	Arizona, Nevada, and California
Third: Meeting the energy requirements of the three States, such available excess energy to be divided equally among the States. ....	Arizona, Nevada, and California”.

1           (d) SCHEDULE D POWER.—Section 105(a) of the  
2 Hoover Power Plant Act of 1984 (43 U.S.C. 619a(a)) is  
3 amended—  
4           (1) by redesignating paragraphs (2), (3), and  
5           (4) as paragraphs (3), (4), and (5), respectively; and  
6           (2) by inserting after paragraph (1) the fol-  
7           lowing:  
8           “(2)(A) The Secretary of Energy is authorized to and  
9 shall create from the apportioned allocation of contingent  
10 capacity and firm energy adjusted from the amounts au-

1 thorized in this Act in 1984 to the amounts shown in  
 2 Schedule A and Schedule B, as modified by the Hoover  
 3 Power Allocation Act of 2009, a resource pool equal to  
 4 5 percent of the full rated capacity of 2,074,000 kilowatts,  
 5 and associated firm energy, as shown in Schedule D (re-  
 6 ferred to in this section as ‘Schedule D contingent capac-  
 7 ity and firm energy’):

“Schedule D

Long-term Schedule D resource pool of contingent capacity and associated firm energy for new allottees

State	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
New Entities Allocated by the Secretary of Energy	69,170	105,637	45,376	151,013
New Entities Allocated by State				
Arizona .....	11,510	17,580	7,533	25,113
California .....	11,510	17,580	7,533	25,113
Nevada .....	11,510	17,580	7,533	25,113
Totals .....	103,700	158,377	67,975	226,352

8 “(B) The Secretary of Energy shall offer Schedule  
 9 D contingency capacity and firm energy to entities not re-  
 10 ceiving contingent capacity and firm energy under sub-  
 11 paragraphs (A) and (B) of paragraph (1) (referred to in  
 12 this section as ‘new allottees’) for delivery commencing  
 13 October 1, 2017 pursuant to this subsection. In this sub-  
 14 section, the term ‘the marketing area for the Boulder City  
 15 Area Projects’ shall have the same meaning as in appendix  
 16 A of the General Consolidated Power Marketing Criteria  
 17 or Regulations for Boulder City Area Projects published

1 in the Federal Register on December 28, 1984 (49 Fed-  
2 eral Register 50582 et seq.) (referred to in this section  
3 as the ‘Criteria’).

4 “(C)(i) Within 18 months of the date of enactment  
5 of the Hoover Power Allocation Act of 2009, the Secretary  
6 of Energy shall allocate through the Western Area Power  
7 Administration (referred to in this section as ‘Western’),  
8 for delivery commencing October 1, 2017, for use in the  
9 marketing area for the Boulder City Area Projects 66.7  
10 percent of the Schedule D contingent capacity and firm  
11 energy to new allottees that are located within the mar-  
12 keting area for the Boulder City Area Projects and that  
13 are—

14 “(I) eligible to enter into contracts under sec-  
15 tion 5 of the Boulder Canyon Project Act (43 U.S.C.  
16 617d); or

17 “(II) federally recognized Indian tribes.

18 “(ii) In the case of Arizona and Nevada, Schedule  
19 D contingent capacity and firm energy for new allottees  
20 shall be offered through the Arizona Power Authority and  
21 the Colorado River Commission of Nevada, respectively.

22 “(iii) In performing its allocation of Schedule D  
23 power provided for in this subparagraph, Western shall  
24 apply criteria developed in consultation with the States of  
25 Arizona, Nevada, and California.

1           “(D) Within 1 year of the date of enactment of the  
2 Hoover Power Allocation Act of 2009, the Secretary of  
3 Energy also shall allocate, for delivery commencing Octo-  
4 ber 1, 2017, for use in the marketing area for the Boulder  
5 City Area Projects 11.1 percent of the Schedule D contin-  
6 gent capacity and firm energy to each of—

7           “(i) the Arizona Power Authority for allocation  
8 to new allottees in the State of Arizona;

9           “(ii) the Colorado River Commission of Nevada  
10 for allocation to new allottees in the State of Ne-  
11 vada; and

12           “(iii) Western for allocation to new allottees  
13 within the State of California.

14           “(E) Each contract offered pursuant to this sub-  
15 section shall include a provision requiring the new allottee  
16 to pay a proportionate share of its State’s respective con-  
17 tribution (determined in accordance with each State’s ap-  
18 plicable funding agreement) to the cost of the Lower Colo-  
19 rado River Multi-Species Conservation Program (as de-  
20 fined in section 9401 of the Omnibus Public Land Man-  
21 agement Act of 2009 (Public Law 111–11; 123 Stat.  
22 1327)), and to execute the Boulder Canyon Project Imple-  
23 mentation Agreement Contract No. 95–PAO–10616 (re-  
24 ferred to in this section as the ‘Implementation Agree-  
25 ment’).

1       “(F) Any of the 66.7 percent of Schedule D contin-  
2 gent capacity and firm energy that is to be allocated by  
3 Western that is not allocated and placed under contract  
4 by October 1, 2017, shall be returned to those contractors  
5 shown in Schedule A and Schedule B in the same propor-  
6 tion as those contractors’ allocations of Schedule A and  
7 Schedule B contingent capacity and firm energy. Any of  
8 the 33.3 percent of Schedule D contingent capacity and  
9 firm energy that is to be distributed within the States of  
10 Arizona, Nevada, and California that is not allocated and  
11 placed under contract by October 1, 2017, shall be re-  
12 turned to the Schedule A and Schedule B contractors  
13 within the State in which the Schedule D contingent ca-  
14 pacity and firm energy were to be distributed, in the same  
15 proportion as those contractors’ allocations of Schedule A  
16 and Schedule B contingent capacity and firm energy..”.

17       (e) TOTAL OBLIGATIONS.—Paragraph (3) of section  
18 105(a) of the Hoover Power Plant Act of 1984 (43 U.S.C.  
19 619a(a)) (as redesignated as subsection (d)(1)) is amend-  
20 ed—

21           (1) in the first sentence, by striking “schedule  
22 A of subsection (a)(1)(A) of this section and sched-  
23 ule B of subsection (a)(1)(B) of this section” and in-  
24 serting “pursuant to paragraphs (1)(A), (1)(B), and  
25 (2)”; and

1 (2) in the second sentence—

2 (A) by striking “any” and inserting  
3 “each”;

4 (B) by striking “schedule C” and inserting  
5 “Schedule C”; and

6 (C) by striking “schedules A and B” and  
7 inserting “Schedules A, B, and D”.

8 (f) POWER MARKETING CRITERIA.—Paragraph (4)  
9 of section 105(a) of the Hoover Power Plant Act of 1984  
10 (43 U.S.C. 619a(a)) (as redesignated as subsection (d)(1))  
11 is amended to read as follows:

12 “(4) Subdivision E of the Criteria shall be deemed  
13 to have been modified to conform to this section, as modi-  
14 fied by the Hoover Power Allocation Act of 2009. The Sec-  
15 retary of Energy shall cause to be included in the Federal  
16 Register a notice conforming the text of the regulations  
17 to such modifications.”.

18 (g) CONTRACT TERMS.—Paragraph (5) of section  
19 105(a) of the Hoover Power Plant Act of 1984 (43 U.S.C.  
20 619a(a)) (as redesignated as subsection (d)(1)) is amend-  
21 ed—

22 (1) by striking subparagraph (A) and inserting  
23 the following:

1           “(A) in accordance with section 5(a) of the  
2 Boulder Canyon Project Act (43 U.S.C. 617d(a)),  
3 expire September 30, 2067;”;

4           (2) in the proviso of subparagraph (B)—

5                 (A) by striking “shall use” and inserting  
6 “shall allocate”; and

7                 (B) by striking “and” after the semicolon  
8 at the end;

9           (3) in subparagraph (C), by striking the period  
10 at the end and inserting a semicolon; and

11           (4) by adding at the end the following:

12                 “(D) authorize and require Western to collect  
13 from new allottees a pro rata share of Hoover Dam  
14 repayable advances paid for by contractors prior to  
15 October 1, 2017, and remit such amounts to the  
16 contractors that paid such advances in proportion to  
17 the amounts paid by such contractors as specified in  
18 section 6.4 of the Implementation Agreement;

19                 “(E) permit transactions with an independent  
20 system operator; and

21                 “(F) contain the same material terms included  
22 in section 5.6 of those long-term contracts for pur-  
23 chases from the Hoover Power Plant that were made  
24 in accordance with this Act and are in existence on

1 the date of enactment of the Hoover Power Alloca-  
2 tion Act of 2009.”.

3 (h) EXISTING RIGHTS.—Section 105(b) of the Hoo-  
4 ver Power Plant Act of 1984 (43 U.S.C. 619a(b)) is  
5 amended by striking “2017” and inserting “2067”.

6 (i) OFFERS.—Section 105(c) of the Hoover Power  
7 Plant Act of 1984 (43 U.S.C. 619a(c)) is amended to read  
8 as follows:

9 “(c) OFFER OF CONTRACT TO OTHER ENTITIES.—  
10 If any existing contractor fails to accept an offered con-  
11 tract, the Secretary of Energy shall offer the contingent  
12 capacity and firm energy thus available first to other enti-  
13 ties in the same State listed in Schedule A and Schedule  
14 B, second to other entities listed in Schedule A and Sched-  
15 ule B, third to other entities in the same State which re-  
16 ceive contingent capacity and firm energy under sub-  
17 section (a)(2) of this section, and last to other entities  
18 which receive contingent capacity and firm energy under  
19 subsection (a)(2) of this section.”.

20 (j) AVAILABILITY OF WATER.—Section 105(d) of the  
21 Hoover Power Plant Act of 1984 (43 U.S.C. 619a(d)) is  
22 amended to read as follows:

23 “(d) WATER AVAILABILITY.—Except with respect to  
24 energy purchased at the request of an allottee pursuant  
25 to subsection (a)(3), the obligation of the Secretary of En-

1 ergy to deliver contingent capacity and firm energy pursu-  
2 ant to contracts entered into pursuant to this section shall  
3 be subject to availability of the water needed to produce  
4 such contingent capacity and firm energy. In the event  
5 that water is not available to produce the contingent ca-  
6 pacity and firm energy set forth in Schedule A, Schedule  
7 B, and Schedule D, the Secretary of Energy shall adjust  
8 the contingent capacity and firm energy offered under  
9 those Schedules in the same proportion as those contrac-  
10 tors' allocations of Schedule A, Schedule B, and Schedule  
11 D contingent capacity and firm energy bears to the full  
12 rated contingent capacity and firm energy obligations.”.

13 (k) CONFORMING AMENDMENTS.—Section 105 of the  
14 Hoover Power Plant Act of 1984 (43 U.S.C. 619a) is  
15 amended—

16 (1) by striking subsections (e) and (f); and

17 (2) by redesignating subsections (g), (h), and  
18 (i) as subsections (e), (f), and (g), respectively.

19 (l) CONTINUED CONGRESSIONAL OVERSIGHT.—Sub-  
20 section (e) of section 105 of the Hoover Power Plant Act  
21 of 1984 (43 U.S.C. 619a)) (as redesignated by subsection  
22 (k)(2)) is amended—

23 (1) in the first sentence, by striking “the re-  
24 newal of”; and

1           (2) in the second sentence, by striking “June 1,  
2           1987, and ending September 30, 2017” and insert-  
3           ing “October 1, 2017, and ending September 30,  
4           2067”.

5           (m) COURT CHALLENGES.—Subsection (f)(1) of sec-  
6           tion 105 of the Hoover Power Plant Act of 1984 (43  
7           U.S.C. 619a) (as redesignated by subsection (k)(2)) is  
8           amended in the first sentence by striking “this Act” and  
9           inserting “the Hoover Power Allocation Act of 2009”.

10          (n) REAFFIRMATION OF CONGRESSIONAL DECLARA-  
11          TION OF PURPOSE.—Subsection (g) of section 105 of the  
12          Hoover Power Plant Act of 1984 (43 U.S.C. 619a) (as  
13          redesignated by subsection (k)(2)) is amended—

14                 (1) by striking “subsections (e), (g), and (h) of  
15                 this section” and inserting “this Act”; and

16                 (2) by striking “June 1, 1987, and ending Sep-  
17                 tember 30, 2017” and inserting “October 1, 2017,  
18                 and ending September 30, 2067”.

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