

117TH CONGRESS
1ST SESSION

S. 953

To provide for drought preparedness and improved water supply reliability.

IN THE SENATE OF THE UNITED STATES

MARCH 24, 2021

Mr. WYDEN (for himself and Mr. MERKLEY) introduced the following bill;
which was read twice and referred to the Committee on Energy and Nat-
ural Resources

A BILL

To provide for drought preparedness and improved water
supply reliability.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Water for Conservation and Farming Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—INFRASTRUCTURE DEVELOPMENT

Sec. 101. Technical amendment to the Water Desalination Act of 1996.
Sec. 102. Bureau of Reclamation Infrastructure Fund.

Sec. 103. Watersmart extension and expansion.

TITLE II—ECOSYSTEM PROTECTION AND RESTORATION

Sec. 201. Waterbird and shorebird habitat creation program.

Sec. 202. Sustaining biodiversity during droughts.

Sec. 203. Reauthorization of Cooperative Watershed Management Program.

Sec. 204. Multibenefit projects to improve watershed health.

Sec. 205. Drought planning and preparedness for critically important fisheries.

Sec. 206. Reauthorization of the Fisheries Restoration and Irrigation Mitigation Act of 2000.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **FUND.**—The term “Fund” means the Bu-
4 reau of Reclamation Infrastructure Fund established
5 by section 102(a).

6 (2) **RECLAMATION STATE.**—The term “Rec-
7 lamation State” has the meaning given the term in
8 section 4014 of the Water Infrastructure Improve-
9 ments for the Nation Act (43 U.S.C. 390b note;
10 Public Law 114–322).

11 (3) **SECRETARY.**—The term “Secretary” means
12 the Secretary of the Interior.

13 **TITLE I—INFRASTRUCTURE** 14 **DEVELOPMENT**

15 **SEC. 101. TECHNICAL AMENDMENT TO THE WATER DESALI-** 16 **NATION ACT OF 1996.**

17 Section 4(a) of the Water Desalination Act of 1996
18 (42 U.S.C. 10301 note; Public Law 104–298) is amended
19 by redesignating the second paragraph (1) (relating to eli-
20 gible desalination projects) as paragraph (2).

1 **SEC. 102. BUREAU OF RECLAMATION INFRASTRUCTURE**
2 **FUND.**

3 (a) ESTABLISHMENT.—There is established in the
4 Treasury of the United States a fund, to be known as the
5 “Bureau of Reclamation Infrastructure Fund”, consisting
6 of—

7 (1) such amounts as are deposited in the Fund
8 under subsection (b)(1); and

9 (2) any interest earned on investment of
10 amounts in the Fund under subsection (c)(1)(B).

11 (b) DEPOSITS TO FUND.—

12 (1) IN GENERAL.—For each of fiscal years
13 2031 through 2061, the Secretary of the Treasury
14 shall deposit in the Fund \$300,000,000 of the reve-
15 nues that would otherwise be deposited for the fiscal
16 year in the reclamation fund established by the first
17 section of the Act of June 17, 1902 (32 Stat. 388,
18 chapter 1093), of which—

19 (A) \$100,000,000 shall be expended by the
20 Secretary for water reclamation and reuse
21 projects authorized under—

22 (i) the Reclamation Wastewater and
23 Groundwater Study and Facilities Act (43
24 U.S.C. 390h et seq.); or

1 (ii) section 4(a)(2) of the Water De-
2 salination Act of 1996 (42 U.S.C. 10301
3 note; Public Law 104–298);

4 (B) \$100,000,000 shall be expended by the
5 Secretary for grants authorized under section
6 9504 of the Omnibus Public Land Management
7 Act of 2009 (42 U.S.C. 10364); and

8 (C) \$100,000,000 shall be expended by the
9 Secretary to perform modifications to preserve
10 the structural safety of Bureau of Reclamation
11 dams and related facilities to ensure that Bu-
12 reau of Reclamation facilities do not present
13 unreasonable risks to public safety, property, or
14 the environment, if the expenditures—

15 (i) account for not more than 85 per-
16 cent of the total costs for any dam safety
17 project; and

18 (ii) are made in accordance with sec-
19 tion 3 of the Reclamation Safety of Dams
20 Act of 1978 (43 U.S.C. 507).

21 (2) AVAILABILITY OF AMOUNTS.—Amounts de-
22 posited in the Fund under paragraph (1) shall—

23 (A) be made available in accordance with
24 this section, without further appropriation; and

1 (B) be in addition to amounts appropriated
2 for the purposes described in this section under
3 any other provision of law.

4 (c) EXPENDITURES FROM FUND.—

5 (1) IN GENERAL.—Subject to paragraph (2),
6 for each of fiscal years 2031 through 2061, the Sec-
7 retary may expend from the Fund, in accordance
8 with this section, not more than an amount equal to
9 the sum of—

10 (A) the amounts deposited in the Fund for
11 the applicable fiscal year under subsection
12 (b)(1); and

13 (B) the amount of interest accrued in the
14 Fund for the fiscal year in which the expendi-
15 tures are made.

16 (2) ADDITIONAL EXPENDITURES.—

17 (A) IN GENERAL.—The Secretary may ex-
18 pend more in any fiscal year than the amounts
19 described in paragraph (1) if the additional
20 amounts are available in the Fund as a result
21 of a failure of the Secretary to expend all of the
22 amounts available under paragraph (1) in 1 or
23 more prior fiscal years.

(B) RETENTION IN ACCOUNTS.—Any additional amounts referred to in subparagraph (A) shall—

(i) accrue interest in accordance with this section; and

(ii) only be expended for the purposes for which expenditures from the Fund are authorized.

SEC. 103. WATERSMART EXTENSION AND EXPANSION.

(a) WATER MANAGEMENT IMPROVEMENT.—Section 9504(a) of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (F), by inserting “, including through temporary, voluntary, and compensated transactions that decrease consumptive water use at a regional or watershed scale” after “imbalances”; and

(B) in subparagraph (J), by striking clause (i) and inserting the following:

“(i) to increase ecological resilience to climate change by addressing climate-related impacts to, or vulnerabilities of, the water supply of the United States, including by enhancing natural water storage

1 within a floodplain or riparian wetland;”;
2 and

3 (2) in paragraph (3)(B)(i), by striking sub-
4 clause (II) and inserting the following:

5 “(II) to use the assistance pro-
6 vided under a grant or agreement to
7 increase the consumptive use of water
8 for agricultural operations above the
9 pre-project levels, as determined pur-
10 suant to the law of the State in which
11 the operation of the eligible applicant
12 is located.”.

13 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
14 9504 of the Omnibus Public Land Management Act of
15 2009 (42 U.S.C. 10364) is amended by striking subsection
16 (e) and inserting the following:

17 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
18 is authorized to be appropriated to carry out this section
19 \$700,000,000, to remain available until expended, subject
20 to the condition that \$50,000,000 of that amount shall
21 be used to carry out section 206 of the Energy and Water
22 Development and Related Agencies Appropriations Act,
23 2015 (43 U.S.C. 620 note; Public Law 113–235).”.

1 **TITLE II—ECOSYSTEM PROTEC-**
2 **TION AND RESTORATION**

3 **SEC. 201. WATERBIRD AND SHOREBIRD HABITAT CRE-**
4 **ATION PROGRAM.**

5 (a) AUTHORIZATION OF HABITAT CREATION PRO-
6 GRAM.—

7 (1) IN GENERAL.—Subject to paragraphs (2)
8 and (3), the Secretary shall establish a program
9 under which the Secretary shall provide financial as-
10 sistance to eligible agricultural producers in Rec-
11 lamation States, in the form of direct payments or
12 credits, as applicable, to compensate the eligible ag-
13 ricultural producers for the creation and mainte-
14 nance of waterbird and shorebird habitats.

15 (2) LIMITATION ON AMOUNT OF FINANCIAL AS-
16 SISTANCE.—Not more than a total of \$3,500,000 of
17 financial assistance may be provided for each fiscal
18 year under paragraph (1).

19 (3) CONDITIONS.—Financial assistance shall be
20 provided under paragraph (1) only if the Secretary
21 determines that the activities receiving the financial
22 assistance would—

23 (A) create new habitat that would not oth-
24 erwise be created; or

1 (B) maintain existing habitat that would
 2 not otherwise be maintained.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
 4 authorized to be appropriated to the Secretary \$3,500,000
 5 to carry out this section for each of fiscal years 2022
 6 through 2027, to remain available until expended.

7 (c) REPORT.—Not later than October 1, 2022, and
 8 every 2 years thereafter, the Secretary shall submit to
 9 Congress a report that describes the environmental per-
 10 formance of activities that are receiving, or have received,
 11 financial assistance under the program established under
 12 subsection (a)(1) during the period covered by the report.

13 **SEC. 202. SUSTAINING BIODIVERSITY DURING DROUGHTS.**

14 Section 9503(b) of the Omnibus Public Land Man-
 15 agement Act of 2009 (42 U.S.C. 10363(b)) is amended—

16 (1) in paragraph (3)(D), by inserting “and na-
 17 tive biodiversity” after “wildlife habitat”; and

18 (2) in paragraph (4)(B), by inserting “and
 19 drought biodiversity plans to address sustaining na-
 20 tive biodiversity during periods of drought” after
 21 “restoration plans”.

1 **SEC. 203. REAUTHORIZATION OF COOPERATIVE WATER-**
 2 **SHED MANAGEMENT PROGRAM.**

3 Section 6002 of the Omnibus Public Lands Manage-
 4 ment Act of 1976 (16 U.S.C. 1015a) is amended by strik-
 5 ing subsection (g) and inserting the following:

6 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
 7 are authorized to be appropriated to carry out this sec-
 8 tion—

9 “(1) \$20,000,000 for each of fiscal years 2012
 10 through 2021; and

11 “(2) \$40,000,000 for each of fiscal years 2022
 12 through 2026.”.

13 **SEC. 204. MULTIBENEFIT PROJECTS TO IMPROVE WATER-**
 14 **SHED HEALTH.**

15 (a) DEFINITION OF ELIGIBLE APPLICANT.—In this
 16 section, the term “eligible applicant” means—

17 (1) any Reclamation State, Indian Tribe, irriga-
 18 tion district, water district, or organization with
 19 water or power delivery authority;

20 (2) any Reclamation State, regional authority,
 21 or local agency or authority; and

22 (3) any nonprofit conservation organization.

23 (b) ESTABLISHMENT OF COMPETITIVE GRANT PRO-
 24 GRAM.—Not later than 1 year after the date of enactment
 25 of this Act, the Secretary, in consultation with the heads
 26 of relevant agencies, shall establish a competitive grant

1 program under which the Secretary shall award grants to
2 eligible applicants for the design, implementation, and
3 monitoring of conservation outcomes of habitat restoration
4 projects that improve watershed health in a Reclamation
5 State by accomplishing 1 or more of the following:

6 (1) Ecosystem benefits.

7 (2) Restoration of native species beyond exist-
8 ing or planned measures necessary to comply with
9 Federal or State laws relating to species recovery.

10 (3) Mitigation against the impacts of climate
11 change to fish and wildlife habitats.

12 (4) Protection against invasive species.

13 (5) Restoration of aspects of the natural eco-
14 system.

15 (6) Enhancement of commercial or recreational
16 fishing.

17 (7) Enhancement of river-based recreation,
18 such as kayaking, rafting, and canoeing.

19 (c) REQUIREMENTS.—

20 (1) IN GENERAL.—In awarding a grant to an
21 eligible applicant under subsection (b), the Sec-
22 retary—

23 (A) shall give priority to an eligible appli-
24 cant that would carry out a habitat restoration

1 project that achieves more than 1 of the bene-
2 fits described in that subsection; and

3 (B) may not provide a grant to carry out
4 a habitat restoration project, the purpose of
5 which is to meet existing environmental mitiga-
6 tion or compliance obligations under Federal or
7 State law.

8 (2) COMPLIANCE.—A habitat restoration
9 project awarded a grant under subsection (a) shall
10 comply with all applicable Federal and State laws.

11 (d) COST-SHARING REQUIREMENT.—The Federal
12 share of the cost of any habitat restoration project that
13 is awarded a grant under subsection (b)—

14 (1) shall not exceed 50 percent of the cost of
15 the habitat restoration project; or

16 (2) in the case of a habitat restoration project
17 that provides benefits to ecological or recreational
18 values in which the nonconsumptive water conserva-
19 tion benefit or habitat restoration benefit accounts
20 for at least 75 percent of the cost of the habitat res-
21 toration project, as determined by the Secretary,
22 shall not exceed 75 percent of the cost of the habitat
23 restoration project.

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
 2 authorized to be appropriated to carry out this section
 3 \$150,000,000 for each of fiscal years 2022 through 2025.

4 **SEC. 205. DROUGHT PLANNING AND PREPAREDNESS FOR**
 5 **CRITICALLY IMPORTANT FISHERIES.**

6 (a) DEFINITIONS.—In this section:

7 (1) CRITICALLY IMPORTANT FISHERY.—The
 8 term “critically important fishery” means—

9 (A) a fishery located in a Reclamation
 10 State that is commercially, culturally, or
 11 recreationally important;

12 (B) a fishery located in a Reclamation
 13 State that contains fish species that are listed
 14 as threatened or endangered pursuant to the
 15 Endangered Species Act of 1973 (16 U.S.C.
 16 1531 et seq.); and

17 (C) a fishery located in a Reclamation
 18 State that is used by 1 or more Indian Tribes
 19 in the Reclamation State for ceremonial subsist-
 20 ence or commercial purposes.

21 (2) INDIAN TRIBE.—The term “Indian Tribe”
 22 has the meaning given the term “Indian tribe” in
 23 section 4 of the Indian Self-Determination and Edu-
 24 cation Assistance Act (25 U.S.C. 5304).

1 (3) QUALIFIED TRIBAL GOVERNMENT.—The
 2 term “qualified Tribal Government” means any gov-
 3 ernment of an Indian Tribe that the Secretary deter-
 4 mines—

5 (A) is involved in fishery management and
 6 recovery activities, including activities under the
 7 Endangered Species Act of 1973 (16 U.S.C.
 8 1531 et seq.); and

9 (B) has the management and organiza-
 10 tional capability to maximize the benefits of as-
 11 sistance provided under subsection (c).

12 (4) SECRETARY.—The term “Secretary” means
 13 the Secretary, acting through the Director of the
 14 United States Fish and Wildlife Service.

15 (b) DROUGHT PLAN FOR CRITICALLY IMPORTANT
 16 FISHERIES.—

17 (1) IN GENERAL.—Not later than January 1,
 18 2022, and every 3 years thereafter, the Secretary, in
 19 consultation with the Director of the National Ma-
 20 rine Fisheries Service, the Commissioner of Rec-
 21 lamation, the Chief of Engineers, applicable State
 22 fish and wildlife agencies, and qualified Tribal Gov-
 23 ernments, shall prepare a plan to sustain the sur-
 24 vival of critically important fisheries during future
 25 periods of extended drought through—

1 (A) voluntary, compensated actions by pri-
2 vate landowners and water right holders; or

3 (B) other investments in drought prepared-
4 ness made by the Secretary.

5 (2) CONSIDERATIONS.—In preparing the plan
6 under paragraph (1), the Secretary shall consider—

7 (A) habitat restoration efforts designed to
8 provide drought refugia and increased fishery
9 resilience during droughts;

10 (B) relocating the release location and tim-
11 ing of hatchery fish to avoid predation and tem-
12 perature impacts;

13 (C) barging of hatchery release fish to im-
14 prove survival and reduce straying;

15 (D) coordination with water users, the
16 Commissioner of Reclamation, State fish and
17 wildlife agencies, qualified Tribal Governments,
18 and interested public water agencies regarding
19 voluntary water transfers, including through
20 groundwater substitution activities, to deter-
21 mine if water releases can be collaboratively
22 managed in a way that provides additional ben-
23 efits for critically important fisheries without
24 negatively impacting wildlife habitat;

1 (E) hatchery management modifications,
2 such as expanding hatchery production of fish
3 during periods of extended drought, if appropriate for a particular river basin;
4

5 (F) hatchery retrofit projects, such as the
6 installation and operation of filtration equipment and chillers, to reduce disease outbreak,
7 egg mortality, and other impacts of droughts in
8 high water temperatures;
9

10 (G) increasing rescue operations of upstream migrating fish;
11

12 (H) improving temperature modeling and
13 related forecasted information to predict water
14 management impacts to the habitat of critically
15 important fisheries with a higher degree of accuracy than current models;
16

17 (I) programs to reduce predation losses at
18 artificially created predation hot spots;

19 (J) habitat restoration efforts designed to
20 provide drought refugia and increased fisheries
21 resilience during droughts; and

22 (K) retrofitting existing water facilities to
23 provide improved temperature conditions for
24 fish.

1 (c) PUBLIC COMMENT.—Before finalizing a plan
 2 under subsection (b), the Secretary shall provide for a
 3 public comment period of not less than 90 days.

4 (d) AUTHORIZATION OF APPROPRIATIONS FOR FISH
 5 RECOVERY EFFORTS.—There is authorized to be appro-
 6 priated to the Secretary to carry out fish, stream, and
 7 hatchery activities relating to fish recovery efforts, includ-
 8 ing activities carried out in coordination with the Director
 9 of the National Marine Fisheries Service, the Commis-
 10 sioner of Reclamation, the Chief of Engineers, applicable
 11 State fish and wildlife agencies, or a qualified Tribal Gov-
 12 ernment, \$25,000,000 for fiscal year 2022.

13 (e) EFFECT.—Nothing in this section affects any ob-
 14 ligation under any Federal environmental law.

15 **SEC. 206. REAUTHORIZATION OF THE FISHERIES RESTORA-**
 16 **TION AND IRRIGATION MITIGATION ACT OF**
 17 **2000.**

18 (a) DEFINITION OF PACIFIC DRAINAGE AREA.—Sec-
 19 tion 2(1) of the Fisheries Restoration and Irrigation Miti-
 20 gation Act of 2000 (16 U.S.C. 777 note; Public Law 106–
 21 502) is amended by inserting “or a terminal lake” before
 22 the period at the end.

23 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
 24 10(a) of the Fisheries Restoration and Irrigation Mitiga-
 25 tion Act of 2000 (16 U.S.C. 777 note; Public Law 106–

1 502) is amended by striking “\$15 million through 2021”
2 and inserting “\$25,000,000 for each of fiscal years 2022
3 through 2028”.

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