

118TH CONGRESS
1ST SESSION

S. 2102

To provide for drought preparedness and improved water supply reliability.

IN THE SENATE OF THE UNITED STATES

JUNE 21, 2023

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. Bureau of Reclamation Infrastructure Fund.
Sec. 102. 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. Drought planning and preparedness for critically important fisheries.

Sec. 205. Reauthorization of the Fisheries Restoration and Irrigation Mitigation Act of 2000.

Sec. 206. Reauthorization of reclamation climate change and water program.

Sec. 207. Reauthorization of Deschutes River Conservancy Working Group.

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 101(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. BUREAU OF RECLAMATION INFRASTRUCTURE**
16 **FUND.**

17 (a) **ESTABLISHMENT.**—There is established in the
18 Treasury of the United States a fund, to be known as the
19 “Bureau of Reclamation Infrastructure Fund”, consisting
20 of—

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

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

5 (b) DEPOSITS TO FUND.—

6 (1) IN GENERAL.—For each of fiscal years
7 2035 through 2065, the Secretary of the Treasury
8 shall deposit in the Fund \$300,000,000 of the reve-
9 nues that would otherwise be deposited for the fiscal
10 year in the reclamation fund established by the first
11 section of the Act of June 17, 1902 (32 Stat. 388,
12 chapter 1093), of which—

13 (A) \$100,000,000 shall be expended by the
14 Secretary for water reclamation and reuse
15 projects authorized under—

16 (i) the Reclamation Wastewater and
17 Groundwater Study and Facilities Act (43
18 U.S.C. 390h et seq.); or

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

22 (B) \$100,000,000 shall be expended by the
23 Secretary for grants authorized under section
24 9504 of the Omnibus Public Land Management
25 Act of 2009 (42 U.S.C. 10364); and

1 (C) \$100,000,000 shall be expended by the
2 Secretary to perform modifications to preserve
3 the structural safety of Bureau of Reclamation
4 dams and related facilities to ensure that Bu-
5 reau of Reclamation facilities do not present
6 unreasonable risks to public safety, property, or
7 the environment, if the expenditures—

8 (i) account for not more than 85 per-
9 cent of the total costs for any dam safety
10 project; and

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

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

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

18 (B) be in addition to amounts appropriated
19 for the purposes described in this section under
20 any other provision of law.

21 (c) EXPENDITURES FROM FUND.—

22 (1) IN GENERAL.—Subject to paragraph (2),
23 for each of fiscal years 2035 through 2065, the Sec-
24 retary may expend from the Fund, in accordance

1 with this section, not more than an amount equal to
2 the sum of—

3 (A) the amounts deposited in the Fund for
4 the applicable fiscal year under subsection
5 (b)(1); and

6 (B) the amount of interest accrued in the
7 Fund for the fiscal year in which the expendi-
8 tures are made.

9 (2) ADDITIONAL EXPENDITURES.—

10 (A) IN GENERAL.—The Secretary may ex-
11 pend more in any fiscal year than the amounts
12 described in paragraph (1) if the additional
13 amounts are available in the Fund as a result
14 of a failure of the Secretary to expend all of the
15 amounts available under paragraph (1) in 1 or
16 more prior fiscal years.

17 (B) RETENTION IN ACCOUNTS.—Any addi-
18 tional amounts referred to in subparagraph (A)
19 shall—

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

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

1 **SEC. 102. WATERSMART EXTENSION AND EXPANSION.**

2 (a) WATER MANAGEMENT IMPROVEMENT.—Section
3 9504(a) of the Omnibus Public Land Management Act of
4 2009 (42 U.S.C. 10364(a)) is amended—

5 (1) in paragraph (1)—

6 (A) in subparagraph (F), by inserting “,
7 including through temporary, voluntary, and
8 compensated transactions that decrease con-
9 sumptive water use at a regional or watershed
10 scale” after “imbalances”; and

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

13 “(i) to increase ecological resilience to
14 climate change by addressing climate-re-
15 lated impacts to, or vulnerabilities of, the
16 water supply of the United States, includ-
17 ing by enhancing natural water storage
18 within a floodplain or riparian wetland;”
19 and

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

22 “(II) to use the assistance pro-
23 vided under a grant or agreement to
24 increase the consumptive use of water
25 for agricultural operations above the
26 pre-project levels, as determined pur-

1 suant to the law of the State in which
2 the operation of the eligible applicant
3 is located.”.

4 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
5 9504(e) of the Omnibus Public Land Management Act of
6 2009 (42 U.S.C. 10364(e)) is amended by striking
7 “\$820,000,000” and inserting “\$1,000,000,000”.

8 **TITLE II—ECOSYSTEM PROTEC-**
9 **TION AND RESTORATION**

10 **SEC. 201. WATERBIRD AND SHOREBIRD HABITAT CRE-**
11 **ATION PROGRAM.**

12 (a) AUTHORIZATION OF HABITAT CREATION PRO-
13 GRAM.—

14 (1) IN GENERAL.—Subject to paragraphs (2)
15 and (3), the Secretary shall establish a program
16 under which the Secretary shall provide financial as-
17 sistance to eligible agricultural producers in Rec-
18 lamation States, in the form of direct payments or
19 credits, as applicable, to compensate the eligible ag-
20 ricultural producers for the creation and mainte-
21 nance of waterbird and shorebird habitats.

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

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

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

7 (B) maintain existing habitat that would
8 not otherwise be maintained.

9 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
10 authorized to be appropriated to the Secretary \$3,500,000
11 to carry out this section for each of fiscal years 2024
12 through 2029, to remain available until expended.

13 (c) REPORT.—Not later than October 1, 2025, and
14 every 2 years thereafter, the Secretary shall submit to
15 Congress a report that describes the environmental per-
16 formance of activities that are receiving, or have received,
17 financial assistance under the program established under
18 subsection (a)(1) during the period covered by the report.

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

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

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

24 (2) in paragraph (4)(B), by inserting “and
25 drought biodiversity plans to address sustaining na-

1 tive biodiversity during periods of drought” after
2 “restoration plans”.

3 **SEC. 203. REAUTHORIZATION OF COOPERATIVE WATER-**
4 **SHED MANAGEMENT PROGRAM.**

5 Section 6002(g) of the Omnibus Public Land Man-
6 agement Act of 2009 (16 U.S.C. 1015a(g)) is amended
7 by striking paragraph (4) and inserting the following:

8 “(4) \$40,000,000 for each of fiscal years 2024
9 through 2031.”.

10 **SEC. 204. DROUGHT PLANNING AND PREPAREDNESS FOR**
11 **CRITICALLY IMPORTANT FISHERIES.**

12 (a) DEFINITIONS.—In this section:

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

15 (A) a fishery located in a Reclamation
16 State that is commercially, culturally, or
17 recreationally important;

18 (B) a fishery located in a Reclamation
19 State that contains fish species that are listed
20 as threatened or endangered pursuant to the
21 Endangered Species Act of 1973 (16 U.S.C.
22 1531 et seq.); and

23 (C) a fishery located in a Reclamation
24 State that is used by 1 or more Indian Tribes

1 in the Reclamation State for ceremonial subsist-
2 ence or commercial purposes.

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

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

11 (A) is involved in fishery management and
12 recovery activities, including activities under the
13 Endangered Species Act of 1973 (16 U.S.C.
14 1531 et seq.); and

15 (B) has the management and organiza-
16 tional capability to maximize the benefits of as-
17 sistance provided under subsection (c).

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

21 (b) DROUGHT PLAN FOR CRITICALLY IMPORTANT
22 FISHERIES.—

23 (1) IN GENERAL.—Not later than January 1,
24 2024, and every 3 years thereafter, the Secretary, in
25 consultation with the Director of the National Ma-

1 rine Fisheries Service, the Commissioner of Rec-
2 lamation, the Chief of Engineers, applicable State
3 fish and wildlife agencies, and qualified Tribal Gov-
4 ernments, shall prepare a plan to sustain the sur-
5 vival of critically important fisheries during future
6 periods of extended drought through—

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

9 (B) other investments in drought prepared-
10 ness made by the Secretary.

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

13 (A) habitat restoration efforts designed to
14 provide drought refugia and increased fishery
15 resilience during droughts;

16 (B) relocating the release location and tim-
17 ing of hatchery fish to avoid predation and tem-
18 perature impacts;

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

21 (D) coordination with water users, the
22 Commissioner of Reclamation, State fish and
23 wildlife agencies, qualified Tribal Governments,
24 and interested public water agencies regarding
25 voluntary water transfers, including through

1 groundwater substitution activities, to deter-
2 mine if water releases can be collaboratively
3 managed in a way that provides additional ben-
4 efits for critically important fisheries without
5 negatively impacting wildlife habitat;

6 (E) hatchery management modifications,
7 such as expanding hatchery production of fish
8 during periods of extended drought, if appro-
9 priate for a particular river basin;

10 (F) hatchery retrofit projects, such as the
11 installation and operation of filtration equip-
12 ment and chillers, to reduce disease outbreak,
13 egg mortality, and other impacts of droughts in
14 high water temperatures;

15 (G) increasing rescue operations of up-
16 stream migrating fish;

17 (H) improving temperature modeling and
18 related forecasted information to predict water
19 management impacts to the habitat of critically
20 important fisheries with a higher degree of ac-
21 curacy than current models;

22 (I) programs to reduce predation losses at
23 artificially created predation hot spots;

1 (J) habitat restoration efforts designed to
2 provide drought refugia and increased fisheries
3 resilience during droughts; and

4 (K) retrofitting existing water facilities to
5 provide improved temperature conditions for
6 fish.

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

10 (d) AUTHORIZATION OF APPROPRIATIONS FOR FISH
11 RECOVERY EFFORTS.—There is authorized to be appro-
12 priated to the Secretary to carry out fish, stream, and
13 hatchery activities relating to fish recovery efforts, includ-
14 ing activities carried out in coordination with the Director
15 of the National Marine Fisheries Service, the Commis-
16 sioner of Reclamation, the Chief of Engineers, applicable
17 State fish and wildlife agencies, or a qualified Tribal Gov-
18 ernment, \$25,000,000 for fiscal year 2024.

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

21 **SEC. 205. REAUTHORIZATION OF THE FISHERIES RESTORA-**
22 **TION AND IRRIGATION MITIGATION ACT OF**
23 **2000.**

24 (a) DEFINITION OF PACIFIC DRAINAGE AREA.—Sec-
25 tion 2(1) of the Fisheries Restoration and Irrigation Miti-

1 gation Act of 2000 (16 U.S.C. 777 note; Public Law 106–
 2 502) is amended by inserting “or a terminal lake” before
 3 the period at the end.

4 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
 5 10(a) of the Fisheries Restoration and Irrigation Mitiga-
 6 tion Act of 2000 (16 U.S.C. 777 note; Public Law 106–
 7 502) is amended by striking “\$15 million through 2021”
 8 and inserting “\$25,000,000 for each of fiscal years 2024
 9 through 2029”.

10 **SEC. 206. REAUTHORIZATION OF RECLAMATION CLIMATE**
 11 **CHANGE AND WATER PROGRAM.**

12 Section 9503(f) of the Omnibus Public Land Man-
 13 agement Act of 2009 (42 U.S.C. 10363(f)) is amended
 14 by striking “2023” and inserting “2033”.

15 **SEC. 207. REAUTHORIZATION OF DESCHUTES RIVER CON-**
 16 **SERVANCY WORKING GROUP.**

17 (a) DEFINITION OF WORKING GROUP.—Section
 18 301(a) of the Oregon Resource Conservation Act of 1996
 19 (Public Law 104–208; 110 Stat. 3009–534; 122 Stat.
 20 836) is amended by striking paragraph (1) and inserting
 21 the following:

22 “(1) WORKING GROUP.—The term ‘Working
 23 Group’ means the Deschutes River Conservancy
 24 Working Group composed of a board of directors of
 25 not fewer than 10, but not more than 15, members

1 nominated by the group represented by the member,
2 of whom—

3 “(A) 2 members shall be representatives of
4 the environmental community in the Deschutes
5 River Basin;

6 “(B) 2 members shall be representatives of
7 the irrigated agriculture community in the
8 Deschutes River Basin;

9 “(C) 2 members shall be representatives of
10 the Confederated Tribes of the Warm Springs
11 Reservation of Oregon;

12 “(D) 1 member shall be a representative of
13 the hydroelectric production community in the
14 Deschutes River Basin;

15 “(E) 1 member shall be a representative of
16 1 of the Federal agencies with authority and re-
17 sponsibility in the Deschutes River Basin;

18 “(F) 1 member shall be a representative of
19 an agency of the State of Oregon with authority
20 and responsibility in the Deschutes River Basin,
21 such as—

22 “(i) the Oregon Department of Fish
23 and Wildlife; or

24 “(ii) the Oregon Water Resources De-
25 partment; and

1 “(G) 1 member shall be a representative of
2 a unit of local government in the Deschutes
3 River Basin.”.

4 (b) REAUTHORIZATION; ADMINISTRATIVE COSTS.—
5 Section 301 of the Oregon Resource Conservation Act of
6 1996 (Public Law 104–208; 110 Stat. 3009–534; 122
7 Stat. 836) is amended—

8 (1) in subsection (b)—

9 (A) in paragraph (3), by striking “2016”
10 and inserting “2032”; and

11 (B) in paragraph (6), by striking “5 per-
12 cent” and inserting “10 percent”; and

13 (2) in subsection (h), by striking “2016” and
14 inserting “2032”.

○