

116TH CONGRESS  
2D SESSION

# H. R. 8166

To support surface and groundwater storage and supporting projects in Reclamation States, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 4, 2020

Mr. COX of California (for himself, Mr. COSTA, and Mr. GARAMENDI) introduced the following bill; which was referred to the Committee on Natural Resources

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## A BILL

To support surface and groundwater storage and supporting projects in Reclamation States, 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 “Western Water Stor-  
5 age Infrastructure Act”.

6 **SEC. 2. SURFACE AND GROUNDWATER STORAGE AND SUP-**  
7 **PORTING PROJECTS.**

8 (a) DEFINITIONS.—In this section:

1           (1) APPROPRIATE COMMITTEES OF CON-  
2           GRESS.—The term “appropriate committees of Con-  
3           gress” means—

4                   (A) the Committee on Appropriations of  
5                   the House of Representatives; and

6                   (B) the Committee on Natural Resources  
7                   of the House of Representatives.

8                   (C) the Committee on Appropriations of  
9                   the Senate;

10                  (D) the Committee on Energy and Natural  
11                  Resources of the Senate;

12           (2) DESIGN; STUDY.—The terms “design” and  
13           “study” include any design, permitting, materials  
14           engineering or testing, surveying, or preconstruction  
15           activity relating to a water storage facility.

16           (3) ELIGIBLE ENTITY.—The term “eligible enti-  
17           ty” means—

18                   (A) any State, political subdivision of a  
19                   State, department of a State, or public agency  
20                   organized pursuant to State law;

21                   (B) an Indian tribe (as defined in section  
22                   4 of the Indian Self-Determination and Edu-  
23                   cation Assistance Act (25 U.S.C. 5304)) or an  
24                   entity controlled by an Indian tribe;

25                   (C) a water users’ association;

1 (D) an agency established by an interstate  
2 compact; or

3 (E) an agency established under State law  
4 for the joint exercise of powers.

5 (4) **FEDERALLY OWNED STORAGE PROJECT.**—  
6 The term “federally owned storage project” means  
7 any project in a Reclamation State—

8 (A) that involves the construction, expan-  
9 sion, upgrade, or capital repair of—

10 (i) a surface or groundwater storage  
11 facility; or

12 (ii) a facility conveying water to or  
13 from surface or groundwater storage;

14 (B) to which the United States holds title;  
15 and

16 (C) that was authorized to be constructed,  
17 operated, and maintained pursuant to—

18 (i) the Reclamation laws; or

19 (ii) the Act of August 11, 1939 (com-  
20 monly known as the “Water Conservation  
21 and Utilization Act”) (16 U.S.C. 590y et  
22 seq.).

23 (5) **NON-FEDERAL STORAGE PROJECT.**—The  
24 term “non-Federal storage project” means any facil-  
25 ity or project in a Reclamation State that—

1 (A) involves the construction, expansion,  
2 upgrade, or capital repair by an eligible entity  
3 of—

4 (i) a surface or groundwater storage  
5 project to which the United States does  
6 not hold title; or

7 (ii) a facility conveying water to or  
8 from surface or groundwater storage to  
9 which the United States does not hold  
10 title; and

11 (B) the construction, expansion, upgrade,  
12 or capital repair of such facility or project pro-  
13 vides a Federal benefit in accordance with Rec-  
14 lamation laws (including regulations).

15 (6) RECLAMATION LAWS.—The term “Reclama-  
16 tion laws” means Federal Reclamation law (the Act  
17 of June 17, 1902 (32 Stat. 388, chapter 1093), and  
18 Acts supplemental to and amendatory of that Act.

19 (7) RECLAMATION STATE.—The term “Rec-  
20 lamation State” has the meaning given the term in  
21 section 4014 of the Water Infrastructure Improve-  
22 ments for the Nation Act (43 U.S.C. 390b note;  
23 Public Law 114–322).

24 (8) SECRETARY.—The term “Secretary” means  
25 the Secretary of the Interior.

1 (b) GRANT PROGRAM.—The Secretary may provide  
2 a grant under this section to an eligible entity to carry  
3 out, within a Reclamation State—

4 (1) a federally owned storage project in accord-  
5 ance with subsection (c); or

6 (2) a non-Federal storage project in accordance  
7 with subsection (d).

8 (c) FEDERALLY OWNED STORAGE PROJECTS.—

9 (1) IN GENERAL.—Subject to the requirements  
10 of this section, on request of an eligible entity, the  
11 Secretary may negotiate and enter into an agree-  
12 ment on behalf of the United States for the design,  
13 study, construction, expansion, upgrade, or capital  
14 repair of a federally owned storage project in an  
15 amount equal to not more than 50 percent of the  
16 total cost of the federally owned storage project.

17 (2) CONDITIONS FOR FEDERAL CONSTRUCTION  
18 FUNDING.—The construction of a federally owned  
19 storage project that is the subject of an agreement  
20 under this section shall not commence until the Sec-  
21 retary—

22 (A) determines that—

23 (i) the federally owned storage project  
24 is feasible in accordance with the Reclama-  
25 tion laws;

1           (ii) the federally owned storage  
2 project provides a Federal benefit in ac-  
3 cordance with the Reclamation laws; and

4           (iii) in return for the Federal cost-  
5 share investment, not less than a propor-  
6 tionate share of the benefits of the feder-  
7 ally owned storage project are Federal ben-  
8 efits, including water supplies dedicated to  
9 specific purposes, such as water quality im-  
10 provements or fish and wildlife protection  
11 and restoration, including a wildlife refuge;  
12 and

13           (B) secures an agreement providing such  
14 funding as is necessary to pay the non-Federal  
15 share of the capital costs of the federally owned  
16 storage project.

17           (3) NOTIFICATION.—The Secretary shall sub-  
18 mit to the appropriate committees of Congress a  
19 written notification that an agreement that satisfies  
20 the requirements in paragraph (2)(B) has been se-  
21 cured not later than 30 days after the agreement is  
22 secured.

23           (4) EXPANSION OR UPGRADE.—The Secretary  
24 shall require, as a condition for design, study, or any

1 other participation in the expansion or upgrade of a  
2 federally owned storage project, the agreement of—

3 (A) if applicable, any entity that has an  
4 existing water service contract or repayment  
5 contract for more than 60 percent of the capac-  
6 ity or yield of the federally owned storage  
7 project, that the expansion will not adversely af-  
8 fect any right or interest of the entity under the  
9 water service contract or repayment contract,  
10 as applicable; and

11 (B) if applicable, a non-Federal entity  
12 that, pursuant to a formal operations and main-  
13 tenance transfer contract or other legal agree-  
14 ment with the Secretary carries out the oper-  
15 ations and maintenance of the federally owned  
16 storage project.

17 (d) NON-FEDERAL STORAGE PROJECTS.—

18 (1) IN GENERAL.—Subject to the requirements  
19 of this section, the Secretary may participate in the  
20 design, study, construction, expansion, upgrade, or  
21 capital repair of a non-Federal storage project in an  
22 amount equal to not more than 25 percent of the  
23 total cost of the non-Federal storage project.

24 (2) CONDITIONS FOR FEDERAL DESIGN AND  
25 STUDY FUNDING.—The Secretary shall only partici-

1       pate in the design or study of a non-Federal storage  
2       project under this section if—

3               (A) the Governor, political subdivision, de-  
4               partment, or public agency of the State in  
5               which the non-Federal storage project is located  
6               supports Federal funding of the non-Federal  
7               storage project; and

8               (B) the Secretary has identified the poten-  
9               tial for Federal benefit sufficient to proceed.

10              (3) CONDITIONS FOR FEDERAL CONSTRUCTION,  
11              EXPANSION, UPGRADE, OR CAPITAL REPAIR FUND-  
12              ING.—Participation by the Secretary in the con-  
13              struction, expansion, upgrade, or capital repair of a  
14              non-Federal storage project under this section shall  
15              be by negotiated agreement between the United  
16              States and the applicable non-Federal entity, and  
17              shall not occur unless—

18               (A) the Governor, political subdivision, de-  
19               partment, or public agency of the State in  
20               which the non-Federal storage project is located  
21               supports Federal funding for the project; and

22               (B) the applicable eligible entity deter-  
23               mines, and the Secretary concurs, that—

24                       (i) the non-Federal storage project is  
25                       technically and financially feasible in ac-



1 cordance with guidelines established by the  
2 Secretary;

3 (ii) the non-Federal storage project  
4 provides a Federal benefit in accordance  
5 with the Reclamation laws;

6 (iii) in return for the Federal cost-  
7 share investment, not less than a propor-  
8 tionate share of the benefits of the non-  
9 Federal storage project are Federal bene-  
10 fits, including water supplies dedicated to  
11 specific purposes, such as water quality im-  
12 provements or fish and wildlife protection  
13 and restoration, including a wildlife refuge;  
14 and

15 (iv) each entity participating in the  
16 non-Federal project is financially capable  
17 of funding its proportionate share of the  
18 non-Federal share of the project costs.

19 (C) Not less than \$10,000,000 of the fund-  
20 ing identified in subsection (g) shall be allo-  
21 cated to non-Federal storage projects that fur-  
22 ther the Department of the Interior's priority of  
23 sustainably developing natural resources and  
24 are—

1 (i) included in the Bureau of Rec-  
2 lamation's 2015 Water Management Goal  
3 Investment Strategy Final Report;

4 (ii) capable of providing water to a  
5 Federal wildlife refuge;

6 (iii) equipped with an approved fish  
7 screen; and

8 (iv) have both conveyance and recir-  
9 culation benefits.

10 (4) NOTIFICATION.—The Secretary shall sub-  
11 mit to the appropriate committees of Congress a  
12 written notification that an agreement that satisfies  
13 the requirements in paragraph (2) has been secured  
14 not later than 30 days after the agreement is se-  
15 cured.).

16 (5) INFORMATION.—

17 (A) IN GENERAL.—In participating in a  
18 non-Federal storage project under this section,  
19 the Secretary—

20 (i) shall—

21 (I) generally, rely on reports pre-  
22 pared by an eligible entity partici-  
23 pating in the non-Federal storage  
24 project, including feasibility or equiva-  
25 lent studies, environmental analyses,

1 and other pertinent reports and anal-  
2 yses; but

3 (II) retain responsibility for mak-  
4 ing the independent determinations  
5 described in paragraphs (2) and (3);  
6 and

7 (ii) may prepare studies supple-  
8 mentary to the studies described in clause  
9 (i)(I), on request of the eligible entity par-  
10 ticipating in the non-Federal storage  
11 project.

12 (B) GUIDELINES.—

13 (i) DRAFT GUIDELINES.—Not later  
14 than 180 days after the date of the enact-  
15 ment of this Act, the Secretary shall issue  
16 draft guidelines for determining whether a  
17 non-Federal storage project is financially  
18 feasible. The guidelines shall be consistent  
19 with and meet the requirements in title  
20 XVI of Public Law 102–575 for a feasi-  
21 bility study report, including the economic  
22 analysis contained in the Reclamation  
23 Manual Directive & Standard Title XVI  
24 Water Reclamation and Reuse Program

1 Feasibility Study Review Process (WTR  
2 11–01), subject to—

3 (I) any additional requirements  
4 necessary to provide sufficient infor-  
5 mation for making the independent  
6 determinations described in para-  
7 graphs (2) and (3); and

8 (II) the condition that the Bu-  
9 reau of Reclamation shall not bear re-  
10 sponsibility for the technical adequacy  
11 of any design, study, cost estimate,  
12 construction, expansion, upgrade, or  
13 capital repair relating to a non-Fed-  
14 eral storage project.

15 (ii) FINAL GUIDELINES.—Not later  
16 than 1 year after the date of the enact-  
17 ment of this Act, the Secretary shall final-  
18 ize the guidelines issued under clause (i).

19 (e) RIGHTS TO USE CAPACITY.—

20 (1) FEDERALLY OWNED STORAGE PROJECT.—

21 The right to use the capacity of a federally owned  
22 storage project that was designed, studied, con-  
23 structed, expanded, upgraded, or repaired under this  
24 Act shall be allocated in such manner as may be mu-  
25 tually agreed to by the Secretary and the party or

1 parties to the agreement executed pursuant to sub-  
2 section (c)(1).

3 (2) NON-FEDERAL STORAGE PROJECT.—The  
4 right to use the capacity of a non-Federal storage  
5 project that was designed, studied, constructed, ex-  
6 panded, upgraded, or repaired under this Act shall  
7 be allocated in such manner as may be mutually  
8 agreed to by the Secretary and the relevant eligible  
9 entity or entities.

10 (f) FEDERAL BENEFITS.—In making a determina-  
11 tion relating to Federal benefits under this Act, the Sec-  
12 retary may consider any benefit realized from the exist-  
13 ence of operational flexibility to optimize the achievement  
14 of any authorized project purpose (whether reimbursable  
15 or nonreimbursable), including through the coordinated  
16 management of Federal and non-Federal facilities.

17 (g) FUNDING.—

18 (1) AUTHORIZATION OF APPROPRIATIONS.—  
19 There is authorized to be appropriated to the Sec-  
20 retary to carry out this section \$800,000,000 for the  
21 period of fiscal years 2021 through 2025.

22 (2) CONGRESSIONAL APPROVAL INITIALLY RE-  
23 QUIRED.—

24 (A) DESIGN AND STUDY FUNDING.—A fed-  
25 erally owned storage project or a non-Federal

1 storage project shall only receive initial design  
2 or study funding under this Act if the project  
3 is designated funding by name in an Act of ap-  
4 propriation.

5 (B) CONSTRUCTION FUNDING.—A feder-  
6 ally owned storage project or a non-Federal  
7 storage project shall only receive initial con-  
8 struction funding under this Act if the project  
9 is designated funding by name in an Act of ap-  
10 propriations.

11 (C) RECLAMATION RECOMMENDATIONS.—

12 (i) IN GENERAL.—Subject to clause  
13 (ii), the Secretary shall submit to the ap-  
14 propriate committees of Congress rec-  
15 ommendations regarding the initial award  
16 of design and study funding, and of con-  
17 struction funding, for each federally owned  
18 storage project and non-Federal storage  
19 project subject to consideration under sub-  
20 paragraphs (A) and (B).

21 (ii) REQUIREMENT.—The Secretary  
22 shall confer with the appropriate commit-  
23 tees of Congress before submitting the rec-  
24 ommendations under clause (i).

25 (3) SUBSEQUENT FUNDING AWARDS.—

1 (A) DESIGN AND STUDY FUNDING.—After  
2 a federally owned storage project or a non-Fed-  
3 eral storage project receives an initial award of  
4 design or study funding under paragraph (2),  
5 additional design or study funding for that  
6 project shall not be subject to paragraph (2).

7 (B) CONSTRUCTION FUNDING.—After a  
8 federally owned storage project or a non-Fed-  
9 eral storage project receives an initial award of  
10 construction funding under paragraph (2), ad-  
11 ditional construction funding for that project  
12 shall not be subject to paragraph (2).

13 (4) PRELIMINARY STUDIES.—Of the amounts  
14 made available under paragraph (1), not more than  
15 25 percent shall be provided for appraisal studies,  
16 feasibility studies, or other preliminary studies.

17 (5) WIIN ACT STORAGE FUNDING.—

18 (A) APPROPRIATIONS.—Each federally  
19 owned storage project and non-Federal storage  
20 project shall be eligible to receive any amounts  
21 made available pursuant to section 4007(h) of  
22 the Water Infrastructure Improvements for the  
23 Nation Act (43 U.S.C. 390b note; Public Law  
24 114–322) (as in effect on the day before the

1 date of the enactment of this Act), in accord-  
2 ance with paragraphs (2) and (3).

3 (B) INDIVIDUAL PROJECTS.—

4 (i) FEDERALLY OWNED STORAGE  
5 PROJECTS.—If the Secretary determines  
6 that a federally owned storage project is el-  
7 igible for funding under section 4007(b) of  
8 the Water Infrastructure Improvements for  
9 the Nation Act (43 U.S.C. 390b note; Pub-  
10 lic Law 114–322), the federally owned  
11 storage project shall remain eligible for  
12 funding under subsection (c).

13 (ii) NON-FEDERAL STORAGE  
14 PROJECTS.—If the Secretary determines  
15 that a non-Federal storage project is eligi-  
16 ble for funding as a State-led storage  
17 project under section 4007(c) the Water  
18 Infrastructure Improvements for the Na-  
19 tion Act (43 U.S.C. 390b note; Public Law  
20 114–322), the non-Federal storage project  
21 shall remain eligible for funding under sub-  
22 section (d).

23 (h) CONSISTENCY WITH STATE LAW.—Nothing in  
24 this section preempts or modifies any obligation of the



1 United States or an eligible entity to act in accordance  
2 with applicable State law.

3 **SEC. 3. DELTA OPERATIONS.**

4 Section 4013 of the Water Infrastructure Improve-  
5 ments for the Nation Act (130 Stat. 1883) is amended—

6 (1) in the first sentence, by striking “5” and  
7 inserting “13”;

8 (2) in paragraph (1)—

9 (A) by striking “10” and inserting “18”;

10 and

11 (B) by striking “and” at the end; and

12 (3) in paragraph (2), by inserting “; and (3)  
13 section 4007, which shall expire 5 years after the  
14 date of its enactment” before the final period.

15 **SEC. 4. CALFED.**

16 (a) PARTNERSHIP AND AGREEMENTS RELATING TO  
17 CERTAIN WATER STORAGE PROJECTS.—The Secretary of  
18 the Interior may enter into a partnership or other agree-  
19 ment relating to a water storage project described in sec-  
20 tion 103 of the Calfed Bay-Delta Authorization Act (Pub-  
21 lic Law 108–361; 118 Stat. 1683) with a local joint-pow-  
22 ers authority established pursuant to State law by 1 or  
23 more irrigation districts or other local water districts or  
24 units of local government within the applicable hydrologic  
25 region, to advance the project.

1 (b) REAUTHORIZATION.—Title I of the Califed Bay-  
2 Delta Authorization Act (Public Law 108–361; 118 Stat.  
3 1681; 123 Stat. 2860; 128 Stat. 164; 128 Stat. 2312; 129  
4 Stat. 2407; 130 Stat. 1866) is amended by striking  
5 “2020” each place it appears and inserting “2024”.

6 **SEC. 5. SAVINGS CLAUSE.**

7 Nothing in this Act or an amendment made by this  
8 Act shall be interpreted or implemented in a manner  
9 that—

10 (1) preempts or modifies any obligation of the  
11 United States or an eligible entity under Federal law  
12 to act in accordance with applicable State law, in-  
13 cluding applicable State water law; or

14 (2) affects or modifies any obligation under ap-  
15 plicable Federal environmental law.

○