

116TH CONGRESS
1ST SESSION

S. 2044

To amend the Omnibus Public Land Management Act of 2009 to establish an Aging Infrastructure Account, to amend the Reclamation Safety of Dams Act of 1978 to provide additional funds under that Act, to establish a review of flood control rule curves pilot project within the Bureau of Reclamation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 27, 2019

Ms. MCSALLY (for herself and Ms. SINEMA) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Omnibus Public Land Management Act of 2009 to establish an Aging Infrastructure Account, to amend the Reclamation Safety of Dams Act of 1978 to provide additional funds under that Act, to establish a review of flood control rule curves pilot project within the Bureau of Reclamation, 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 “Water Supply Infra-
5 structure Rehabilitation and Utilization Act”.

1 **SEC. 2. AGING INFRASTRUCTURE ACCOUNT.**

2 Section 9603 of the Omnibus Public Land Manage-
3 ment Act of 2009 (43 U.S.C. 510b) is amended by adding
4 at the end the following:

5 “(d) AGING INFRASTRUCTURE ACCOUNT.—

6 “(1) ESTABLISHMENT.—There is established in
7 the general fund of the Treasury a special account,
8 to be known as the ‘Aging Infrastructure Account’
9 (referred to in this subsection as the ‘Account’), to
10 provide funds to, and provide for the extended re-
11 payment of the funds by, transferred works oper-
12 ating entities or project beneficiaries responsible for
13 repayment of reimbursable costs for the conduct of
14 extraordinary operation and maintenance work at
15 transferred works, which shall consist of—

16 “(A) any amounts that are authorized to
17 be appropriated to the Account under section
18 9605; and

19 “(B) any amounts deposited in the Ac-
20 count under paragraph (3)(B).

21 “(2) EXPENDITURES.—Subject to appropria-
22 tions and paragraph (3), the Secretary may expend
23 amounts in the Account to fund and provide for ex-
24 tended repayment of the funds for eligible projects
25 at transferred works identified in a report submitted
26 under paragraph (5)(A).

1 “(3) REPAYMENT CONTRACT.—

2 “(A) IN GENERAL.—The Secretary may
3 not expend amounts under paragraph (2) with
4 respect to an eligible project described in that
5 paragraph unless the transferred works oper-
6 ating entity or project beneficiary responsible
7 for repayment of reimbursable costs has entered
8 into a contract to repay the amounts under sub-
9 section (b)(2).

10 “(B) DEPOSIT OF REPAID FUNDS.—
11 Amounts repaid by a transferred works oper-
12 ating entity or project beneficiary responsible
13 for repayment of reimbursable costs receiving
14 funds under a repayment contract entered into
15 under this subsection shall be deposited in the
16 Account without further appropriation.

17 “(4) APPLICATION FOR FUNDING.—

18 “(A) IN GENERAL.—Not less than once per
19 fiscal year, the Secretary shall accept, during
20 an application period established by the Sec-
21 retary, applications from transferred works op-
22 erating entities or project beneficiaries respon-
23 sible for payment of reimbursable costs for
24 funds and extended repayment for eligible
25 projects.

1 “(B) ELIGIBLE PROJECT.—A project eligi-
 2 ble for funds and extended repayment under
 3 this subsection is a project that—

4 “(i) qualifies as an extraordinary op-
 5 eration and maintenance work under this
 6 section;

7 “(ii) is for the major, non-recurring
 8 maintenance of a mission-critical asset;
 9 and

10 “(iii) is not eligible to be carried out
 11 or funded under the repayment provisions
 12 of section 4(c) of the Reclamation Safety
 13 of Dams Act of 1978 (43 U.S.C. 508(c)).

14 “(C) GUIDELINES FOR APPLICATIONS.—
 15 Not later than 60 days after the date of enact-
 16 ment of this subsection, the Secretary shall
 17 issue guidelines describing the information re-
 18 quired to be provided in an application for
 19 funds and extended repayment under this sub-
 20 section that require, at a minimum—

21 “(i) a description of the project for
 22 which the funds are requested;

23 “(ii) the amount of funds requested;

24 “(iii) the repayment period requested
 25 by the transferred works operating entity

1 or project beneficiary responsible for re-
2 payment of reimbursable costs;

3 “(iv) the financial justification for re-
4 questing an extended repayment period;
5 and

6 “(v) the financial records of the trans-
7 ferred works operating entity or project
8 beneficiary responsible for repayment of
9 reimbursable costs.

10 “(D) REVIEW BY THE SECRETARY.—The
11 Secretary shall review each application sub-
12 mitted under subparagraph (A)—

13 “(i) to determine whether the project
14 is eligible for funds and an extended repay-
15 ment period under this subsection;

16 “(ii) to determine if the project has
17 been identified by the Bureau of Reclama-
18 tion as part of the major rehabilitation and
19 replacement of a project facility; and

20 “(iii) to conduct a financial analysis
21 of—

22 “(I) the project; and

23 “(II) the transferred works oper-
24 ating entity or project beneficiary re-

1 sponsible for repayment of reimburs-
2 able costs.

3 “(5) REPORT.—Not later than 90 days after
4 the date on which an application period closes under
5 paragraph (4)(A), the Secretary shall submit to the
6 Committees on Energy and Natural Resources and
7 Appropriations of the Senate and the Committees on
8 Natural Resources and Appropriations of the House
9 of Representatives a report that—

10 “(A) identifies each project eligible for
11 funds and extended repayment under this sub-
12 section;

13 “(B) with respect to each eligible project
14 identified under subparagraph (A), includes—

15 “(i) a description of—

16 “(I) the eligible project;

17 “(II) the anticipated cost and du-
18 ration of the eligible project; and

19 “(III) any remaining engineering
20 or environmental compliance that is
21 required before the eligible project
22 commences;

23 “(ii) an analysis of—

24 “(I) the repayment period pro-
25 posed in the application; and

1 “(II) if the Secretary rec-
2 ommends a minimum necessary repay-
3 ment period that is different than the
4 repayment period proposed in the ap-
5 plication, the minimum necessary re-
6 payment period recommended by the
7 Secretary;

8 “(iii) an analysis of the effect on the
9 affordability of water of—

10 “(I) the repayment period pro-
11 posed in the application; and

12 “(II) if the Secretary rec-
13 ommends a minimum necessary repay-
14 ment period that is different than the
15 repayment period proposed in the ap-
16 plication, the minimum necessary re-
17 payment period recommended by the
18 Secretary; and

19 “(iv) an analysis of alternative non-
20 Federal funding options; and

21 “(C) describes the balance of funds in the
22 Account as of the date of the report.”.

1 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS FOR THE**
 2 **RECLAMATION SAFETY OF DAMS ACT OF 1978.**

3 Section 5 of the Reclamation Safety of Dams Act of
 4 1978 (43 U.S.C. 509) is amended, in the first sentence,
 5 by inserting “, and, effective October 1, 2019, not to ex-
 6 ceed an additional \$550,000,000 (October 1, 2019, price
 7 levels)” before “, plus or minus”.

8 **SEC. 4. REVIEW OF FLOOD CONTROL RULE CURVES PILOT**
 9 **PROJECT.**

10 (a) DEFINITIONS.—In this section:

11 (1) BUREAU.—The term “Bureau” means the
 12 Bureau of Reclamation.

13 (2) ELIGIBLE WORKS.—

14 (A) IN GENERAL.—The term “eligible
 15 works” means a reserved works, or a trans-
 16 ferred works for which—

17 (i) the flood control rule curve has not
 18 been substantially adjusted during the 10-
 19 year period ending on the date of enact-
 20 ment of this Act; and

21 (ii) the Secretary receives a request in
 22 accordance with subsection (c)(1)(A).

23 (B) EXCLUSIONS.—The term “eligible
 24 works” does not include—

1 (i) any project authorized by the
 2 Boulder Canyon Project Act (43 U.S.C.
 3 617 et seq.);

4 (ii) any project authorized by the Act
 5 of April 11, 1956 (commonly known as the
 6 “Colorado River Storage Project Act”) (43
 7 U.S.C. 620 et seq.); or

8 (iii) any project of the Pick-Sloan
 9 Missouri River Basin Program (authorized
 10 by section 9 of the Act of December 22,
 11 1944 (commonly known as the “Flood
 12 Control Act of 1944”) (58 Stat. 891, chap-
 13 ter 665)).

14 (3) PILOT PROJECT.—The term “pilot project”
 15 means the pilot project established under subsection
 16 (b).

17 (4) SECRETARY.—The term “Secretary” means
 18 Secretary of the Interior.

19 (b) ESTABLISHMENT OF PILOT PROJECT.—The Sec-
 20 retary shall establish within the Bureau a pilot project to
 21 adjust flood control rule curves in accordance with sub-
 22 section (d).

23 (c) SELECTION OF ELIGIBLE WORKS.—

24 (1) REQUEST.—

1 (A) IN GENERAL.—In order for an eligible
2 works to be selected for inclusion in the pilot
3 project, a responsible party shall submit a writ-
4 ten request to the Secretary.

5 (B) NOTICE.—Not later than 30 days
6 after the date on which the Secretary receives
7 a request under subparagraph (A), the Sec-
8 retary shall notify—

9 (i) each responsible party of that re-
10 quest, using lists maintained by the Bu-
11 reau; and

12 (ii) if applicable, the appropriate Fed-
13 eral power marketing administration.

14 (2) SELECTION.—Each year, the Secretary
15 shall—

16 (A) select 1 or more eligible works for in-
17 clusion in the pilot project; and

18 (B) submit a list of those eligible works
19 to—

20 (i) the Secretary of the Army;

21 (ii) the Committee on Natural Re-
22 sources of the House of Representatives;
23 and

24 (iii) the Committee on Energy and
25 Natural Resources of the Senate.

1 (3) EXCLUSION.—The Secretary shall not select
2 an eligible works for inclusion in the pilot project
3 under paragraph (2)(A) if, not later than 60 days
4 after the date on which the notice is provided to
5 each responsible party under paragraph (1)(B)(i), a
6 majority of the responsible parties submit to the
7 Secretary an objection to the inclusion of the eligible
8 works in the pilot project.

9 (d) ADJUSTMENT OF FLOOD CONTROL RULE.—

10 (1) IN GENERAL.—The flood control rule curve
11 of an eligible works shall be adjusted pursuant to
12 section 7 of the Act of December 22, 1944 (33
13 U.S.C. 709), if the Secretary of the Army deter-
14 mines that the adjustment would enhance the au-
15 thorized purposes of the eligible works.

16 (2) CONSIDERATIONS.—In the adjustment of a
17 flood control rule curve under paragraph (1), the fol-
18 lowing factors shall be considered:

19 (A) Forecast-informed reservoir operations.

20 (B) Improved hydrologic forecasting for—

21 (i) precipitation;

22 (ii) snowpack;

23 (iii) runoff; and

24 (iv) soil moisture conditions.

1 (C) Any new watershed data, including
2 data provided by a responsible party for the eli-
3 gible works.

4 (3) CONSULTATION.—In the adjustment of a
5 flood control rule curve under paragraph (1), the fol-
6 lowing entities shall be consulted:

7 (A) Each responsible party for the eligible
8 works.

9 (B) In the case of an eligible works that
10 produces power marketed by the Federal Gov-
11 ernment, the Federal power marketing adminis-
12 tration that markets the power.

13 (C) The Secretary.

14 (e) CONSULTATION.—The Secretary shall consult
15 with the Secretary of the Army with respect to any action
16 taken by the Secretary of the Army—

17 (1) pursuant to section 7 of the Act of Decem-
18 ber 22, 1944 (33 U.S.C. 709); and

19 (2) that relates to the pilot project.

20 (f) FUNDING.—The Secretary or the Secretary of the
21 Army, as appropriate, may accept amounts from respon-
22 sible parties for eligible works to fund all or a portion of
23 the cost of carrying out an adjustment under subsection
24 (d), including a review or revision of operational docu-
25 ments (including water control plans, water control manu-

1 als, water control diagrams, release schedules, rule curves,
 2 operational agreements with non-Federal entities, and any
 3 associated environmental documentation).

4 (g) EFFECT.—Nothing in this section—

5 (1) affects or modifies any existing authority to
 6 review or modify—

7 (A) reservoir operations, including any ex-
 8 isting forecast-informed reservoir operations at
 9 a facility of the Corps of Engineers, such as
 10 Coyote Dam; and

11 (B) flood control operations; or

12 (2) affects or modifies any authorized purpose
 13 of any project carried out by the Secretary.

14 (h) TERMINATION.—

15 (1) IN GENERAL.—The pilot project shall termi-
 16 nate on the date that is 15 years after the date of
 17 enactment of this Act.

18 (2) EFFECT.—Termination of the pilot project
 19 under paragraph (1) shall not affect any flood con-
 20 trol rule curve developed as part of the pilot project.

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